

(1957) 04 PAT CK 0019
In the Patna High Court
Case No : Misc. Judicial Case No. 58 of 1957

Manoranjan Ghose

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-04-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1957 Patna 393

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Bhabananda Mukherji and Prem Shanker Sahay, for the Appellant;
Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application on behalf of the petitioner Mandranjan Ghose praying for grant of a writ under Article 226 of the Constitution commending the Opposite parties to permit the petitioner to sit for the Special Lower Division Secretariat Examination, to be held on 7th February, 1957. Cause has been shown in this case by the learned Government Advocate on behalf of the State of Bihar and other opposite parties to whom a notice of the rule was ordered to lie given..

2. The rule was issued in this case on 24th January 1957. Thereafter the, petitioner made a prayer that he may be permitted to sit for the examination to be held on 7th February 1957, pending the hearing of the application, but that the result of the examination may not be published or given effect to until the application was disposed of. The prayer was allowed by this Bench and on 4th February, 1957 it was ordered that the petitioner should be permitted to appear at the examination to be held by the Finance Department on 7th February 1957, and that the results would not be published till the disposal of the application.

3. The case of the petitioner is that he was appointed on 25th September 1943, as a Class II typist and was confirmed with effect from 18th May 1948, in the

office, of the Inspector General of Police, Patna. He was promoted as Class I typist from 1st June 1950. On 19th. May 1956, the petitioner made a representation to the Secretary of the Finance Department through the proper authorities for permission to appear at the Special Lower Division Secretariat Examination." The case of the petitioner is that no permission was granted to him by the Finance Department, though he was qualified to appear at the examination and though he fulfilled all the conditions required by the Government order dated 9th November 1956. The Government order is to the following effect ;

"Notice."

A special competitive examination will be conducted by the Finance Department on 17th, 18th, 19th and 20th December 1956, for the assistants who are now employed on temporary basis in the Secretariat (Including amalgamated departments) and in the offices attached to the Secretariat (including Unamalgamated Departments, the offices of the Chief Conservator of forest, Bihar Secretariat to the Governor, Commissioners of all divisions etc). In order that a candidate is eligible to sit at the examination, he must (a) have put in more than one year of continuous service as L. D. Assistant in the scale of 75-150/70-125 on 30th August 1956. The candidate must have passed I. A. or I. Sc. or any other equivalent examination. If, however, he is a Matriculate he must have put in at least 5 years continuous service under Government on 30th August 1955."

(b) have a certificate from his department head that his temporary service has been satisfactory and that he is fit for absorption in the permanent service.

(c) Pay a fee of Rs. 5/- for appearing at the examination. The fee should be deposited in a treasury or branch of State Bank of India in Bihar and the amount should be credited under the head XXXVI Misc. Departments provincial Examination fees other Examination Fees. The duplicate copy of the challan should be attached with the application form.

2. The examination will consist of the following subjects,

(i) precis writing.

(ii) Office procedure, Receipt and Registration of papers, Routine procedure in dealing with cases, Drafting, Tabulating, indexing and Recording of cases.

(iii) Bihar Service Code (Chapter I, II, III, IV, V, VI, S, 8 and Chapter VII) Government Servants Conduct Rules and Travelling Allowance Rules. "

(iv) Hindi Essay.

3. In order to qualify at the examination a candidate must secure not less than 50% marks in total excluding Hindi Essay for which qualifying marks will be 30 per cent.

4. Application should reach the Under Secretary--F. Department, through the proper channel not later than 30th November, 1956, in the enclosed form"

The circular of the Finance Department dated the 9th of October, 1956, which is annexure H to the application, as also relevant in this connection and is to the following effect.

"Subject:--Special L. D. Examination.

Sir, It has been decided to hold a Special L. D. Examination to enable the temporary L. D. Assistants, who have put in more than one year on continuous service on the 30th of August, 1956, to qualify for permanent appointment in the L. D. The Examination will be held sometime in November or December and the date of the Examination will be communicated shortly. The temporary L. D. Assistants serving in your Department may be informed of the above decisions.

You are requested to indicate immediately the number of temporary L. D. Assistants in your department who may be eligible to appear in the examination.

It is requested that a list of temporary L. D. Assistants with more than 1 year of continuous service on the 30th August, 1956 who may have been retrenched as a result of the last allotment of L. D. Passed candidates, may also be sent. The list may show their total length of continuous service on the above date as also the date on, which they were actually retrenched. An attempt will be made to reappoint those against existing vacancies in the different department. The number of such vacancies either temporary or permanent in your department may also be Indicated

A reply may be sent by the 22nd of October, 1956.

Sd. S.N. Singh Secretary to-Government."

The case of the petitioner is that he had put in more than five years continuous-service under the Government on the 30th Of August, 1956, and that he had also put in more than-one year"s continuous service on the 30th August 1956 as a Lower Division Assistant. The petitioner also states that he had furnished a Certificate from the-head of the department that his temporary service had been Satisfactory and that he was fit for absorption in the permanent service. The certificate given by the petitioner is at page 18 of the paper book and is to the following effect;.

"Certified that Shri Manoranjan Ghose, temporary assistant attached to the office of the D. I. G. of Police, Northern Range, Muzaffarpur, has put in 6 years and 8 months of continuous service as a lower Division Assistant in the scale of 70.125 with effect from 1-1-49 to 30-8-55. He was appointed a Typist on 25-9-43 and holds his lien on that permanent post." He is still in continuous service as a L. D. Assistant from 1-1-49 in this office,

He is quite fit for absorption in permanent Government service as an assistant.

Sd. B. N. Mazumdar 22-11-56. Dy. Inspector-General of Police, N. R. Muzaffarpure."

In the counter affidavit It is stated on behalf of the respondent that the petitioner was not permitted to appear at the examination as he did not fulfil the conditions required by the Government circular. It was alleged that on the 21st of May, 1956, the Inspector-General of Police had ordered the petitioner to revert to his post of typist and so there was no continuous period of service for one year prior to the 30th of August, 1956, as required by the Government circular, and the petitioner was, therefore, not qualified for appearing at the competitive Examination.

4. On this point the submission of learned Counsel on behalf of the petitioner is that though the order of the Inspector-General of Police states that the petitioner was to revert from the post of temporary assistant to the post of typist Class II with effect from the 21st of May, 1956, the order was actually not communicated, to the petitioner till the 29th January, 1957, and the order did not become effective before that date. The order of reversion is quoted at page 32 of the paperbook and is in the following terms:.

"Northern Range Order No. 41 of 1957.

Sri Manoranjan Ghose working as temporary assistant In North Range Office is reverted to his substantive post of typist Class II with effect from 21-5-56 A. M. He is promoted to typist Class I on Rs. 80 in the scale Of Rs. 80--4--100 E. B. 4--120 with effect from 21-5-56 A.M.

(A. I. G.'s O. O. No. 12 of 1957).

Sd. B. N. Mazumdar, D. I. G. of Police, N. R. Muzaffarpure, Memo No. 749/VT-4-54. Office of the D.T.G. of Police, N. R. Muzaffarpure Dated the 29th January, 1957.

Copy forwarded to:--

1. A. I. G. Bihar for information with reference to his memo No. 242 A dated 7-1-57.

2. Head Assistant/Accountant for necessary action.

3. Sri Manoranjan Ghose for information,

Sd. B. N. Mazumdar, D. I. G. Police, Northern Range, Muzaffarpure".

In our opinion the submission made by learned Counsel on behalf of the petitioner is correct. The " order itself does not show on the face of it on what date it was passed but it is clear enough that the order was communicated to the petitioner on the 29th of January 1957. The order was also communicated on the same date to the Assistant Inspector General, Bihar, and also to the Head Assistant and Accountant for necessary action.

5. In these circumstances we are of opinion that the order reverting the petitioner from the post of temporary assistant in the Northern Range office became an effective order only on the 29th of January, 1957, when it was communicated to the petitioner and also when the order was sent to the Head Assistant and the Accountant for necessary action. It follows, therefore, that on the 30th of August, 1958, the petitioner had put in one year continuous service as a Lower Division Assistant and as the conditions Imposed by the Government circular, annexure H, and the Government order, annexure, I had been fulfilled the petitioner was entitled to appear at the special Lower Division Secretariat Examination. It follows, therefore, that the order of the Secretary, Finance Department, refusing to give permission to the petitioner to appear at the examination is ultra vires.

6. For these reasons we hold that this application must be allowed and that a writ in the nature of mandamus should be issued commanding the respondents to publish the results of the special Lower Division Secretariat Examination held on the 7th February, 1957, so far as the petitioner is concerned. The application is accordingly allowed, but there will be no order as to costs In the circumstances of this case.