

(1990) 09 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 5682 of 1990

Prem Darshan Singh "Diwakar"

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 233, 236

Citation : (1991) 1 BLJR 66 : (1991) 1 PLJR 6

Hon'ble Judges : S.B. Sanyal, J;Aftab Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.B. Sanyal and Aftab Alam, JJ.—The petitioner desires issuance of a writ of mandamus on respondent Nos. 2 to 4 to permit him to appear in the ensuing examination for selection and appointment to Additional District Judge in the State of Bihar, even though he has joined the Judicial Service as a Munsif in the State of Bihar in the year 1986.

2. It appears that in the year 1985 pursuant to an advertisement, the petitioner applied to be considered for appointment to the post of Additional District Judge by way of direct recruitment having fulfilled all the eligibility clauses and the norms required by the advertisement, namely, he had been an Advocate and practiced for seven years. For some reason or the other, the selection process and/or appointment could not be made. The petitioner, while his application remained pending for direct recruitment as an Additional District Judge took an appointment to the post of Munsif in the year 1986. In the year 1989-90, a fresh advertisement was issued for appointment of Additional District Judges and it is provided in the said advertisement that those persons, who had already applied earlier pursuant to the earlier advertisement, need not apply afresh and their applications would be considered as of other candidates.

3. The petitioners grievance is that while persons similarly situated were issued

admit cards to participate in the examination for selection and subsequent appointment as Additional District Judge, he has been denied the said opportunity and, therefore, the action is ultra vires Articles 14 and 16 of the Constitution of India.

The petitioner further contends that he had put in seven years as an Advocate and was eligible on the date the first advertisement was brought out. He will therefore, be deemed to be eligible for all intents and purposes and the bar under Article 233(2) of the Constitution will be inapplicable in this case. Had he not been eligible when the advertisement in the year 1985 was brought out, the question would have been altogether different.

In short, the argument is that if the petitioner was not in service of the State on the date he made the application for appointment as an Additional District Judge, his eligibility consideration will be referable to the date of advertisement and not otherwise.

4. Mr. P.N. Jha appearing on behalf of the High Court stated that the petitioner was not rightly issued any admit card and the High Court has already cancelled the admit cards issued to such candidates, who are in the judicial service of the State. It is said that from the description given in the applications it was not possible for the High Court to discern whether a particular person is in the service or carries on vocation and/or profession as indicated in the form of the application. Article 233 of the Constitution envisages two sources of recruitment and/or appointment to the post of District Judge. Article 233(1) of the Constitution relates to promotion from certain Services to be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State, whereas Article 233(2) of the Constitution relates to direct appointment of persons as District Judges who had put in seven years as an Advocate or a Pleader and is recommended by the High Court for appointment. It is settled that a Judicial service is a service of the State. The petitioner being in judicial service in the State is not, therefore, eligible to be appointed (emphasis supplied) as District Judges, even if he has put in seven years as an Advocate prior to his appointment as a Munsif.

5. The argument of the learned counsel for the petitioner that the bar and/or eligibility is relatable to the date of submission of the application for appointment or devoid of substance. The bar applies to the date of appointment as a District Judge. On the date a person is appointed as a District Judge, he must not be in the service of the Union and/or of the State, and so should be the position on the date the selection process is initiated. Our view is fully fortified by the decision of the Supreme Court in the case of Satya Narain Singh and Others Vs. High Court of Judicature at Allahabad and Others, . Mr. Singh, in course of his argument, submitted that there has been a latest decision of the Supreme Court allowing A.P.Ps. who are in the service of the State Government, to be appointed as Munsif in subordinate judicial service. Therefore, that principle should be made applicable here as well. He has, however, not been able to produce the judgment

before us. The submission of Mr Singh, on the face of it, has no merit inasmuch as Article 233 of the Constitution applies to the appointment of District Judges, namely, superior judicial service and not subordinate judicial service. As per Article 236 of the Constitution the District Judge includes Additional District Judge.

6. For all these reasons, we find no merit in this application. It is, accordingly, dismissed. We, however direct the High Court to sort out all such cases where admit cards have been issued, which is in violation of Article 233(2) of the Constitution of India.