
(2015) 11 PAT CK 0082

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 20546 and 20799 of 2010

Nutan Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Constitution of India, 1950 — Article 16(4)

Citation : (2015) 11 PAT CK 0082

Hon'ble Judges : Ravi Ranjan, J.

Bench : Single Bench

Advocate : Yugal Kishore, Sr. Advocate, Virendra Prasad, U. Malik and Nutan Sahay, Advocates, for the Appellant; Abhmay Raj, AC to A.A.G.-2, for the Respondent

Judgement

Dr. Ravi Ranjan, J.—Heard the parties.

2. Both the writ applications have been heard together and are being disposed of by common order in view of identical issues being involved.

3. Petitioners of both the cases claim to have been appointed as Assistant Teachers of Girls School, Dalmianagar, which is a Government Aided Minority School. Both of them claim to have been appointed against the advertisement published on 09.03.2004 and re-advertised on 29.12.2005. It is claimed that the Managing Committee of the said school sent a letter dated 14.08.2006, as contained in Annexure-1/1, to the District Superintendent of Education Rohtas, informing him regarding such appointment so that nominee may remain present at the time of interview. The petitioners were called for interview. They appeared and, on being declared successful, they were appointed on the post of Assistant Teachers, Matric Trained, against permanent vacancies and, thereafter, they started teaching regularly. Vide Annexures 3 and 4, appended with the C.W.J.C. No. 20546 of 2010, the Managing Committee sent a detailed report regarding appointment to the District Superintendent of Education, Rohtas. Thereafter, the Principal of the School submitted pay bills of the newly appointed teachers from

September 2006 to February 2007 to the District Superintendent of Education, vide Annexures 5 and 6 of the writ petitions. The Secretary of the Managing Committee again sent a letter to the District Superintendent of Education, Rohtas requesting him to approve the services of the newly appointed teachers but he did not approve and, in fact, he did not pass any order regarding confirmation of the services of the petitioners. It appears that the District Superintendent of Education, vide Annexure E dated 06.06.2007 appended with the counter affidavit filed on behalf of the respondent No. 5, refused to approve the same on the grounds stated therein, the main grounds being that no representative of Government was present at the time of interview and reservation policy of the State Government was not followed. Thereafter, it appears that an enquiry was held by the Regional Deputy Director of Education, Patna Region, who came to the conclusion that the views expressed by the District Superintendent of Education were uncalled for. Even then the Government has not released necessary grant to the aforesaid school so that the petitioners could be paid their respective salaries.

4. Learned counsel appearing for the State submitted that the Government nominee was not there on the date of interview and reservation policy of the State has not been followed, therefore, the services of the petitioners have not been approved and, thus, the liability of salary would not be upon the State Government.

5. However, the aforesaid issues are no longer *res integra*, inasmuch as a Single Judge Bench of this Court in *Anjali Jain and another Vs. The State of Bihar & Ors.* (2003 (11) PLJR 702) has already held that, so far the recognized Minority Schools receiving grants are concerned, the State Government is not competent to impose the reservation policy in such schools as the right of State to provide reservation in the matters of employment under article 16(4) of the Constitution would be limited to the employment or appointment to any office of the State Government.

6. In yet another decision a Single Judge Bench of this Court in *C.W.J.C. No. 8079/06 (Ara Catholic Middle School and another v. The State of Bihar & others)* and other analogous matters, disposed of on 27.03.2014, has held that employment in minority institution cannot be treated to be employment under the State Government or the instrumentality of the State. Thus, the Government under its regulatory power cannot enforce its reservation policy in the Government Aided Minority Institution.

7. In yet another decision a Single Bench of this Court in *C.W.J.C. No. 14025 of 2010 (Smt. Anita Banka and another v. The State of Bihar and others)*, disposed of on 20.04.2011 has concurred with the view that in the minority institutions, for the purpose of appointment, the State Government does not have any occasion to enforce its reservation policy.

8. So far the second issue regarding presence of nominee of the State

Government is concerned, it is contended on behalf of the petitioners that proper information was given to the District Superintendent of Education vide Annexure-3 dated 25.09.2006, as appended in C.W.J.C. No. 20546/10, regarding sending his representative at the time of interview on 19.08.2006, i.e. the date of interview. It is apparent from the inquiry report of the Regional Deputy Director of Education, Patna Region, that on 01.07.2006 a meeting was held in which under Agenda No. (2) it was accepted that 19.08.2008 would be the date of interview. In that meeting the Government nominee was also present and he had signed the minutes of the proceeding as his signature was there on the relevant record, however, despite that, if he did not appear on the date of interview then that would be not a fatal lacunae so that the entire process of selection be not approved by the State Government.

9. A Division Bench of this Court in its order dated 12.09.2013 passed in L.P.A. No. 1198 of 2011 (The State of Bihar and others v. Smt. Anita Banka and another) has held that if there was proper information to the District Superintendent of Education regarding interview to be held by the school a representative of the District Superintendent of Education to attend the interview but he did not remain present throughout the period of interview having failed in performing his duties, the appointment of the writ petitioners cannot be vitiated. In the present case, it cannot be held that the representative of the District Superintendent of Education was present at the interview but the fact that the District Superintendent of Education was already informed, vide Annexure 3, regarding the date of interview, has not been denied by the State and further fact is that the Regional Deputy Director of Education, Patna Region, Patna has found in his inquiry that, while fixing the date of interview in the meeting, the State representative was present and unanimous decision was taken in the meeting to hold interview on 19.08.2006. It was the duty cast upon such representative of the District Superintendent of Education concerned to ensure that the such representative remains present during the time of interview. The State Authority itself having failed in performing its duty, on such ground, in my considered view, the appointment of the writ petitioners cannot be vitiated.

10. As a result, these writ applications succeed.

11. Since no other issues have been raised showing any illegality in the appointment of the writ petitioners by the State except the aforesaid two contentious issues which have already been considered by this Court, the Director, Primary Education, Human Resources and Development Department, Government of Bihar, is directed to take a decision with respect to release of necessary fund for payment of salary/emolument of the writ petitions within a period of three months from the date of receipt/production of a copy of this order.