
(2011) 04 PAT CK 0296
In the Patna High Court
Case No : CWJC No. 4199 of 2008

Md. Zabihullah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Citation : (2011) 59 BLJR 2660 : (2011) 2 PLJR 1039

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—The Petitioner has passed his Maulvi Examination conducted by the Bihar State Madrasa Education Board, Patna. Pursuant to advertisement issued for appointment of inter alia Urdu Teachers in Gram Panchayat Raj Dhobahi in the district of Sheohar, where there were six vacancies for Urdu Teachers, apart from others Petitioner applied. A merit list was prepared and Petitioner was not selected instead Respondent No. 8 was selected. Petitioner has challenged the very basis on which the merit list has been prepared in so far as Urdu Teachers are concerned. Let it be noted that the Urdu Teachers are those persons who had passed Maulvi Examination.

2. The dispute in this case lies in a very narrow compass. Firstly, it is not in dispute that this Maulvi Examination conducted by the Bihar State Madrasa Education Board has been granted equivalence with Intermediate Examination as conducted by the Bihar School Examination Board, which was earlier Bihar Intermediate Council. The dispute is that for Maulvi Examination a person has to sit for 12 papers and the marks sheet is aggregate of 12 papers aggregating to 1200 marks. The controversy is with regard to the 12th paper which is designated as optional subject. Whether the marks of this 12th optional subject have to be included or not is the question? The fact is that the merit list of aspirants of Urdu Teachers was prepared taking only 11 subjects and excluding the 12th optional subject on the strength of a circular of the State Government in the Department of Human Resources Development of the year 2006.

3. On behalf of the Petitioner, it is stated that circular, in fact, if taken to be what it said and how it was acted upon, is wrong. The position stands clarified by subsequent circular of the State Government, which is Annexure-3 dated 15.11.2007 to the writ petition. In this circular Government has clarified that Maulvi Examination is equivalent to Intermediate Examination and the optional subject is compulsory and not optional in that sense. This is clarified by the Bihar State Madrasa Education Board by Annexure-7 as well.

4. Learned Counsel for the private-Respondent No. 8 submits that both Annexures-3 & 7 are issued after the selection process and cannot be looked into. The question, thus, arises is whether the selection process was correctly done or not.

5. Having heard the parties and considered the matter, in my view, the policy adopted for the purposes of the selection process appears to be wrong. The simple reason for this is that a person sitting for Maulvi examination has no option but to appear for all 12 papers. The only option is what would be the 12th paper. In the marks sheet itself it is clearly indicated as optional paper and not additional paper. It is nobody's case that a person can take examination only in 11 papers without even opting for the 12th paper. It makes little difference whether he passes or fails in the 12th paper. The 12th paper is compulsory paper only subject to be taken being optional. The marks sheet further shows that for calculating the division and other purposes the sum total of the 12th paper is taken. Thus, it is wrong to say or assume that the 12th paper is an optional paper like additional paper, which is not obligatory to be taken up. To the contrary, the subsequent circulars of the State Government and clarification by the Bihar State Madrasa Education Board that the 12th paper is a compulsory paper giving choice to the students to choose one amongst several subjects available therein. It is optional in that limited sense. Thus, it is apparent that the merit list of all six posts, in so far as Urdu Teachers are concerned, has been erroneously prepared and by taking only the total of 11 papers excluding the 12th optional paper. The result of taking in account the 12th paper would alter the merit list. This can be shown by comparing the marks as obtained by Petitioner vis-a-vis private-Respondent No. 8. If marks of 11 papers are taken into account for the purposes of preparing the merit list, Petitioner has 867 marks out of 1100, whereas private-Respondent No. 8 has 872 marks out of 1100. Thus, private-Respondent No. 8 was selected. But, if we take the all marks of 12 paper the marks secured by Petitioner is 936 out of 1200 as against 928 by private-Respondent No. 8. The policy of marking of applicants for the post of Urdu Teachers, who had passed the Maulvi Examination conducted by the Bihar State Madrasa Education Board was, thus, clearly erroneous. It needs to be corrected. The concerned Gram Panchayat or the selection committee therein would have to revisit the entire merit list of applicants for the purposes of Urdu Teachers taking into account all 12 papers and then reposition them and issue consequential orders. It may be that because of this correction of the policy, the merit list would have to be revised but that is a natural consequence of a

correction of policy error. The effect whereof will have to be given by the Respondents within one month of production of a copy of this order before the concerned Block Development Officer. It is also clarified that there will be no fresh advertisement and only revision of the merit list of all six posts of Urdu Teachers will be done with consequences to follow.

6. It was lastly contended on behalf of Respondent No. 8 that as the Petitioner has not impleaded all the persons who would likely be effected by this correction of policy the writ petition must fail. The answer to this is the decision of the Apex Court in the case of State of U.P. and Another Vs. Ram Gopal Shukla, wherein in paras 16 and 17 of the said report it is held that they may be proper parties but are not necessary parties and the writ petition in their absence is maintainable.

7. With these observations and directions, the writ petition is disposed of.