
(2002) 12 PAT CK 0059
In the Patna High Court
Case No : L.P.A. No. 11 of 1995

Nirmal Kumar Jha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Citation : (2003) 51 BLJR 103 : (2003) 1 PLJR 495

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : Vishwanath Prasad Sinha, Lal Narayan Singh, Iqbal Asif Niazi and Rajesh Kumar, for the Appellant; Ramesh Kumar Datta, SC 4 and Purnendu Singh, for the Respondent

Judgement

Ravi S. Dhavan, C.J.—This is Letters Patent Appeal filed to challenge the order dated 8-12-1994 on C.W.J.C. No. 5811/91, Nirmal Kumar Jha and Ors. v. The State of Bihar and Ors., The appellants seek appointment as Elementary and/or Primary School Teachers. By the writ petition they sought a writ of certiorari to quash the order of the Director, Primary Education, Government of Bihar rejecting their representation claiming appointments on the post of teachers in elementary and/or primary schools. All things are considered. The operative portion of the judgment of the learned Judge is relevant. This is reproduced.

"In the result, the petitioners are not entitled to the reliefs claimed. However, they shall be entitled to apply for consideration for appointment under the new Rules as and when the vacancies arise and are advertised subject to fulfilling the necessary conditions; and the State Government may consider the question of relaxation of age bar in suitable cases so as to minimise their hardship,"

2. This Court has heard learned Counsel for the appellants and learned Counsel for the State (S.C.IV). At present the relief received by the appellants is to the effect that they would be entitled to apply for consideration for appointment under the new Rules as and when the vacancies arise consequent upon an advertisement and should the occasion arise the State Government may consider

the question of relaxation of age bar in suitable cases so as to minimise their hardship.

3. In so far as the merits of the matter are concerned, the contention of the appellants is to the effect that there were others who had received condonation of age at the time when they were being interviewed. The appellants have given specific instances with names of the incumbents and also their date of birth. Unfortunately the statement of fact made by the appellants has not been denied affirmatively in the counter-affidavit. In fact, the pleadings have been evaded. Thus appellants claim discrimination and desire that in similar circumstances they be considered also.

4. The Court is unable to give any direction straightway but to appreciate the contention of the appellants and the evasive reply of the respondents in the counter-affidavit, it is best to re-produce the pleadings against each other. Paragraphs of the pleadings to be noticed are paragraph 8 of the petition; reply to this paragraph is in paragraph 6 of the counter-affidavit. Paragraph 19 of the petition; reply to which is in paragraph 11 of the counter-affidavit. Paragraph 21 of the writ petition; reply to which is in paragraph 12 of the counter-affidavit.

Para-8 (Writ petition) Para-6 (Counter Affidavit)

That the panels prepared as aforesaid by the Selection Board were approved up to the level of Regional Deputy Director of Education and thereafter appointments were made on 25-5-1988. From 1981 panel in which the petitioners name stand at serial No. 23, altogether 57 appointments were made and 34 persons juniors to the petitioner No. 1 were issued appointed letter. The position of petitioner No. 2 stood at serial No. 26 but 31 persons below petitioner No. 2 were issued appointment letter on 25-5-1988.

That with regard to the statement made in paragraphs No. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 16 of the writ petition, it is humbly submitted that the same are the matter of record.

Para-19 Para-11

That other candidates who were in the 1981 panel were considered for the appointment after getting their age condoned although their case was such that they were over aged on the date of interview out the then Director/Primary Education after condoning the over age their appointments were made. The chart of those persons are given hereunder: ?

That with regard to the statement made by the petitioners in paragraph-19 and 20 of the petition, it is humbly submitted that the statements therein are not supported by the substantial proof, hence it could not be verified. The contention of the petitioners in paragraph 20 is not correct and it has already been explained in the Director's order dated 7-7-1989.

Name: Date of birth:

Shri Shyam Mishra 4-7-50

Devendra Kr. Jha 9-1-50

Prafulla Chandra Kuwar 1-2-50

Birendra Mohan Jha 8-1-50

Lakhanlal Poddar 2-7-50

Para-21 Para-12

That the petitioners at the time of interview or thereafter with held no information with them and they supplied all the relevant informations to the Education authorities after due verification of the certificates and after the petitioners were put in the panel of appointment and now at this stage the respondent is estopped from making the plea that these petitioners were over aged at the time they were put in selection panel.

That with regard to the statement made in paragraph-21 of the petition, it is humbly submitted that the petitioners have misconceived the Government circular. It is open to the authority concerned to make correction if any errors committed in past. The petitioners contentions that their names were included in the panel hence they are entitle for the appointment, is wrong and baseless. Mere inclusion of names in the panel does not guarantee a person to be appointed.

5. Unfortunately, the counter-affidavit has been filed by an Assistant Inspector of Basic Schools, He has not taken responsibility satisfactorily except the pleadings in the counter-affidavit or deny them and fortify the denial with facts. Appropriately, the counter-affidavit ought to have been filed between any of the respondents i.e. Respondent No. 2, the Director of Primary Education, Government of Bihar, Respondent No. 3, the Regional Deputy Director, Bhagalpur or Respondent No. 4, the Deputy Superintendent of Education, Bhagalpur. In paragraph 6 of the counter-affidavit the deponent answering the case on behalf of the State has virtually stated that what has been pleaded by the appellants are matters of record. In paragraph 11 of the counter-affidavit the deponent states that the statements made are not supported by substantial proof when in the petitioner, in context, petitioners are virtually giving names of persons and their date of birth. In paragraph 12 of the counter-affidavit the deponent says that the authorities concerned can make corrections if any errors were committed in the past; this is virtually admitting what the appellants are contending.

6. This tendency to file affidavits of subordinate officials is deprecated. There is no responsibility in such pleadings.

7. In the circumstances, the Court is of the opinion that this matter ought to be referred to the Director, Primary Education, Government of Bihar, Respondent No. 2. The aspect of discrimination as contended by the appellants and specific

replies not given needs to be looked into threadbare. The appellants will be entitled to be heard. Accordingly, they be given a date in representing their case. Thereafter, any order which may be passed by Respondent No. 2 will be a reasoned order,

8. A direction in the nature of mandamus is, thus, issued. The matter be considered and an order giving reasons be passed within six weeks of a certified copy of this order being placed before Respondent No. 2, the Director, Primary Education.

9. With the aforesaid observations, the operative portion of judgment of learned Judge is modified accordingly.

10. The appeal succeeds in part. No order on costs. Let a copy of the order be given to the office of S.C. IV.