
(2015) 03 PAT CK 0025

In the Patna High Court

Case No : Letters Patent Appeal No. 678 of 2014 and Civil Writ Jurisdiction Case No. 18708 of 2012

Nafisulwora and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) LabIC 2832

Hon'ble Judges : Anjana Mishra, J.; I.A. Ansari, J.

Bench : Division Bench

Advocate : Rajendra Prasad Singh, Senior Advocate, Rajeev Kumar Singh and N. Yeshu, for the Appellant; Krishna Kumar, A.C. to G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anjana Mishra, J.—The appellants have challenged the judgment and order, dated 04.03.2014, passed in C.W.J.C. No. 18708 of 2012 (Yasmin Sultana and Another Vs. The State of Bihar and Others), whereby and whereunder the learned single Judge, while upholding the order of the appellate authority, has given directions to the Panchayat Niyojan Samiti to complete the process of counselling/selection within three months from the date of production of copy of the said order. The learned single Judge, thus, upheld the directions of the appellate authority to cancel the appointment of all Panchayat Teachers. The appellants, being part of the said appointment process and having worked on the posts of Panchayat Teacher, are, thus, aggrieved and challenge, with the help of this appeal, the order of cancellation of their appointment as Panchayat Teachers and the direction to start afresh the process of counselling/selection within the period aforementioned.

2. The facts, giving rise to the present appeal, are as stated hereunder:

(i) The appellants, who were respondents in the writ petition, had participated in

the selection process, for appointment to the posts of Panchayat Teacher, pursuant to an advertisement issued in the year 2008. After having applied for the same, the candidates were required to be present in the counselling on 28.02.2009. The writ petitioners and the appellants appeared in the counselling. Yasmin Sultana and Md. Jahangeer Alam, the petitioners in C.W.J.C. No. 18708 of 2012, also appeared in the counselling, whereas one Kaisar Fatma (respondent No. 6) and Zahita Isamat (respondent No. 7) did not appear in the counselling and, as such, their names did not figure in the counselling list nor did respondent Nos. 6 and 7 file their objection thereto.

(ii) On 03.03.2009, a meeting of Niyojan Samiti was held, but soon thereafter, in the entire State, the process of appointment of Panchayat Teachers was stayed by the Government. However, on 08.07.2010, the Government issued a press notice lifting the ban and directing that the appointments should be made on 13.08.2010 and 14.8.2010 respectively.

(iii) On 31.07.2010, the meeting of the Niyojan Samiti was held once again and decision was taken for appointment of Panchayat Teachers. Accordingly, on 13.08.2010, appointment letters were issued, pursuant to which the appellants as well as Yasmin Sultana and Md. Jahangeer Alam joined. These appointments were made against 19 posts. Out of the 19 posts, 17 appointments were made, whereas two posts still remained vacant.

(iv) The dispute arose after the filing of Case No. 703 of 2010 before the District Teachers Appointment Appellate Tribunal on the complaint of respondent Nos. 6 and 7 (Kaisar Fatma and Zahita Isamat respectively). In the said appeal, the appellants herein were not made parties; however, the appointments of Yasmin Sultana and Md. Jahangeer Alam were assailed, in the appeal, alleging mass level manipulation of the record and forgery committed by the appointment committee.

(v) In the said case, bearing Case No. 703 of 2010, vide order, dated 09.02.2012, the appellate authority passed an order cancelling the appointments of respondent Nos. 9 and 10 (Yashmin Sultana and Md. Jahangeer Alam) and further directed the appointment committee to appoint respondent Nos. 6 and 7, i.e., the appellants of Case No. 703 of 2010.

(vi) Against the order, dated 09.02.2012, Yasmin Sultana filed CWJC No. 5017 of 2012. The learned single Judge of this Court, upon hearing the parties, remitted the matter back to the appellate authority for appropriate orders in view of the findings arrived at and after looking into the records of the case. Similarly, Md. Jahangeer Alam also preferred CWJC No. 5263 of 2012 and, vide order, dated 20.03.2012, the said writ application was disposed of in terms of the order passed in CWJC No. 5017 of 2012.

(vii) On remand, the District Teachers Appointment Appellate Tribunal passed order, dated 11.09.2012, in Case No. 861 of 2012, after hearing the parties, including the appellants, cancelling the entire selection process and appointment

of Panchayat Teachers of Gram Panchayat-Janerwa, Block-Banjariya, district - East Champaran.

(viii) Aggrieved by the order, dated 11.09.2012, aforementioned, passed by the District Teachers Appointment Appellate Tribunal in Case No. 861 of 2012, two sets of writ applications were filed. The appellants preferred C.W.J.C. No. 18044 of 2012, whereas respondent Nos. 9 and 10 (Yasmin Sultana and Md. Jahangeer Alam respectively) preferred C.W.J.C. No. 18708 of 2012. The present appeal is directed against the order by which the case of Yasmin Sultana and another, bearing CWJC No. 18708 of 2012, has been dismissed with a direction to the authority to complete the process of counselling within three months from the date of production of a copy of the said order.

(ix) So far as C.W.J.C. No. 18044 of 2012 is concerned, though there was direction to list the case along with C.W.J.C. No. 18708 of 2012, the same was never placed for admission, but the learned single Judge, without taking note of the fact that there was a specific order of status quo to be maintained in favour of these appellants, dismissed the writ application filed by respondent Nos. 9 and 10. It is relevant to mention here that in C.W.J.C. No. 18044 of 2012, the appellants of the present L.P.A. are petitioners and respondents of the present L.P.A. are party-respondents. It is important to indicate here that a learned single Judge, while hearing C.W.J.C. No. 18044 of 2012 (Nafishulwora and others Vrs. The State of Bihar and others), had issued notices to respondent Nos. 9 and 10 (respondent Nos. 6 and 7 of C.W.J.C. No. 18044 of 2012) and further directed that pending disposal of the writ application, status quo, as existing on the said date, i.e., 09.10.2012, be maintained.

(x) The notice on respondent No. 6 was served, but the fresh notice on respondent No. 7, which was directed to be filed within the peremptory time of one week, could not be filed due to some mistake on the part of the learned counsel for the parties and, as such, C.W.J.C. No. 18044 of 2012 was dismissed. While the matter remained pending for restoration, C.W.J.C. No. 18044 of 2012 was directed to be listed along with C.W.J.C. No. 18708 of 2012, vide order, dated 16.01.2014. On 27.01.2014, a learned single Judge directed the office to list C.W.J.C. No. 18708 of 2012 on 11.02.2014 maintaining its position along with C.W.J.C. No. 18044 of 2012. The learned single Judge, again, passed an order, on 20.02.2014, to list the case on 24.2.2014 and directed that CWJC No. 18044 of 2012 be listed in due course after its restoration. However, the learned single Judge proceeded to hear the matter, i.e., CWJC No. 18708 of 2012, and passed an order on merit dismissing the case of the writ petitioners in CWJC No. 18708 of 2012, seriously, thus, prejudicing, according to the appellants, (i.e., the writ petitioners of C.W.J.C. No. 18044 of 2012) inasmuch as the appellants are the writ petitioners in CWJC No. 18044 of 2012.

3. Aggrieved by the order of the learned single Judge passed in C.W.J.C. No. 18708 of 2012 (Yasmin Sultana and another Vrs. The State of Bihar and others), the writ petitioners of C.W.J.C. No. 18044 of 2012 are before us in appeal and

have urged the following grounds for seeking reliefs:

(a) It has been urged by the appellants that the impugned judgment under appeal is in clear violation of the principles of natural justice, the same having been passed without any notice to show cause or opportunity of hearing to the appellants.

(b) The other ground, urged by the appellants, is that respondent Nos. 5 and 6, having not appeared at the counselling in the Gram Panchayat, could not have been permitted to challenge the appointment of these petitioners, even though the Appellate Tribunal cancelled all the appointments and this aspect of the matter, though strenuously urged in the writ petition, was not taken note of by the learned single Judge.

(c) It is also urged by the appellants that the Niyozan Samiti has been directed to complete the process of counselling/selection within three months even though the appellants were not given any notice or opportunity of hearing.

(d) The appellants also submit that though there was an order of status quo to be maintained passed in the writ application filed by them, bearing C.W.J.C. No. 18044 of 2012, both the writ applications were not heard together and, thus, the order, passed by the learned single Judge, tantamounts to dismissal of their writ application as well.

4. I.A. No. 5055 of 2014 has been filed by one Kaishar Fatma and one Zahita Isamat, respondent Nos. 6 and 7 in the present appeal. By the said interlocutory application, respondent Nos. 6 and 7 have opposed the appeal and have prayed for affirming the order under appeal passed by the learned single Judge on the ground that the appellants herein were, in fact, respondents in C.W.J.C. No. 18708 of 2012 and were fully aware of the proceedings of the said case. Even though both the cases were directed to be heard together, respondents chose not to contest the matter before the learned single Judge. While their own application remained pending for restoration, they took a back seat and did not resist the conclusion of the writ application, bearing CWJC No. 18708 of 2012. It is submitted by the respondents that CWJC No. 18044 of 2012 was pending for restoration and the issue involved was same and identical. It is further contended by the respondents that, apart from the judgment under appeal, prior to disposal of the same, one Panchayat Teacher had also challenged the said impugned order of the Tribunal in CWJC No. 532 of 2013. The same was heard and another co-ordinate Bench of this Court had dismissed the writ petition on merits vide order, dated 13.01.2014. The respondents further contend that the impugned order clearly took note of the fact that the appointments had been made on the basis of fraud, forgery and irregularity committed by the Niyozan Samiti in the entire selection process of Panchayat Teachers. It is submitted that the counter affidavit, filed by the State, indicates and that the State admits that there were several discrepancies in the counselling register through which the writ petitioners had been appointed and how suitable applicants had been

discriminated and deprived of their rights. The counter affidavit also indicates, points of the respondents, that there was fabrication in counselling register prepared by the respondents, which did not tally with the application register and the application forms. Thus, the District Teachers Appointment Appellate Tribunal clearly held that the selection process was vitiated and set aside the entire selection process with direction to complete the same within a period of three months.

5. We have examined the records of the case and also considered the rival contentions advanced by the writ petitioners-appellants as well as the answering respondents. A perusal of the party position clearly indicates that the appellants herein, being writ petitioners in CWJC No. 18044 of 2012, were also respondents in CWJC No. 18708 of 2012. While the matter had been posted together on several dates, it is not known what steps were taken by them for restoration of CWJC No. 18044 of 2012. Further-more, they being respondents in CWJC No. 18708 of 2012, it was always open to them to contest the matter on same and similar ground, which they had urged in CWJC No. 18044 of 2012, for pursuing the case vis-a-vis the writ petitioners/respondents herein.

6. Having not contested the matter before the learned single Judge, this Court finds and holds that it is, now, not open to the appellants to lay their claim before the appellate court and there has been no violation of the principles of natural justice.

7. Coming to the merits of case, we are also of the view that the District Teachers Appointment Appellate Tribunal has rightly come to the finding that there had been irregularities by Niyojan Samiti of Janerwa Panchayat inasmuch as the counselling register and proceeding register had been changed and the entire merit list had been interpolated showing respondent Nos. 6 and 7 to be absent. Thus, the selection, made in pursuance of fraud committed by Niyojan Samiti, cannot be sustained in the eyes of law and, as such, the finding of fact arrived at by the fact-finding authority could not have been disturbed either by the Writ Court under Article 226 of the Constitution of India or in the present appeal.

8. It is well-settled principle that the finding of fact, arrived at by a Tribunal after considering all the facts and after perusal of all records, cannot be disturbed unless the same is perverse and/or contrary to law. However, the learned Tribunal has quite fairly, after considering all the facts and after considering the proceeding register and other documents, come to the finding that the counselling register was fabricated and has accordingly issued necessary directions for rectification of the illegalities committed by Niyojan Samiti. While dismissing the writ application filed by respondents No. 9 and 10, the learned single Judge, too, has taken note of the findings arrived at by the appellate authority.

9. For the foregoing reasons, we find no merit in the appeal. This appeal, thus,

fails and is dismissed. The order of the learned single Judge is upheld. However, there shall be no order as to costs.

I.A. Ansari, J.

I agree.