
(1997) 08 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 2428 of 1989

Mrs. Madhu Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-08-1997

Acts Referred:

Citation : (1998) 1 PLJR 17

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Rajendra Pd. Singh, Ajay Kumar Thakur and Dinu Kumar, in C.W.J.C. No. 1389 and R.K. Rajan, in C.W.J.C. No. 2428, for the Appellant; D.N. Singh and Vishwambhar Prasad, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—In both the cases as common point of law is involved, they were heard together and are being disposed of by this common judgment.

2. The Petitioner of C.W.J.C. No. 2428 of 1989 (Mrs. Madhu Sinha) while prayed for direction on the Respondents to empanel her name for appointment to the post of Lady Extension Officer, the Petitioner of C.W.J C. No. 1398 of 1989 (Meena Kumari) has prayed for direction on the Respondents to consider her case for appointment to the said post of Lady Extension Officer.

3. The brief common facts are, as follows:

The posts of Lady Extension Officer are Class-III posts and are available in Muffasil Offices under the Divisional Commissioner. They are under the direct control of the Revenue and Land Reforms Department of the State of Bihar. There is no separate guideline/rule laid down for appointment to the post of Lady Extension Officer. The State Government from its Personnel and Administrative Reforms Department issued a general guideline for appointment against Class-III post of the district by their letter No. 11972 dated 9th June, 1976. Subsequently, the Land Reforms Department of the State Govt. also issued their individual guideline by letter No. 96/83 dated 22nd/29th November, 1983. Therein, they

reiterated the guideline dated 9th June, 1976 issued by the Personnel and Administrative Reforms Department and directed the District authorities and the Divisional Commissioners to follow such guideline for appointment against Class-III posts.

In terms of the aforesaid guideline dated 9th June, 1976, as reiterated by guideline dated 22nd/29th November, 1983 (of Revenue and Land Reforms Department), a panel of persons is to be prepared after "allotting marks" for certain qualification and other factors. According to the same, the marks of the basic qualification are to be treated to be 100% and on that basis the marking is to be made taking into note the marks obtained by a candidate at the time of such basic qualification. The additional bonus marks have been further prescribed under the guideline. If a person acquire higher qualification like Degree, Post Graduate Degree etc. then additional five marks are to be given for each of such higher qualification. This apart, mark has also been prescribed for persons having higher age.

For example, if matriculation is the basic qualification for appointment to a post then the percentage of such matriculation examination will be the base mark. If such person has obtained higher qualification like Graduation then the person will be entitled for five bonus marks and if such person is Post Graduate then further five bonus marks are to be added for such Post Graduation. Similarly, if the basic qualification is Graduation then the basic mark will be the percentage of marks of such Graduation and in that case, the five bonus marks are to be provided if a person holds further higher qualification of Post Graduate etc. Over such marks, the marks for age are to be added.

In the present cases, advertisement was published for appointment to the post of Lady Extension Officer on 14th December, 1987. Admittedly, the Petitioners being eligible for such post applied, Graduation with Arts, Commerce and Science was the minimum qualification laid down for such appointment. Thereafter, no separate written test was held nor any viva-voce test (interview) was conducted. A panel (merit list) was prepared by the Selection Committee on the basis of criteria laid down vide guideline dated 22nd/29th November, 1983. A number of persons were provided with appointments but Petitioners having not been appointed, they have filed the instant writ petitions.

4. According to the Petitioners, they have been provided with lesser marks by the Selection Committee in the chart which resulted non-appointment of the Petitioners. It is alleged that in fact the persons having lesser marks, they have been appointed but the Petitioners have not been provided with such appointment.

5. Admittedly, the panel (merit list) prepared by the Selection Committee on the basis of guideline dated 22nd/29th November, 1983 shows that the candidates who had obtained a minimum of 54.5 points, have been appointed. However, according to the Respondents, the total points of both the Petitioners being less

than 54.5 points, they having not come within the zone of appointment and so no order of appointments have been issued in their favour.

At this stage, it is to be taken into note that all the appointments against the post of Lady Extension Officers were made prior to the filing of these two writ petitions. None of the Petitioners have challenged the appointment orders of others, including the persons alleged to have obtained lesser points than the Petitioners, but have been appointed.

6. In the writ petition, C.W.J.C. No. 2428 of 1989 (Smt. Madhu Sinha), one Smt. Sangita Kumari was impleaded as Respondent No. 4, but the case stood dismissed in the year 1990 against her (Respondent No. 4) for non-compliance of the Court's order. In the other case, C.W.J.C. No. 1398 of 1989 (Meena Kumari), by order dated 13th February, 1989, this Court ordered to keep one post of Lady Extension Officer vacant for the Petitioner.

7. Individual claim of the Petitioners:

C.W.J.C. No. 2423 of 1989 (Smt. Madhu Sinha):

According to this Petitioner, she should have been provided with a total of 60 points. The bifurcation has been shown in the following manner:

- (a) For B.A. - 47 (percentage of basic qualification obtained by petitioner at Graduate standard);
- (b) For M.A. (Hindi) - 05 (further bonus points);
- (C) For age being 27 years - 08 points.

Total: 60 Points:

C.W.J.C. No. 1398 of 1989 (Meena Kumari)

According to this petitioner, she should have been provided with the following points;

- (a) For Degree - 61.5 Points (Having obtained 61.5 marks in Honours-Passed with 1st Class).
- (b) For age being above 25 years - 02.0 Points

Total : 63.5 Points

8. In the counter affidavit, both the Petitioners have been shown to have obtained lesser than 54.5 points. In the case of Meena Kumari, the counsel for the State replied that on the basis of the Graduation mark-sheet, she has been provided with 50.5 points and 2 points for age. Thus, she has a total of 52.5 points.

I have gone through the mark-sheet of this Petitioner (Meena Kumari) of B.A. (Hons.) Examination, as contained in Annexure-4. She has been provided with

369 marks out of 600 marks. In Philosophy, this Petitioner was provided with Degree in Honours. According to the procedure of the University, for Honours candidates, the other subjects than the Honours subject, are not taken into account for the purpose of awarding class. For example; Hindi Vernacular Composition, English, Psychology and General Knowledge, the four subjects were additional to the Honours subject of Philosophy. In the matter of grant of Degree in Honours, only subject in Philosophy was taken into note to award 1st Class Honours in favour of the Petitioner, Meena Kumari and not the total marks. However, it appears that the Respondents have taken into note the total marks, including the optional papers, for calculating the points of the Petitioner. According to this Court such calculation is not proper, otherwise it will lead to anomaly. It will make not only an Honours student equivalent to a Pass Course, but will result to downgradation of Class inspite of giving a higher class by the University in favour of a person. It is admitted that the Pass Course in Graduation standard in the State of Bihar is two years, whereas the Honours Course is for three years. If the total marks are taken into note then it will make two unequals equal because even an Honours student can compete and pass in all the papers after two years, but does not obtain degree without completing the three years' course.

This apart, if the total marks are taken into note then in some cases, it will lower down the class as in the present case. If total marks are taken into note then it will be less than 60 marks and in that case the Petitioner is to be treated to have passed in 2nd Class. But the fact remains is that she was provided with 1st Class on the basis of marks obtained in the Honours papers.

9. Accordingly, I hold that the Petitioner is entitled for calculation of marks at the Graduate standard on the basis of marks obtained in the Honours papers, she having passed the Degree with Honours. If such marks are allowed in favour of the Petitioner then it will go more than 60 points and thus the Petitioner (Meena Kumari) automatically becomes eligible for appointment, the persons having lower points have been provided with appointment.

10. For the reasons stated above, I direct the Respondents to provide the Petitioner (Meena Kumari) with order of appointment on the post of Lady Extension Officer within a period of fifteen days from the date of receipt/production of a copy of this judgment. However, said Petitioner, Meena Kumari will be entitled for salary from the date of her joining and the seniority is to be counted on the basis of position in the merit list, wherein her position is to be made at a place treating the total points as $61.5 + 2$ i.e. a total of 63.5 points.

11. So far as Petitioner (Smt. Madhu Sinha) of the other writ petition is concerned, I am not discussing her case on merit. All the appointments to the post of Lady Extension Officer were made prior to the filing of the writ petition and no post was reserved for her. In her case, Respondent No. 4 was impleaded as party Respondent, but the case against her was dismissed for default in 1990. Such being the position, even if the writ petition is allowed in favour of Mrs.

Madhu Sinha, the same cannot be implemented in absence of such vacancy. The Respondents, in her case, also cannot be directed to throw out any person, who have already been appointed though received lower points than this Petitioner, as such persons have not been impleaded as party-Respondents in the writ petition (C.W.J.C. No. 2428 of 1989).

12. However, if any post of Lady Extension Officer advertised in the year 1988 and is still remain vacant, this Petitioner (Smt. Madhu Sinha) may bring the same to the notice of the authorities and in that case, they will consider her case, in accordance with law, taking into note the points obtained by her, as stated above.

13. In the result, the writ petition, C.W.J.C. No. 1398 of 1989 is allowed and the writ petition, C.W.J.C. No. 2428 of 1989 stands disposed of with the observations and directions, as mentioned above. No cost.