

(2013) 04 PAT CK 0060

In the Patna High Court

Case No : LPA No. 1234 of 2012 in CWJC No. 9075 of 2010

Priyanka Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 PLJR 886

Hon'ble Judges : R.M. Doshit, C.J.;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Bindhyachal Singh, Ram Binod Singh, Satya Prakash and Prashant Sinh, for the Appellant; A.K. Kesari, Brajesh Kumar for the State, Lalit Kishore, Satyabir Bharti and Alok Chandra for the BPSC, for the Respondent

Judgement

R.M. Doshit, C.J.—This Appeal under Clause 10 of the Letters Patent is preferred by the writ petitioner against the judgment and order dated 18th May, 2012 passed by the learned single Judge in CWJC No. 9075 of 2010. The matter at dispute is the selection and appointment of the appellant as Employment Officer in the Department of Labour Resources pursuant to her selection by the Bihar Public Service Commission (hereinafter referred to as "the Commission") after successfully passing the Combined Competitive Examination, 2008.

2. Pursuant to the requisition made by the various Departments of the State Government, on 6th November, 2007 the Commission published advertisement No. 4 of 2007 inviting applications from eligible candidates for selection and appointment to some 14 services under the State Government. Pursuant to the said advertisement, the appellant made application as a Scheduled Caste candidate and gave the order of her preference for each service. Her 4th preference was the post of Labour Superintendent and 6th was that of Sub-Registrar in the Department of Registration, Excise and Prohibition. Consequent to her merit position and the order of her preference, she was recommended for the post of Labour Superintendent as a Scheduled Caste candidate. When she

approached the concerned Department, she was given appointment as Employment Officer and not as a Labour Superintendent. She did accept the appointment as Employment Officer, however, she lodged her objection. As her objection was not considered, she approached this Court in above CWJC No. 9075 of 2010 under Article 226 of the Constitution.

3. According to the appellant, if she could not be given appointment as Labour Superintendent for want of adequate vacancies, she should have been offered appointment to the other service according to order of her preference.

4. The petition was contested by the State Government and the Bihar Public Service Commission.

5. On perusal of the counter affidavits made by the State Government and the Commission, it appears that although the State Government in its Department of Labour Resources had made requisition for 15 vacancies in the cadre of Labour Superintendent and four vacancies in the cadre of Employment Officer, while publishing the advertisement, the Commission carelessly mentioned 19 vacancies in the cadre of Labour Superintendent and the cadre of Employment Officer was totally omitted. Against the 19 vacancies advertised, 19 recommendations were made by the Commission. The Department, in its wisdom, bifurcated these 19 candidates. The Department appointed first 15 candidates as Labour Superintendent. The rest, lower in the merit list, were offered the appointment as Employment Officer. It may be mentioned here that both the posts of Labour Superintendent and the Employment Officer were in the same pay scale.

6. The learned single Judge has dismissed the writ petition on the premise that the options called for were department-wise; the appellant having opted for Labour Department and she having accepted appointment as Employment Officer, she had no right to enforce her other preferences. The learned single Judge has also held that the appellant did not challenge the omission of four posts of Employment Officer in the advertisement No. 4 of 2007 published by the Commission.

7. We must note that the observation, "Form-II did not contain service-wise option only but also department-wise at Items-I & II" is factually wrong. The preference called for in Form-II was essentially for the services/cadres mentioned therein. Item Nos. I & II being the Bihar Administrative Service and the Bihar Police Service. Further, the petitioner had no occasion to challenge the mistake committed by the Commission in omitting the reference to the post of Employment Officer in advertisement No. 4 of 2007. The mistake committed by the Commission could not have been known to the world until it was disclosed in the counter affidavit filed in the writ petition. The petitioner, therefore, could not have challenged nor did she need to challenge the mistake committed by the Commission.

8. It is apparent that the stalemate has been created by the reckless mistake committed by the Commission. It has also come on record that after 4th

preference it was the 6th preference for the post of Sub-Registrar where some appointments were made in the category of Scheduled Caste. Three out of four Scheduled Caste candidates appointed as Sub-Registrar were lower in the merit than the appellant. The appellant, therefore, could have legitimately expected appointment as Sub-Registrar, in case she could not be appointed to the cadre of Labour Superintendent for want of adequate vacancies.

9. The question, therefore, should be whether this Court in exercise of discretionary jurisdiction under Article 226 of the Constitution would interfere in the matter and direct the Commission to recommend the name of the appellant for appointment to the post of Sub-Registrar and direct the State Government to make appointment accordingly.

10. Learned Advocate Mr. Bindhyachal Singh has appeared for the appellant. He has relied upon the Full Bench judgment of this Court in the matter of Dr. (Mrs.) Shushma Pandey Vs. State of Bihar .

11. Learned Advocate Mr. Satyabir Bharti has appeared for the Commission. He has relied upon the judgment of the Hon"ble Supreme Court in the matter of State of Bihar Vs. Kaushal Kishore Singh and others, .

12. At the outset, we may note that the judgment of the Hon"ble Supreme Court in the matter of Kaushal Kishore Singh (supra) has no relevance to the facts of the present case. In the matter of Dr. (Mrs.) Shushma Pandey (supra), the Full Bench of this Court did hold that once the policy is to offer appointment on the basis of merit-cum-preference, right to appointment on the said principle is enforceable right.

13. We do agree with the proposition. The petitioner had the enforceable right to appointment according to her merit-cum-preference. It cannot be gainsaid that three persons below her in the category of Scheduled Caste were appointed as Sub-Registrar and that at the relevant time her claim for Sub-Registrar was overlooked.

14. As stated hereinabove, this peculiar situation has occurred on account of careless mistake committed by the Commission. Further, this situation could well be avoided had the Department of Labour Resources informed the Commission and had sorted out the matter at that point of time. Now, the situation is somewhat out of control. In case, the appellant's demand for appointment as Sub-Registrar is accepted at this stage, one Sub-Registrar appointed pursuant to the recruitment process commencing from advertisement No. 4 of 2007, will have to be moved out which will lead to a chain reaction and as a result at least 7 to 8 persons will have to be moved out from their present appointment and posting, throwing the entire administration out of gear. Moreover the recruitment process was not confined to the fourteen services/cadres mentioned in the advertisement. The advertisement was specific that the recruitment was made for fourteen services/cadres mentioned therein and for "other posts".

15. We, in our discretion, do not propose to disturb so many persons more than two years after their appointment and posting. We have noticed that although the post of Employment Officer was not mentioned in advertisement No. 4 of 2007, may be under protest, the appellant did accept appointment as Employment Officer. It is not in dispute that the posts of Labour Superintendent and Employment Officer carry the same pay scale; although the promotional avenues and future prospects may not be the same. The appellant having accepted the appointment as Employment Officer and no immediate prejudice is caused to the appellant, we do not propose to exercise our discretionary power to reshuffle the appointments more than two years after the appointments were made. For the aforesaid reasons, we dismiss this Appeal in limine.