

(2008) 12 PAT CK 0008
In the Patna High Court

Nawal Kishore Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Citation : (2008) 12 PAT CK 0008

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sheema Ali Khan, J.—The petitioners have challenged the letter No. 605 issued on 21.3.1996 whereby the respondent No. 4 has refused to appoint the petitioners as drivers against duly sanctioned posts.

2. The petitioners had moved this Court vide C.W.J.C. No. 4763 of 1995 which was disposed of on 20.11.1995.

3. The facts are that an advertisement was published by the respondents inviting applications from the eligible candidates for the post of drivers. The petitioners duly faced the selection process and were also included in the panel of selected candidates. However, although 14 persons were appointed, the petitioners were not appointed and thus they filed the aforesaid writ application. This Court while disposing of the writ application has observed that "merely because the petitioners have been empanelled they have not acquired any right of appointment. But the petitioners have certainly acquired the legitimate expectation to the effect that in case of appointment such panel must be taken into account and the panel should not be reviewed on flimsy grounds". The Court further observed that the panel would remain valid for two years.

4. After the order of this Court no further progress took place and the petitioners filed a contempt application numbered as M.J.C. No. 1790 of 2002. In the said contempt application it was also alleged that certain persons have been appointed by the Civil Surgeon-cum-Chief Medical Officer, Vaishali as Jeep drivers

on daily wages.

5. A show cause was filed on behalf of the Civil Surgeon-cum-Chief Medical Officer, Vaishali at Hajipur as well as on behalf of the Deputy Superintendent, Vaishali at Hajipur. In the said show cause it has been admitted that certain persons were appointed in the Indian Red Cross Society, Tuberculosis Society and the appointments were not made by the Deputy Superintendent.

6. On the other hand, the show cause filed on behalf of the Civil Surgeon-cum-Chief Medical Officer, Vaishali, was to the effect that there was a clear direction from the higher officials of the Health Department to appoint the persons, only if vehicles are available and are in working condition in the Health Department. It has also been stated that 16 vehicles have been condemned, and as such, there was no need of drivers.

7. Learned Counsel for the petitioners withdrew the contempt application with a liberty to challenge separately appointments to the Indian Red Cross Society, Leprosy Society or the T.B. Society.

8. The present writ application has been filed challenging the order contained in annexure 13 by which it has been stated that the petitioners have not been appointed because there is no work available for them. This order was passed by the Deputy Director (Administration), Health. In the said letter it has also been stated that those persons working on daily wages, should also be terminated after issuing them show cause notices.

9. From the averments made in the writ application, it appears that the petitioners were selected and empanelled after an advertisement for the post of drivers. As observed earlier by this Court empanelment by itself does not create a right for appointment, and as such, the petitioners could not have claimed that they should be appointed. On the other hand, it can not be doubted that if there were any need of drivers and vacancies were available, the petitioners had a right to be considered in view of the fact that this Court had directed that the panel would have a life for two years. However, from the two orders impugned, it is apparent that there was no requirement for appointment of any drivers apart from those persons who were appointed, and as such, the appointment letters were not issued to the petitioners.

10. I find no illegality in the orders impugned.

11. Learned Counsel for the petitioners relied on two judgments of this Court reported in *Lipika Mukherjee Vs. The State of Bihar and Others*, . The order has been passed in a Letters Patent Appeal relating to termination of the petitioners. The court had found that there is no semblance of any modality which inspires confidence in the manner in which the appointments were duly made in accordance with law. The facts of that case aforesaid, are not in favour of the petitioners as there is no doubt about the fact that the modalities of the appointment were followed in the present case.

12. The next case reported in Awadhesh Kumar and Others Vs. The State of Bihar and Others, . This case relates to regularization of Jeep drivers in the district of Nawadah. The petitioners of that case had been working for 24 years and were seeking regularization. Two issues were raised by the State. Firstly with regard of nomenclature of the post that whether it was to be treated as Class III post or Class IV post and secondly whether the appointments was to be made by the District Head or by the B.P.S.C. The Division Bench of this Court held that the petitioners would be entitled for regularization in the facts of that case after clarification of the dispute that were raised by the State. I find that the facts of the case are not applicable to the case of the petitioners.

13. In the result, the writ application is dismissed. No order as to cost.