
(2012) 06 PAT CK 0059
In the Patna High Court
Case No : CWJC No. 1395 of 2011

Priyanka Kumari Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 4 PLJR 482

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Onkar Kumar, for the Appellant; Anjani Kr. Sharan for the State, Mr. Avanindra Kumar Jha for the Respondent No. 7 and 8 and M/s Amrit Abhijat, Piyush Pariyat and Upendra Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner, the State, Respondent No. 7 and Respondent No. 9. The petitioner is aggrieved by the order dated 10.12.2010 in Appeal No. 695 of 2009 passed by District Teachers Appointment Appellate Tribunal at Supaul (hereinafter referred to as "the Tribunal"). It allows the appeal preferred by Respondent No. 9 and cancelled the appointment of the petitioner with a consequential direction to appoint Respondent No. 9.

2. Learned counsel for the petitioner submits that the selection process commenced in 2006 and the final merit list drawn up in 2007. Pursuant to Respondent No. 9 declining the offer for appointment the petitioner was appointed and joined on 16.3.2007. The law applicable governing the appointment was the Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as "the Rules"). Under Rule 18 the aggrieved was required to file a complaint before the Block Development Officer, within a period of thirty days. No such complaint was filed on behalf of Respondent No. 9 after the appointment of the petitioner much less within the time prescribed. If that remedy was not availed, Respondent No. 9

could not evade answerability for the same by subsequently invoking the appellate jurisdiction of the Tribunal directly in 2009. Reliance was placed on 2011(4) BBCJ 2179 (Gangesh Kumar Singh vs. State of Bihar) and 2011(4) BBCJ 360 (Kamini Kumari vs. State of Bihar).

3. By a statutory notification dated 25.8.2008 the appellate Tribunal came to be constituted in lieu of the Block Development Officer. There is no explanation not only for the lapse for the earlier period but also in having instituted the appeal in the year 2009. Respondent No. 9 was not at all vigilant in protection of her rights. Third party rights in favour of the petitioner were allowed to be created and consolidated by her appointment on 16.3.2007 and continuance thereafter. The private Respondent No. 9 after having declined offer for appointment appears to have pursued her option for appointment elsewhere and only after having been unsuccessful had second thoughts and revived an unnecessary controversy. If any blank papers were obtained from her by the Panchayat Secretary as she alleged, normal human conduct required her to lodge a complaint before the concerned authority or at least institute an FIR. The impugned order also notices the contention that the Panchayat Secretary had been threatened barely days later on 20.2.2007 to return the documents submitted by Respondent No. 9 after declining the offer for appointment failing which the consequences for him shall not be good. A written complaint was lodged on 22.2.2007 by the Panchayat Secretary before the Block Development Officer. It was lastly submitted that one Ranju Kumari had higher marks than the Respondent No. 9. She had a preferential right to be considered even before Respondent No. 9.

4. The findings arrived at by the Tribunal with regard to the documents questioned by Respondent No. 9 cannot be said to be conclusive in any manner. No other ground was urged.

5. Learned counsel for the State supported the impugned order. Counsel for Respondent No. 7 submitted that the allegations are against the earlier Panchayat Secretary. The present Panchayat Secretary supports the impugned order.

6. Learned Counsel for Respondent No. 9 has submitted that there is no infirmity in the decision making process. The findings are not perverse. The writ court in exercise of powers for judicial review under Article 226 shall not interfere with findings of fact. The Appellate Tribunal in Supaul was constituted only in the year 2009. The order of the Tribunal is well considered and reasoned. It merits no interference.

7. The Tribunal is the creation of a statutory order. There is no provision for appeal or any other remedy before any superior forum. The orders of the Tribunal therefore attain finality. But being a statutory order it is amenable to judicial review of the Court under Article 226. That shall not constitute the Court as an appellate forum over the order of the Tribunal to examine all questions of

facts and law afresh. The jurisdiction of the Court in judicial review under Article 226 is primarily confined to the decision making process. If there has been any infirmity in the decision making process that itself shall vitiate the order without furthermore. Situations where parties have not been heard, materials have been considered behind the back of another, the Tribunal relied on materials outside the proceeding, opportunity of defence to rebut evidence was not given, can be said to be some of the grounds on which the order may suffer from procedural infirmity. Even if there is no procedural infirmity, the Court may still interfere under judicial review if the findings are perverse, materials not relevant have been considered and relevant materials excluded. If the conclusion is such that no reasonable person of ordinary prudence could have arrived at, the writ court can interfere. Subject to the aforesaid limitations the writ court shall not interfere with the orders of the statutory Tribunal merely because it may be proper to interfere or another view from that taken by the Tribunal may also be possible. The findings of fact by the Tribunal unless demonstrated to be perverse shall not be interfered with under judicial review and will have to be given finality.

8. The limitation of judicial review over an order of the Tribunal was considered in *Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S. Viswanathan*, observing as follows:--

12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the teamed single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.

9. While exercising powers of certiorari against statutory orders which contains reasons the writ court shall first examine the statutory order itself. It is only in cases where the findings are alleged to be contrary to records that the original records may be looked into. The writ court will normally refrains from examination of original records in judicial review unless absolutely imperative.

10. Delay is a factor relevant where the writ court may decline to exercise

jurisdiction specially where third party rights have been created and continued. This however is not an absolute principle. It is more a matter of discretion by the Court under Article 226 whether the delay in the facts of a case needs to be condoned or not. Each case will therefore have to be decided on its own facts. There can be no absolute or standardised yardstick on the question of delay. Even if there was a statutory provision under 2006 Rules of time limitation with no provision for condonation of delay, that shall not inhibit the powers of the writ court under Article 226 if otherwise issue may arise for perpetuation of illegality.

11. In Balkar Singh Vs. Jagdish Kumar and Others etc., condoning a delay of 680 days it was observed:--

13.....In such circumstances, though Shri M.N. Krishnamani, learned Senior Counsel very strongly opposed the condonation of delay, we do not think interest of justice would be served by refusing to condone the delay, the consequence of which would be to perpetuate an illegal order and more so.....

12. The Court shall now proceed to examine the order of the Tribunal in the background of the aforesaid discussion.

13. Even if Ranju Kumari had higher marks than Respondent No. 9 or the petitioner, in absence of any grievance by her she does not appear relevant in the controversy between the petitioner and Respondent No. 9.

14. Respondent No. 9 was placed above the petitioner. She is alleged to have given in writing that she was not interested in the offer leading to the same being provided to Respondent No. 9. Her specific case before the Tribunal was that she deposited her certificates before the Panchayat Secretary on 15.2.2007. She was called to be delivered the appointment letter on 16.2.2007. On that date the Panchayat Secretary asked her to sign on the back of the appointment letter and on two blank sheets which she did innocently. She has alleged that a demand of Rs. 50,000/- was made before the appointment letter could be handed over as otherwise the Panchayat Secretary would utilize her signatures. She claims to have represented before the Block Development Officer. The Panchayat Secretary stood true to his words and offered the appointment to another. The Block Development Officer on 24.2.2007 by letter no. 77-2 directed that the appointment letter be handed over to Respondent No. 9 which was not complied with. She then claims to have represented before the Principal Secretary, Human Resources Department, the District Magistrate and the District Education Officer. She sought to explain the delay that once the Block Development Officer had given directions it was expected to be complied with in the normal course. Her economic condition did not facilitate a sustained fight by her before the executive authority and it is only after the constitution of the Tribunal that aspirations of justice was aroused in her. The Mukhiya acknowledged that the Respondent No. 9 had represented before the Block Development Officer but alleged that she had twisted facts. He further acknowledged letter no. 77-2 dated 24.2.2007 issued by the Block Development

Officer to provide appointment to Respondent No. 9. It was urged as a defence that Panchayat Secretary on 25.2.2007 informed the Block Development Officer of the correct facts and expressed inability to comply the order urging that the appointment had already been provided to another. The Court has serious reservations if the Mukhiya or the Panchayat Secretary had the jurisdiction under the 2006 Rules to disobey the direction of a statutory authority, a fundamental facet of rule of law. Once it is acknowledged by the Mukhiya and the Panchayat Secretary that for denial of the offer of appointment on 16.2.2007 Respondent No. 9 complained to the Block Development Officer on 24.2.2007, statutory directions were flagrantly disobeyed by the Mukhiya and Panchayat Secretary question of delay becomes irrelevant and the petitioner cannot urge that she must get advantage of the illegal acts of the Mukhiya and Panchayat Secretary in flagrant disobedience of the directions issued by the Block Development Officer well within time. It is therefore held that the question of delay in approaching the Tribunal becomes irrelevant on this issue. The Court shall further discuss the issue of delay when it comes to the merit of the discussion.

15. The petitioner contended that Respondent No. 9 had given an application and taken back her candidature. This led to the fresh counseling and offer of appointment to her. Respondent No. 9 had returned her appointment letter and taken back all her original certificates. The Tribunal in view of the factual nature of the controversy issued notice to the then Panchayat Secretary of the then Panchayat Shikshak Appointment Committee who declined to appear despite repeated request and to produce original records. The Mukhiya who was duly represented by the Counsel was repeatedly requested to produce the original record but he did not do so. If Respondent No. 9 had been called for counseling with her original certificates and directed to appear on 16.2.2007 to collect her appointment letter, that she immediately gave in writing on 22.2.2007 that she was withdrawing her candidature does not appeal to common sense. More so when admittedly two days later Respondent No. 9 filed an application before the Block Development Officer under Rule 18. Obviously she had a grievance which she was pursuing. It is not common practice that a candidate being handed over the original appointment letter is asked to sign on the back of the appointment letter or that the candidate is required to sign on any blank paper. Be that as it may, the photo of the Proceeding Register was produced by the petitioner, surprisingly when it should have been produced by the Mukhiya or the Panchayat Secretary and who declined to produce the originals. The Tribunal noticed that it was not issued to her under the R.T.I. Act. The observations of the Tribunal that it was made available to her in collusion with the Panchayat Secretary cannot be rejected outright as fanciful or unfounded. There is a finding not denied in the writ application that father of the petitioner was the friend of Mukhiya and looked after all his affairs. The Tribunal rightly observed that this brings the entire controversy in deep suspicion. The proceedings were signed by the Mukhiya and Panchayat Secretary and the signature of the two other members at the different places appeared to be different in its manner. The adverse inference drawn by

the Tribunal that despite repeated request the original records were not produced cannot be held to be legally unsustainable. The Tribunal has adequately considered the question why Respondent No. 9 did not complain or lodge an FIR immediately on 16.2.2007. It rightly holds that a candidate eager for employment with limited resources hardly has the capacity to take on the entire establishment. In any view of the matter it has been noticed that she moved the Block Development Officer well within the time of 30 days under Rule 18 and who also issued statutory direction to the Mukhiya. The photocopy of the resignation letter alleged to have been submitted by Respondent No. 9 was produced before and perused by the Tribunal. The Tribunal has recorded its satisfaction that apparently the signature appears to be of another person. If Respondent No. 9 was an applicant for the post of a teacher, was an educated person, she should have tendered the resignation in her pen, the alleged resignation letter bore no date. It was not addressed to any officer, the language was unusual. The writing of the application appear to have been deliberately done in a manner where it may not be possible to decipher who was the author of the contents. There was no initial signature of the Respondent No. 9 also. These are conclusive findings of fact by the Tribunal and the Court in judicial review shall not re-examine the fact as an Appellate Court.

16. The aforesaid findings of fact arrived at by the Tribunal from the original records have not been disputed by the petitioner.

17. It was urged on behalf of the Mukhiya that Respondent No. 9 had sought to file an appeal only after she failed to secure employment elsewhere under which hope she had withdrawn her candidature. The Tribunal held that no material was produced by the Mukhiya in support of this suggestion.

18. Quite apart from the complaint having been found to be lodged under Rule 18 within time, additional question arises for consideration on the aspect of delay. Even if there was inaction on part of Respondent No. 9 after 24.2.2007, the delay in institution of the appeal in 2009, it being contended that the Tribunal was constituted in Supaul in 2009, the question for consideration in the facts of the case would be if delay by creation of third party rights in favour of the petitioner by her appointment on 17.3.2007 has binding effect so that the Court shall allow the illegality to be perpetuated by declining interference on technical defects otherwise found to be glaring. The answer definitely has to be in the negative.

19. The Court finds no reason to interfere with the impugned order. The writ application is dismissed.