
(2007) 07 PAT CK 0081
In the Patna High Court
Case No : CWJC No. 447 of 2006

Mithilesh Kumar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Citation : (2007) 4 PLJR 266

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Judgement

Mridula Mishra, J.—Heard counsel for the petitioner and the counsel appearing for the State. Prayer of the petitioner in this writ application is for quashing the order dated 15.12.2005 passed by the Director Social Welfare, rejecting representation of the petitioner and for a direction to the respondents to appoint him on the post of Assistant Instructor (Electronic) in Kamla Nehru Social Service Institute and Handicapped Rehabilitation Training Centre, Patna.

2. Petitioner had earlier moved before this Court in C.W.J.C. No. 543 of 2005 which was disposed of by order dated 11.7.2005 giving direction to the Director, Social Welfare to dispose of petitioner's representation on or before 8.8.2005. In the light of the direction of this Court the impugned order dated 15.12.2005 has been passed.

3. Petitioner's case is that in response to the advertisement bearing No. 2 of 2001 published by Bihar Public Service Commission dated 30.12.2001, petitioner also applied. Several posts were advertised including the post of Assistant Instructor. (Electronics) in Kamla Nehru Social Service Institute and Handicapped Rehabilitation Training Centre. Petitioner was declared successful in the competitive test. His original documents and certificates were verified, his name was recommended for appointment, but he was not appointed. Subsequently, the petitioner filed his representation before the concerned Minister, who directed for immediate appointment of the petitioner. Even then petitioner could not be appointed as the validity of the recommendation made by the B.P.S.C. has

already lapsed. Director sent a letter for revalidation of the recommendation which was also made for three months and was scheduled to lapse on 8.8.2005. In the revalidated period petitioner was not being appointed and he filed writ application. All these facts have duly been considered in the earlier writ application.

4. Counsel for the petitioner submits that the respondents have rejected his representation in violation of the direction of this Court passed in C.W.J.C. No. 543 of 2005. Specific direction was to pass order within the period 8.8.2005, but the order has been passed on 15.12.2005. This delay was intentional as the respondents wanted to get the revalidated period lapsed.

5. Counter affidavit has been filed on behalf of respondents stating that in the year 1998-99 it was decided to introduce two new trades namely Electronics and Electrical Appliances repairing for the vocational training of persons with disabilities. This proposal was approved by Empowered Committee under the Chairmanship of Development Commissioner, Bihar. Accordingly it was proposed to appoint instructor and one Assistant Instructor for each trade. In the light of this decision requisition for appointment of two Instructor and two Assistant Instructors was sent to the B.P.S.C. In the year 1998-99 despite sanction of fund appointment could not be made due to non-receipt of recommendation from B.P.S.C. for these posts. In the year 2000-01 extension of this scheme could not be approved by the Empowered Committee. The B.P.S.C. was intimated vide letter No. 2416 dated 14.11.2002 not to send recommendations for appointment on the said post. In spite of that B.P.S.C. sent recommendation for four persons including the petitioner for appointment. In the year 2001-02 the extension of the posts were not made by Empowered Committee but in the year 2002-04 the Director of Social Welfare submitted a proposal for the extension of the posts in the light of the receipt of recommendation from B.P.S.C. The Empowered Committee did not sanction the extension of the said posts but approved the training in these new trades through professionally established N.G.O./institutions. For these reasons appointment of the petitioner could not be made.

6. Counsel for the petitioner in reply to the stand taken by the respondents have stated that the selection process commenced by publishing advertisement on 30.12.2001. Any decision which was taken by the respondents subsequent to the initiation of the appointment process against the interest of the candidates is illegal and arbitrary. Statements made in the counter affidavit clearly indicate that the decision not to make appointment was taken subsequent to the publication of advertisement. On the basis of such decision the conditions of advertisement dated 30.12.2001 could not be altered adversely to the interest of petitioner or other candidates who had already made applications. Reliance has been placed on the decision reported in the case of Surendra Prasad Singh Vs. The State of Bihar and Others, in which it has been held that:-

"Yet another question equally important may also arise whether on the terms and conditions of the advertisement dated 8.10.1997 the selection processes having been commenced, can be altered adversely to the interest of candidates who had

already made applications. In my view, this question also is no longer res Integra, because by virtue of different decisions of this Court and that of the Apex Court, once the process of selection had commenced on the basis of the commitments of the authorities at the time of publication of advertisement, it cannot be altered or taken away adversely to the interest of the candidates by adopting any subsequent principle either it be in a form of resolution or by a rule framed under Article 309 of the Constitution, unless such a rule is expressly or by necessary implication directs application retrospectively. Reference in this regard can usefully be made to a decision of the Apex Court in the case of Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, and another case of A.A. Calton vs. The Director of Education & Anr. (supra). Similar view akin to it was also expressed by this Court in the case of Miss Afshan Azeem and Others Vs. State of Bihar, , Ranjit Kumar Choubey & Ors. vs. State of Bihar & Ors. (supra) and yet another decision in the case of Sharmila Kumari vs. The Bihar Public Service Commission & Ors. 1995(1) P.L.J.R. 275."

7. I find much substance in the submission made by the counsel for the petitioner. Requisition for appointment was made by the Director, Social Welfare and on such requisition the posts were advertised by the B.P.S.C. Request was made to the B.P.S.C, for not sending recommendation for appointment by letter No. 2416 dated 14.11.2002. By that time posts were already advertised, admit cards were issued and the candidates appeared in the examination. Any subsequent decision including the decision taken by the Empowered Committee on 3.5.2003 for not sanctioning for appointment on these posts and to lake service of professional established N.G.O./Instructor for giving training in these two new trades is against the settled law of the land. The respondent has rejected the representation of the petitioner without considering the direction of this court as well as settled law on this point. Accordingly, the order dated 15.12.2005 passed by the Director, Social Welfare is quashed. The Secretary, Social Welfare, Government of Bihar and the Director, Social Welfare are directed to appoint the petitioner on the post of Assistant Instructor (Electronic) in Kamla Nehru Social Service and Handicapped Rehabilitation Training Centre, after getting the recommendation for validation by B.P.S.C. Patna. The letter of appointment must be issued in favour of the petitioner by the respondents within two weeks from the date of receipt/production of a copy of this order.