

(1994) 02 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 542 of 1992

Md. Kalimuddin and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 18-02-1994

Acts Referred:

Citation : (1994) 02 PAT CK 0005

Final Decision : Allowed

Judgement

S.N. Jha, J.—This writ application has been filed for mandamus to the Respondents to consider the cases of the Petitioners for appointment as Assistant teachers. The facts giving rise to the application, shortly stated, are as follows.

2. On. 7.8.88 advertisement was issued by the Director, Primary Education, Bihar inviting applications for appointment on the post of Assistant Teachers. The Petitioners applied for the appointment in the Santhal Parganas Division. They were interviewed by the Selection Committee in July 1989. On 19.1.91 a panel of 215 persons including the Petitioners, as contained in Annexure-3, was sent by the Regional Deputy Director, Santhal Parganas Division for approval of the Director. It is said that there were 160 vacancies on the post for which recommendations had been made. On 30.1.91 the Director approved the names of 98 persons for appointment. They included 47 candidates of general category, 43 candidates of the Scheduled Tribes 6 of Scheduled Castes and 2 persons of the handicapped category. It is said that out of the aforesaid 98 persons 91 only joined the posts and they are working in different schools. It is said that the list of 52 persons was again sent on 26.8.91 pursuant to the direction of the Director dated 5.6.91 in which also the names of the petitioners are mentioned. The grievance of the Petitioners is that no appointment is being made from the list.

3. The writ petition was filed on 20.1.92. An interim order was passed on 28.1.92 to the effect that pending admission of the application the panel in question shall not lapse. The writ petition was admitted on 9.9.92. An observation was made that at the time of the disposal of the writ petition the Court shall consider the

desirability of granting relief to the Petitioners in view of the expiry of life of the panel.

4. The Respondents have filed counter affidavit. The factual aspect of the case as shortly stated hereinabove has not been denied. A stand, however has been taken that the Director, Primary Education has taken a decision vide his letter dated 27.5.93 not to make appointments from the old panel. It is also suggested that Rule regarding appointment are being framed and appointments will be made as per the revised Rules. In this connection it has been indicated that the State Government has dispensed with the necessity of training as a necessary qualification for the purpose of appointment and Rules are being suitably amended accordingly.

5. Mr. Ram Chandra Jha, learned Counsel for the Petitioners, submitted that vacancies being of the year 1988 they have to be filled up according to the then existing rules and the reservation policy. He submitted that on the own showing of the Respondents vide paragraph 12 of the counter affidavit the panel had been (sic) pared in the light of the guidelines laid down in the circular of the Personnel and Administration Reforms Department and the letters of the Director Primary Education dated 21.11.90 and 5.6.91 respectively and therefore, there being no infirmity in the preparation of the panel the Petitioner should not be denied appointment. Mrs. Sheema Ali Khan learned Standing Counsel No. 9, on the other hand contended that mere empanelment does not create any right appointment and it is open to the state Government not to make appointments or to fill up only some of the existing vacancies from the panel. She also submitted that the panel was not in accordance with new reservation policy or rules which are in offing. In support of her contentions counsel placed reliance on The State of Haryana Vs. Subash Chander Marwaha and Others, ; Mani Subrat Jain and Others Vs. State of Haryana and Others, and Shankarsan Dash Vs. Union of India,

6. The submission that the empanelment does not create any legal right for appointment and that the Government is not bound to fill up the vacancies as a proposition of law is unexceptionable. However, the State discharging public duties cannot be allowed to arbitrarily take the stand that no appointment or only some appointments will be made from the existing panel. Some reason which may be said to be rational or plausible must be assigned. During course of hearing there was some controversy at the initial stage as to whether the panel was prepared in accordance with the reservation policy. Counsel for the Petitioners submitted that the vacancies being of the year 1988, the new reservation policy which came into force In 1990 cannot be applicable and even if it were to apply, it would appear from the letter of the Regional Deputy Director dated 26.8.91, which was sent in response to the aforesaid letter of the Director for dated 5.6.91, that the panel had been prepared keeping in view the new reservation policy and persons of different categories had been included as per quota. counsel drew our attention to the break-up of the recommendation

contained in the aforementioned letter dated 26.8.91 (Anexure-6). He also drew our attention to the statement made in paragraph 12 of the counter affidavit wherein it is stated that "a revised panel was prepared and sent for approval in the light of Government letter No. 389 dated 5.6.91 based on letter No. 147 dated 21.11.1990 of the Personnel and Administrative Reforms Department".

7. The panel thus does not appear to be violative of the reservation policy of the State. So far as the proposed Rules of recruitment are concerned, the details have not been furnished from which it could be gathered as to whether any substantial or drastic deviation is sought to be made from the existing rules regarding the procedure of recruitment except that training is no longer to be a necessary qualification or condition of eligibility. I do not want to go into the correctness of the policy of the State dispensing with the necessity of training as a condition of eligibility. However, I have serious doubt whether appointment of untrained teachers in preference to the trained ones who are already in panel and available for appointment can be said to be in public interest.

8. A salient aspect of the case is as against 160 vacancies and out of 98 persons approved for appointment, as many as 43 belong to Scheduled Tribes while only 6 of the Scheduled Castes category and 47 of the General category find their place. The percentage of the reservation in favour of the Scheduled Castes and Scheduled Tribes is 14 and 10 percent respectively in the State services. There is nothing to indicate that these 43 persons were approved for appointment against accumulated vacancies meant for the Scheduled Tribes. The Respondents have not come forward with any explanation as to how appointment have been made in such an uneven manner.

9. I have already said above that while it is open to the State not to make appointment or to make only few appointments against the existing vacancies, the reasons for doing so should be disclosed. It is not open to them to say suddenly one fine morning that no appointment will be made at all or no further appointment will be made from the panel without disclosing any reason whatsoever. If the State were permitted to take such stand it might result in arbitrariness. The Government of the day or the agency of the Government may take steps for appointment and a new changed Government or the personnel may refuse to effectuate the decision of the previous Government or the agency without disclosing the reasons. Of course, that is not the situation in hand. However, the correctness of a particular plea has to be tested by taking it to its logical end.

10. I am conscious of the fact that the panel was prepared in 1991 and much time has elapsed since then. In paragraph 6 of the counter affidavit the Respondents have stated that the advertisement does not mention about life of panel. Counsel for the Petitioners tried to capitalise on the aforesaid plea. I do not find any substance in the argument in this regard. Even if the advertisement does not mention the period or life of the panel, or general principles, it is well settled that appointment should not be made from a State panel. However, as

stated above, the writ petition was filed on 20.1.92. Thus, even if the period or life of the panel were treated to be of one year, it is obvious that the Petitioners have come to this Court before expiry of the said period. In this view of the matter, further delay of two years on account of the fact that the writ petition could not be heard earlier should not stand in their way in getting the relief to which they may otherwise be entitled.

11. Having, thus, considered the different aspects of the case, I am of the opinion that the Petitioners, as indeed those placed above them in the panel in question deserve reconsideration of their case for appointment on the basis of the impugned panel dated 19.1.91 (Annexure-3) and 26.8.91 (Annexure-6). This writ petition is, accordingly, allowed. The Director Primary Education, Bihar is directed to consider the matter afresh and issue appropriate order within two months from the date of the receipt of a copy of this judgment. There will be no order as to costs.

Shashank Kumar Singh J.

12. I agree