
(2005) 03 PAT CK 0058
In the Patna High Court
Case No : CWJC No. 10276 of 1997

Prem Kumar Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(3), 226, 227

Citation : (2005) 2 PLJR 242

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Dharni Dhar Prasad Sinha and Ashok Kumar Sinha, Ramesh Kumar Datta, Purnendu Singh and Piyush Lall, for the Appellant; Amar Nath Singh and Ajat Shatru, M/s. Dr. S.N. Jha and Ajay Kumar for Respondents Nos. 6 to 8, 11 and 13, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—The writ petition was initially filed on behalf of four persons but one more person was allowed to be added as petitioner No. 5. At the hearing stage arguments have been advanced by Mr. Dharni Dhar Prasad Singh, Advocate only on behalf of petitioners No. 2 and 5. The prayer in this writ petition is for quashing a part of notification dated 21.5.1997 (Annexure-1) issued by the Department of Personnel and Administrative Reforms, Government of Bihar, appointing respondents No. 5 to 12 on the post of Additional District and Sessions Judge and to direct the respondents No. 1 to 4 to appoint the petitioners on the basis of their names in the select list of 66 successful candidates contained in Annexure-3. Petitioners applied for appointment to the post of Additional District and Sessions Judge in the Bihar Superior Judicial Service pursuant to advertisement published on 16.7.1994 in prominent newspapers which has been annexed as Annexure-2. After written examination and oral interview, a select list of 66 candidates was prepared, a copy whereof has been annexed as Annexure-3. Out of that altogether 54 persons have been appointed.

2. In the writ petition the case of the petitioners is that in the advertisement the notified vacancies were 54 but it was not the correct number because it was described as proposed vacancies and not as actual vacancies. According to submissions advanced at the time of hearing, the number of vacancies was alleged to be much more on account of alleged error in calculation and subsequent retirement etc. Petitioners have claimed that on proper calculation of the vacancies they would also be entitled for appointment on the basis of their placement in the select list below the 54 persons already appointed.

3. Further case of the petitioners is that on careful reading of the advertisement, particularly note (4) appearing after para 11 of the advertisement it would appear that only those candidates were eligible to be considered who were residents of State of Bihar and since respondents No. 5 to 12 had shown themselves to be residents of places outside Bihar hence their selection and appointment was contrary to terms of advertisement and fit to be quashed. According to petitioners, sufficient, vacancies would otherwise also be available for petitioners once the notification in respect of appointment of respondents No. 5 to 12 is quashed.

4. On behalf of the State of Bihar and the High Court of Judicature at Patna counter affidavits have been filed and they have contested the claims of the petitioners. According to Learned Counsel for the State, as per requirement of law the Patna High Court reported only 54 vacancies of Additional District and Sessions Judge available for being filled up by direct recruitments from members of the Bar and appointments have been made by the State of Bihar of all the 54 candidates recommended by the Patna High Court and no other person could have been appointed by the State Government in absence of any further recommendation.

5. According to counter affidavit filed on behalf of the Patna High Court, in a Full Court meeting dated 27. 11.1993 a decision was taken for fresh advertisement for appointment of Additional District and Sessions Judges directly from Bar against the existing expected vacancies both in permanent and temporary posts, in the light of direction of the Hon'ble Supreme Court contained in judgment dated 13.10.1993 in the case of State of Bihar vs. Madan Mohan Singh Ed. : 1994(1) PLJR (SC)82 reported in 1994 (3) SCC 308. Thereafter, the State Government was requested vide letter No. 17301 dated 10.12.1993 to publish the advertisement containing inter alia an stipulation in note No. (4) that the same procedure shall be accepted in the case of candidates practising as Advocates/Pleaders outside the State of Bihar as would be applicable in respect of the advocates practicing within the State of Bihar. By Court's fether No. 4403 dated 7.4.1994 the State Government was informed that in total 54 vacancies will be filled up in the Bihar Superior Judicial Service by direct appointment from the Bar. The Full Court in its meeting held on 30.11.1996 resolved that the names of 54 persons be recommended to the State Government with a request to notify the appointment of only 53 candidates at that time and to keep one

post vacant in view of a pending writ petition. Subsequently that post was also filled up with the 54th candidate already recommended by the High Court, in that Full Court meeting a further resolution was passed requesting the State Government to issue necessary advertisement inviting applications for filling up further vacancies erectly from Bar. Subsequently by communication dated 9.2.1997 the State Government was requested for issuance of another advertisement for nine vacancies which included one anticipated vacancy.

6. It is not in dispute that pursuant to subsequent advertisement also appointments have been made which were challenged in this writ petition and have been made subject to result of this writ petition.

7. An interlocutory application bearing No. 1296 of 1999 has also been directed to be considered at the time of hearing of the writ petition. In that application petitioners have prayed for directing the respondents No. 1 to 4 to furnish or bring on record several documents in detail so that petitioners may have full knowledge of sanctioned and existing strength of Bihar Superior Judicial Service including details of year-wise vacancy in the cadre since 1989 as per quota rule.

8. The first submission advanced on behalf of the petitioners is that in view of note (4) in the advertisement and Article 233 of the Constitution of India only residents of Bihar or practitioners of Bihar were eligible to apply. On the other hand, the stand of respondents is that paragraphs 1 and 2 of the advertisement only are relevant for qualification of the candidates and there is nothing in those two paragraphs or for that matter anywhere in the advertisement debarring practitioners or residents of places outside Bihar from submitting applications and compete for the selection. Learned Counsel for the High Court Mr. Ramesh Kumar Datta pointed out that note (2) refers to various reservations and note (4) was only by way of clarification in respect of reservation. It provided that no candidate would get any benefit on ground of caste, religion or sEx. Candidates practising outside the State who are residents of the State will also be governed by the same procedure which shall be applicable to candidates belonging to the State. According to respondents this note was meant to clarify that statutory provisions of reservations shall be applied even to those candidates who belong to the State of Bihar but are practicing outside. It may be noticed here that subsequently the State Act providing for reservation was declared to be inapplicable in the matter of recruitment to Bihar Superior Judicial Service and no reservation as per that Act was given effect to.

9. On a careful perusal of the advertisement as well as ail other relevant provisions such as Rules of recruitment governing Bihar Superior Judicial Service, Articles 14, 16 and 233 of the Constitution of India, this Court finds no merit in the submissions advanced on behalf of the petitioners. There is nothing in Article 233 of the Constitution to warrant the inference that only those Advocates or Pleaders can be recommended for appointment who have practised for the required number of years only in the State of Bihar. It has rightly been submitted on behalf of the respondents that had such reservation been provided by the

advertisement it would have offended Articles 14 and 16 of the Constitution of India. In fairness to the Learned Counsel appearing for the High Court as well as Dr. Jha, Sr. Advocate appearing for some of the private respondents it is relevant to note that they have elaborated their submissions on the aforesaid point by submitting that Article 16(3) as well as provisions of Public Employment (Requirement as to Residence) Act, 1957 empowers only the Parliament to make a law prescribing requirement as to residence within a State prior to such employment or appointment. It has rightly been submitted that there is no such law made by the Parliament or even by the State Legislature. Not even executive decision to this effect has been brought to the notice of this Court. Some case laws such as AIR 1970 SC 422 (A.B.S. Narsimha Rao vs. State of Andhra Pradesh) were cited but there is no requirement to go into further details of this issue.

10. The next issue raised on behalf of the petitioners was that more than 66 posts were available for direct recruitment from the Bar and hence, the High Court had no jurisdiction to withhold any of the 64 names finding place in the select list. On this issue a submission was advanced on behalf of the petitioners that counter affidavit of High Court giving details of vacancies in paragraphs 6 and 7 is technically defective because it does not mention that it is by way of reply to paragraph 19 of the writ petition. In that paragraph of the writ petition it has been alleged that more than 66 posts were available. The counter affidavit on the other hand has categorically stated about the existing as well as anticipated vacancies to be only 54. Pleadings, particularly in context of writ petitioners under Articles 226 and 227 of the Constitution of India cannot be construed on the basis of technicalities. Even otherwise, in civil proceedings governed by CPC the entire pleadings are required to be noticed for deciding relevant issues. Hence, this Court finds no merit in the objection raised on behalf of the petitioners as to the flaw in the counter affidavit.

11. The submission advanced on behalf of the petitioners that advertisement mentions only proposed vacancies as 54 and not the existing and anticipated vacancies is devoid of any substance. The counter affidavit filed on behalf of the High Court refers to specific communication from the High Court to the State Government disclosing that the recruitment was to be made in respect of 54 vacancies only. There is no denial of this fact by any subsequent pleading. In such circumstances, this Court finds substance in the stand of the High Court that in the light of law laid down in the case of State of Bihar vs. Madan Mohan Singh (supra) even the High Court was not competent to recommend further names beyond the disclosed vacancies of 54. That judgment was in a case arising out of similar controversy from Bihar in relation to direct recruitment to the same service for which advertisement was issued in 1989 and appointments were made in 1991. The High Court decided to recommend one more name against a vacancy which had occurred due to retirement. The State Government objected to appointment of one more candidate beyond the declared vacancy of 32. The Apex Court held the decision of the High Court to be invalid in absence of

any statutory rule or any mention in the advertisement that the panel will remain in force for one year. The Apex Court approved the stand of the Government that fresh recruitment process should be resorted to for filling up a future vacancy. The legal position is thus clear and against the stand of the petitioners. This law has been further reiterated in paragraph 63 of a recent judgment of the Supreme Court in the case of Virendar Singh Hooda vs. State of Haryana, reported in AIR 2005 SC 137. The judgment in the case of State of Bihar vs. Madan Mohan Singh has also been noticed in paragraph 33 of the said judgment. In the light of aforesaid judgments no fault can be found in action of the High Court in not recommending any further names for any vacancy beyond 54 as disclosed in the advertisement.

12. The petitioners had accepted the advertisement and submitted to the selection process and hence, they cannot now be permitted to challenge the vacancies mentioned in the advertisement. No further enquiry of fact regarding vacancies is required to be made and hence, the prayer made in IA No. 1296 of 1999 is rejected.

13. In deference to Learned Counsel for the petitioners it is recorded that he referred to a judgment of the Supreme Court in the case of Miss Nee lima Shangla vs. State of Haryana reported in 1987 BLJR (vol. 35) 506 to submit that the Supreme Court had disapproved action of the concerned Public Service Commission in not communicating entire result on ground that originally there were only 17 vacancies. In that case the relevant rules were noticed in paragraph 1 of the judgment and one of the Rules permitted to have such number of names available as may be estimated to be sufficient for the filling of vacancies which are anticipated to be likely to occur within two years from the date of selection of candidates as a result of an examination. Thus, the facts and rules were entirely different in that case and the said judgment is of no help to the petitioners. He also placed reliance upon judgment of the Supreme Court in the case of State of Maharashtra vs. Pratapsingh Dayal Singh Rajput reported in AIR 1998 SC 1054. In that case also the facts and circumstances were entirely different. From the select list prepared for promoting judicial officers to the post of Additional District Judge the claim of one candidate was excluded by Full Court of High Court and when challenged, no reasons for exclusion were disclosed even during hearing of the writ petition. That judgment is also not applicable in the facts of the case.

14. On careful consideration of all the facts and circumstances, this Court finds that there is no mention in the advertisement or any law or rules to exclude Advocates or Pleaders residing or practising outside the State of Bihar for the purpose of selection and appointment to Bihar Superior Judicial Service. this Court further finds that the High Court had decided and communicated the vacancies to be filled up pursuant to advertisement contained in Annexure-2, to the State Government and such vacancies were mentioned in the advertisement as 54 and hence after 54 persons above the petitioners were appointed as per the select list, the petitioners have no right to claim appointment against further

vacancies. this Court is conscious of the fact that vacancies for direct recruitment from the Bar are to be determined as per quota rule and hence, the determination made at the relevant time must be given respect so that quota of the promotees may not be affected. In view of aforesaid discussions, this Court finds no merit in the writ petition. It is accordingly dismissed. There shall be no order as to costs.