
(2001) 02 JH CK 0034
In the Jharkhand High Court
Case No : CWJC No. 1248 of 2000 (R)

Poonam Prasad

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Citation : (2001) 49 BLJR 1610

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard learned counsel for the parties.

2. No counter affidavit has been filed by the respondent-State, although time was allowed by this Court by order dated 9.5.2000. This Court, therefore, has no option but to dispose of this writ application on the averment made therein.

3. The petitioner is aggrieved by only that part of the impugned order dated 24.4.2000 issued by the respondents whereby the total marks allotted to the petitioner in 1994 panel for the post of Assistant Professor, Department of Gyanocology has been reduced to 33 from 35.5.

4. It appears that the respondents authorities invited applications from the eligible persons for appointment in the post of Assistant Professor in the Department of Gyanocology and after scrutinising a panel was prepared for appointment to the post of Assistant Professor in the said Department. In the said panel the name of the petitioner appears at Serial No. 1 and she secured 35.5 marks. A copy of the panel has been annexed as Annexure 1 to the writ application. It is worth to mention here that one Amrita Sharan was placed in Serial No. 3 and Sima Choudhary was placed at Serial No. 14 respectively in the said panel and they secured 35 and 33 marks respectively. Said Amrita Sharan challenged the said panel by filing CWJC No. 7109/97 before the Patna High Court. In the said writ application the respondent-State appeared and filed

counter affidavit stating, inter alia, that the said panel and the marks allotted to the candidates are valid and there is neither any illegality or irregularity in preparation of panel and allotment of marks to the candidates. The said writ application was dismissed by a Division Bench of the Patna High Court on 22.4.1998 by passing the following order :

"22.4.1998 by virtue of selection indeed the selected candidate does not get indefeasible right to be appointed. This point is well settled in the case of Union of India Vs. S.S. Uppal and another, . Applying the same yardstick in the instant case, we find that in the final selection list the petitioner's name is appearing at Serial No. 3 whereas only two candidates, who are above her have been appointed. Thus, in our opinion, she has not been discriminated. It is not that the persons, who are ranked below her have been appointed. This being so, we do not find any ground to interfere at this stage in writ.

The writ petition is accordingly dismissed."

5. It appears that after the aforesaid writ application was dismissed, another writ application was filed by Dr. Smt. Sima Choudhary at Patna being CWJC No. 8983/97 and she prayed that she is entitled to get additional two points for the reason that she acquired qualification of Diploma of National Board Qualification (DNB). According to her, she ought to have allotted 35 marks instead of 33 marks because of her additional qualification of DNB. The writ application was disposed of on 21.9.1998 by directing the petitioner to file representation to that effect. Said Sima Choudhary accordingly filed representation and thereafter the impugned order was passed awarding two additional marks to Dr. Seema Choudhary and thereafter the marks secured by her came to 35 from 33.

6. As noticed above, the petitioner is aggrieved only by that part of the impugned order by which the marks allotted to her has been reduced to 33 from 35.5. From the facts narrated above, it is clear that the 1994 panel was earlier challenged before the Patna High Court and the respondent-State of Bihar opposed the writ application and took a specific defence that the panel was correctly prepared and there is no illegality or irregularity in preparation of the panel. The writ application was, therefore, dismissed by up-holding the panel. The 1994 panel was thereafter never challenged by any of the candidates whose names appear in the said panel, as stated by the writ petitioner. Dr. Seema Choudhary also did not challenge the panel rather her only case was that she ought to have been allotted two additional points and thereafter she allotted 35 marks instead of 33 marks. On the-other hand, the marks allotted to the petitioner never the subject matter of dispute before the Patna High Court in the aforementioned two writ applications nor Dr. Amrita Sharan or Dr. Seema Choudhary ever disputed the correctness of the marks allotted to the petitioner. In that view of the matter, while allotting two additional marks to Dr. Seema Choudhary by the impugned order, there was no reason or occasion for the respondents to reduce the marks allotted to the petitioner from 35.5 to 33.

7. As stated above, no counter affidavit has been filed by the respondent-State. Since the petitioner has not challenged the marks allotted to either Amrita Sharan or Seema Choudhary, there is no need to implead them as party-respondents in this case. Regard being had to the facts and circumstances of the case and the discussion made above, in my opinion reduction of marks allotted to the petitioner from 35.5 to 33 is illegal, arbitrary and unjustified. I have, therefore, no option but to up-hold the 1994 panel so far with regard to marks allotted to the petitioner i.e. 35.5. The respondents are directed to treat the marks allotted to the petitioner as 35.5 in the impugned order as contained in Annexure 4.

This writ application, is therefore, allowed with the aforesaid observations and directions.

8. Petition allowed.