

(2007) 02 PAT CK 0137

In the Patna High Court

Case No : LPA No. 282 of 1999 with 955 of 2000

Mina Kumari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Citation : (2007) PLJR 205

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Mahesh Prasad, Gopal Pd. Sharan and Rewati Kant Raman, for the Appellant; Ray Shivaji Nath and Satish Kr. Sinha, for the Respondent

Judgement

Barin Ghosh and Navaniti Pd. Singh, JJ.—Pursuant to an advertisement published sometimes in 1989, process of selecting candidates to undertake A.N.M. Course began. The appellants in these two appeals responded to the said advertisement and participated in the selection process initiated for the District of Palamu. The candidates, as that of the appellants herein, after having had participated in the said selection process did not get to know the result of their efforts in the selection process. A group of such candidates approached this Court by filing a writ petition seeking a mandamus, upon the authorities concerned to publish the result. This writ petition was dealt with by a Division Bench of this Court. The said writ petition was contested by the respondents therein by filing a counter affidavit wherein it was contended that the selection process is vitiated by gross irregularities. In those circumstances, the Division Bench felt that it would be unwise to issue a mandamus to publish result of such selection and instead directed the Government to examine the matter. The appellants in LPA No. 282/1999 then approached this Court by filing CWJC No. 7713 of 1995 once again seeking a mandamus directing publication of the result of the said selection. To this writ petition, the Government filed a counter affidavit and therein in no uncertain terms elaborated the irregularities committed by the selectors at the time of selection. Having regard to such contention in the counter affidavit and

those having not been dealt with in any rejoinder filed to such counter affidavit, a learned Single Judge of this Court by a judgment and order dated 12th July, 1996 specifically refused to issue a mandamus directing publication of the result, as was prayed for in the said writ petition, but at the same time made it clear that it shall be open to the Director-in-Chief, Health Services, Bihar to take an appropriate decision in respect of selection and publication of the result of the petitioners, if any. Subsequent thereto, the Director-in-Chief, Health Services, Bihar took a decision to publish the result of the said selection, but later on by the impugned order decided to withdraw the said decision.

2. The appellants in LPA No. 282/ 1999 thereafter approached this Court by filing yet another writ petition registered as CWJC No. 2455 of 1998 challenging the decision of the Director-in-Chief, Health Services, Bihar not to publish the result of the said selection. They contended in the writ petition that apart from stating that the selection process was vitiated by irregularities, in the impugned order no indication of any such irregularity had been given. The said appellants sought to bring on record all necessary records in order to show that there was, in fact, no irregularity in the selection process. This writ petition too was contested by the Government by filing a counter affidavit. In that, in no uncertain terms it had been stated that the Health Directorate on scrutiny of the list of selected candidates found that candidates who have obtained lesser marks have been recommended for being admitted to the ANM Course; whereas candidates who obtained higher marks were refused such admission. It was stated that the Health Directorate, therefore, directed the Civil Surgeon, Palamu, being the person responsible for the selection in question, to rectify the merit list and thereupon to send the same for approval of the Director-in-Chief, Health Services, Bihar, but the same was not done and instead the Civil Surgeon ordered for taking admission in the course on the basis of the original merit list. Though the appellants in LPA No. 282/1999 filed a rejoinder but did not deal with the assertions, as indicated above, made by the Government in its counter affidavit.

3. When the writ petition was dealt with, a learned Single Judge of this Court held that it was not permissible to reopen the same issue which stood concluded by the decision rendered in the previous writ petition, i.e., CWJC No. 7713/1995.

4. In LPA No. 282/1999, the appellants are contending that the Court is required to do substantial justice by looking into the materials on record to ascertain as to whether, in fact, there had been any such irregularity in the selection process which could vitiate the selection altogether.

5. In the other LPA, i.e. LPA No. 955/2000, the appellants in their writ petition sought for a mandamus directing publication of their result, which having been refused by the Writ Court, they have preferred the said appeal and are seeking a direction for publication of their result.

6. In so far as the writ petitioners in CWJC No. 2455/1998 are concerned, i.e.,

the appellants in LPA No. 282/1999, they sought to reopen an issue in a subsequent writ petition which stood concluded in the previous writ petition filed by them and accordingly the Writ Court by the judgment impugned in the said appeal dated 9th February, 1999 correctly did not permit them to reopen the same. Apart, from that, as aforesaid, the irregularities as were committed had been brought to the notice of the appellants and admittedly they had nothing further to say in relation thereto.

7. It is true that a member of the public, who had responded to an advertisement and thereupon had been invited to participate in the selection process, is entitled in law to know the result of his efforts at such selection. Normally, therefore, he should be made aware whether he succeeded in such selection or not. However, when the entire selection process is vitiated, there is no question of making that person aware as to what is the result of his efforts at the selection for there is no scope of ascertaining the true effect of such effort.

8. In the instant case, as stated above, the entire selection is vitiated. At the time of preparing the merit list, even roster clearance was not obtained. As a result, people belonging to General Category sought to be selected for reserved category. Furthermore, it has come on record, as indicated above, that the people who received lesser marks were recommended for admission and were ultimately given admission, despite a direction given by the highest authority to correct, the merit list and to obtain the approval thereof.

9. Against the person responsible for effecting such gross irregularities, namely, the Civil Surgeon, Palamu, a departmental proceeding was initiated and upon conclusion thereof he has been dismissed from his service. The net effect of the whole thing is that the entire process is vitiated and accordingly it is impossible to declare result, because whatever would be declared would not be the true reflection of the actual merit of the efforts made at the selection by the candidates. In those circumstances, both the appeals fail and the same are dismissed. We have with great effort restrained ourselves from imposing exemplary costs, at least in LPA No. 282/1999.