(1991) 08 PAT CK 0041

In the Patna High Court

Case No : CWJC No. 1121 of 1991 (R)

Md. Tahsin Ahmad APPELLANT

Vs

District Rural Development Agency, Lohardaga and Others RESPONDENT

Date of Decision : 30-08-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (1993) 1 PLJR 546

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Sumir Prasad and Mrs. Sheela Prasad, for the Appellant; N.K. Prasad, M.M. Banerjee, P.K. Prasad, M. Sahu, D.K. Pathak and B.B.M. Murti, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In this application, the petitioner prays for issuance of a writ of or in the nature of mandamus commanding upon the respondent nos. 1 to 3 to appoint the petitioner on the post of Accountant in terms of the panel approved by the respondent no. 1 and for issuance of an appropriate writ for quashing the order of appointment of Respondent no. 4 dated 11.4.1991 to the said post as contained in Annexure-5 to the application for amendment of the writ petition. The basic facts of the case are admitted.

2. The respondent no. 1 is a State within the meaning of Article 12 of the Constitution of India.

It notified vacancies for the posts of Accountants, Clerks and Drivers to the Employment Exchange, Lohardagga in November, 1988 and pursuant thereto, the authorities of the said Employment Exchange sent the names of eligible candidates for appointment in the post of Accountants, Clerks and Drivers. The petitioner in para-7 of the writ petition has set out the names of the persons whose names were forwarded by the Employment Exchange for appointment as against the post of Accountants. The name of the respondent no. 4 does not find place therein.

3. Admittedly, the name of the respondent no. 4 was sent by the Employment Exchange for his appointment in the post of Cleric.

4. It is further admitted that the Selection Committee held interviews for appointments as against the post of Accounts Clerks and Drivers separately and three separate panels were prepared. The respondent no. 4''s name appeared at serial no. 2, of Annexure-3 which is a panel prepared for the appointment of the post of Clerks and the petitioner''s name appeared at serial no. 2 of Annexure-2, which is a panel prepared by the respondents for the appointment of the vacant post of accountants.

5. The petitioner has contended that the name of one Suresh Singh appeared at serial no. 1 and his name was at serial no. 2 in the said panel, which is contained in Annexure-2 to the writ application.

The aforementioned Suresh Singh did not join and thus in a meeting held on 6.10.1990, a resolution was passed that the letter of the appointment may be issued in the name of the petitioner.

6. However, by reason of the impugned order dated 11.4.1991 as contained in Annexure-5 to the application for amendment of the writ petition, the respondent no. 4 was appointed in the post of an Accountant, although, as noticed hereinbefore, his name was sent by the Employment Exchange for appointment on the post of Clerk and he was interviewed by the Selection Committee for appointment on the said post.

7. It has been contended in the writ application that the respondent no. 4 was appointed in the post of Accountant in violation of the provisions contained in Articles 14 and 16 of the Constitution of India.

It was further contended that he was so appointed as his father is the Head clerk working with the respondent no. 1 and thus manipulations were made at his instance.

8. In this case, two counter affidavits have been filed one on behalf of respondent nos. 1 to 3 and another on behalf of the respondent no. 4.

The respondents have taken a common stand in their counter affidavits and it has been contended therein that as the respondent no. 4 had been working on daily wages in the post of Accountant since 1988, his services were regularised in terms of a Resolution adopted by the respondent no. 1 and as contained in Annexure-A to the counter affidavit.

9. In this case, as indicated hereinbefore, it has not been disputed that the name of the respondent no. 4 was sent by the Employment Exchange for appointment as against the vacant post of a clerk whereas the name of the petitioner was sent for appointment as against a vacant post of accountant.

10. From a perusal of Annexure-3, it appears that the panel prepared for appointments of clerk had been given effect to, inasmuch as three persons had been appointed out of the said panel, which would be evident from the Office order dated 11.4.1991, as contained in Annexure-4 to the application for amendment to the writ petition.

11. Similarly, from Annexure-2 to the Suppementary affidavit filed on behalf of the petitioner, it is evident that a separate panel was prepared for appointment as against the vacant post of accountant.

Two separate panels having been prepared by the respondent no. 1, in my opinion, it was not open to it to appoint respondent no. 4 in the post of Accountant when his name was sent by the Employment Exchange, he was interviewed by the Selection Committee and his name found place at serial no. 2 in the panel prepared for the appointment of clerks, the respondent no. 1 having set out the rules for recruitment for the vacant posts of accountants and clerks, was bound thereby. It thus ignoring the rules of recruitment could not have appointed the respondent no. 4 as against the vacant posts of accountant only on the ground that he had been working on daily wages on the post of accountant since 1988 and his services are required to be regularised.

12. It is now well known that a State within the meaning of Article 12 of the Constitution of India is bound to give equal opportunity of employment to all the eligible candidates for being considered for appointment, in terms of Article 16 of the Constitution of India.

The respondents having laid down a procedure for recruitment in the posts of accountants and clerks could not have deviated or departed therefrom and such deviation and departure attracts Articles 14 and 16 of the Constitution of India.

13. A ''State'' can appoint a person only by taking recourse to two methods, namely : (a) appoint on a regular basis i.e. upon following the procedures laid down under the Recruitment Rules which must be in conformity with the provisions of Article 16 of the Constitution of India or (b) by promotion.

14. The Supreme Court in R.N. Nanjundappa Vs. T. Thimmiah and Another, has held that third mode of appointment is not envisaged unless there exists any policy decision or statute in that regard.

15. This aspect of the matter has recently been considered by this Court in details in M.L. Gupta and Others Vs. Instrumentation Ltd. and Others .

this Court in the aforementioned decision has clearly held that regularisation does not mean permanent absorption in the State service of a person who does not have any existing right in relation thereto.

16. Further, in this case malice in law, on the part of the respondents no. 1 to 3 is writ large on the fact of the records. There was only one vacant post of accountant and thus if the respondent no. 4 was to be regularised in, neither

there was any necessity for the respondent no. 1 to notify the said vacancy to the Employment Exchange nor was there any necessity to send offer of appointment to Shri Suresh Singh.

17. In this view of the matter, in my opinion, the impugned order dated 11.4.1991, as contained in Annexure-5 to the application for amendment to the writ application cannot be sustained.

The respondent nos. 1 to 3, however regard being had to the facts and circumstances of the case, may appoint the respondent no. 4 as against a vacant post of clerk, if there exists any vacancy in accordance with law.

18. So far as the petitioner is concerned, as his name appears at Serial No. 2 of the panel and as admittedly, Sri Suresh Singh whose name appeared at Serial No. 1 thereto did not join the said post of accountant, the respondents shall appoint the petitioner on the post of accountant. This application is allowed with the aforementioned observations and directions.

However, in the facts and circumstances of the case, there will be no order as costs.