
(1993) 08 PAT CK 0028
In the Patna High Court
Case No : C.W.J.C. No. 4615 of 1993

Miss Afshan Azeem and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 2 PLJR 745

Hon'ble Judges : N. Pandey, J; Chy. S.N. Mishra, J

Bench : Division Bench

Judgement

N. Pandey & Chy. S.N. Mishra, JJ.—After hearing the petitioners as also the Learned Counsel for the State, this writ application is being disposed of at the stage of admission itself. In this application under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for a direction to the respondents to appoint them against appropriate posts of Bihar Finance Service, as their names have been recommended by the Bihar Public Service Commission on 25th of June, 1992, and to declare the order of the Chief Secretary dated 17.4.1993 as illegal and mala fide. Their further prayer is to hold that The Bihar Reservation of Vacancies in Post and Service (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) (Second Amendment) Ordinance, 1993" (in short "the Ordinance") cannot take away the vested right of the petitioners for appointment, which had accrued to them as per the rules and terms of advertisement, available before the promulgation of "the Ordinance", which came into force on 27.4.1993.

2. In order to appreciate the controversies, it will be advisable to have a brief survey of some of the facts. The Bihar Public Service Commission in terms of an advertisement, published in the month of March, 1991, in the daily newspaper, conducted 37th Combined Competitive Examination for various services. Final result of the examination was published in the month of June, 1992 and the petitioners were selected for Bihar Finance Service and got 17th, 22nd and 21st

position respectively in the merit list of 52 candidate. In a similar circumstance, the merit lists with respect to the vacancies against different posts were also published. The names of the petitioners were recommended by the Bihar Public Service Commission for appointment in Bihar Finance Service under the reserved category of female and economically weaker class respectively. On receipt of the recommendation, the department of Commercial Taxes got the police verification etc., completed by the middle of January, 1993. When all the process for appointment were almost complete, the Chief Secretary on 17.4.1893 stayed the process for appointment till further orders. In the meantime, on 27th of April, 1993, the Ordinance in question was issued, whereby, the benefit of reservation, extended to the candidates of economically backward classes, were taken away although candidates of other services, for example Bihar Administrative Service and Bihar Education Service, who were selected in the said examination, have already been appointed.

3. A counter affidavit has been filed on behalf of respondent no. 3 (Commissioner, Commercial Taxes, Government of Bihar), saying since "the Ordinance" in question is retrospective in nature, it will affect all such cases in which the formalities of selection have even been completed before the promulgation of "the Ordinance". Therefore, the claim of the petitioners for their appointment can not be considered.

4. Mr. Mukherjee, Learned Counsel appearing for the petitioners, contended that admittedly, the process of selection was complete before the commencement of the Ordinance. Apart from that, in different departments on the basis of such selection, candidates were appointed. According to him, the selection of the petitioners can not be held illegal as the process of selection had commenced much before the promulgation of "the Ordinance". According to him, the amended rule can not be applied to invalidate the selection, made by the Commission. In the instant case, the Commission had acted in accordance with the then existing rules and there is no dispute that the petitioners were eligible for appointment.

5. It was next contended that the order of the Chief Secretary dated 17.4.1993, staying appointment of the petitioners, was highly unjust and malafide. A question thus, arises whether in view of the provisions of the amended ordinance, the legitimate right of the petitioners for consideration for appointment can be taken away. Admittedly, before the promulgation of this ordinance, there was a provision for reservation with respect to the candidates, belonging to economically backward classes. In view of the amendment of Section 4 of Bihar Act 3, 1992, the benefit of reservation to the candidates of economically backward classes has been taken away. sub-section IV (B) of Section 4 envisages that the provisions of the Ordinance would apply to all such cases in which formalities of selection have been completed before 28th of April, 1993. It would be appropriate to quote the provision hereunder :

(iv) After clause (a), a new clause shall be added, namely "(b) Notwithstanding

anything contained to the contrary in the Ordinance or in any other law or rules for the time being in force, or in any judgment or decree of the Court, the provisions of Section 4 shall apply to all such cases in which all formalities of selection have been completed before 28th April 1993 but the appointment letters have not been issued.

6. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. From a bare reference to the provisions of "the Ordinance", quoted above, there is no doubt that its operation has been made with retrospective effect and therefore, it would affect all such cases, except with respect to such selection where letters of appointment have not been issued.

7. Admittedly, several candidates of 37th Combined Competitive Examination, whose names were recommended by the Commission, have been appointed by the Government. Therefore, there is no difficulty in holding that on completion of formalities of selection, appointment letters were issued to several candidates before 28th of April, 1993. If the selection was complete before the cut off date and appointments were given effect to, we fail to appreciate how the amended ordinance will take away the right of the petitioners to be considered. True it is that on account of stay, granted by the Chief Secretary on 17.4.1993, appointment letters were not issued to the petitioners. But the fact remains that the said selection, in which the petitioners were selected, was given effect to and with respect to most of the candidates, appointment letters were issued.

8. Our attention has been drawn towards an abstract of the file of the Personnel and Administrative Department. It shows that after obtaining opinion from the learned Advocate General on the subject, the Deputy Secretary and Secretary sent the matter before Chief Secretary, which was sent before the Chief Minister. The opinion of the Advocate General has been quoted as such :

The selection which has been made or where the process have been commenced can not be governed by the new amendment.

9. In our view, the proposal of the department or opinion of the learned Advocate General may not be binding on the Legislators. But in the background of the facts of this case, in our view, the proposal was fully justified.

10. There is no doubt that with respect to most of the candidates, whose names were recommended along with the petitioners, letters of appointment have been issued.

Therefore, in view of the provision of Sub-section (iv) (b) of Section 4, the right of the petitioners for consideration still exists. The amended rule, therefore, can not apply in such cases. It is true that a candidate can not get right to the post merely by making an application for the same, but a right is accrued in his favour for being considered in terms and conditions of the advertisement. The Government can not take a different view to defeat the claim of the petitioners.

11. In view of the facts, stated above, we direct respondent nos. 2 and 3 to consider the cases of the petitioners in the light of the discussions, made above. This writ application is accordingly, disposed of. But in the circumstances of the case, there shall be no order as to costs.