
(2007) 11 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 5273 of 2006

Rajendra Mochi and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

Citation : (2007) 11 PAT CK 0021

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Suresh Pd. Singh No. 1 and Vitesh Kumar Singh, for the Appellant;
S.S. Sundaram for Resp. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioners, learned Counsel for the State and the learned Counsel appearing on behalf of the Staff Selection Commission. Separate counter affidavits have been filed on behalf of the Department of Revenue and Land Reforms, Department of Registration and the Bihar Staff Selection Commission.

2. The relief sought for in this writ application by the petitioners is for a direction to the Bihar Staff Selection Commission to make necessary recommendation of the candidates declared successful in the "Amin Competitive Examination 2004" conducted by the Bihar Staff Selection Commission.

3. Learned Counsel for the petitioners submits that a requisition was sent by the Department of Revenue and Land reforms to the Bihar Staff Selection Commission for selection and recommendation of persons for appointment on the post of "Amin". The requisition of the Department of Revenue and Land Reforms dated 27.3.2004 fixed the eligibility criteria for appointment on the post of "Amin" as follows:-

(i) Matric/Equivalent pass;

- (ii) Passed in Amin Examination;
- (iii) The selection must be made on the basis of competitive examination;
- (iv) Past experience shall not be compulsory.

4. The requisition sent to the Bihar Staff Selection Commission was followed by an advertisement and selection process in which the petitioners were declared successful. The Commission at its meeting on 22.11.2005 resolved to recommend the names of the successful candidates except for four roll numbers in respect of whom certain information were wanting. Subsequently the necessary information has also been submitted with regard to them. The petitioners fulfilled the conditions of eligibility as per the requisition and have obtained the training of "Amin" from institutions registered with the Government of Bihar and that their certificates bear the registration number of the institution also. The mere change in the situation of incumbents on the post of Secretary and members of the Commission has led to the subsequent developments where the recommendations of successful candidates, approved earlier is now sought to be wrongly withheld.

5. Learned Counsel appearing on behalf of the Department of Revenue and Land Reforms and the Inspector General of Registration stated that they stand by statements made in the counter affidavits filed on their behalf. The Department of Registration had granted registration to such institutions for establishing the Training Institute which fulfilled the requirements for such registration.

6. The counter affidavit on behalf of the Department of Revenue and Land Reforms states that the Bihar Staff Selection Commission is only a Nodal Department for conducting examination after receiving vacancies from the various Departments and publication of results. That the Bihar Staff Selection Commission is duty bound to send names of successful candidates to the concerned Department/offices. The counter affidavit further states that the criteria for eligibility of the aspirants for the post of "Amin" were fixed by the Department of Revenue and Land Reforms forwarded to the Commission.

7. Learned Counsel for the Bihar Staff Selection Commission urged that the advertisement issued by the Commission in pursuance of the requisition sent by the Department of Revenue and Land Reforms stated that the candidates must have passed examination for training as "Amin" from a Government Recognized Institution. The petitioners conscious of the conditions of the advertisement had applied. They underwent the selection process. The recommendation made earlier by the Commission was contrary to the conditions of the advertisement inasmuch as the petitioners were not qualified from Government recognized institution in terms of the advertisement. The institutions were therefore fake and for which an FIR had been lodged. The petitioners cannot now contend of their eligibility without having qualified from a Government recognized institution. For the afore-said reason a fresh decision had been taken by the Commission on 31.3.2006 to cancel the selection.

8. The Bihar Staff Selection Commission is only an agency through which the recruitment is made. The need for recruitment, the extent of recruitment, the nature of qualifications required, suitability for the job etc., are the prerogative of the employer and not the agency through which the selection may be made. Once the department which was to make the appointments had sent a requisition to the Commission, the Commission was required to make selection in accordance with the same and the stipulations provided therein. Any change in the requisition or conditions of eligibility for appointment could be made only by the employer and not by the agency through which the selection was to be made. Schedule to the Regulation creating the Bihar Staff Selection Commission by notification dated 31.5.2003 specifies the role of the Commission. The powers sought to be claimed by the Commission presently are not and cannot be vested in it.

9. The insertion by the Commission of the condition with regard to eligibility was an act of the Commission and not of the requisitioning department. This Court has no hesitation in holding that this act of the Commission was purely beyond jurisdiction and the petitioners cannot be non-suited for the reason that they applied and underwent selection. The claim of the petitioners that they have obtained training from the institutions registered with the Government of Bihar and their certificates bears registration numbers cannot be lost sight of particularly in view of the counter affidavit on behalf of the Inspector General of Registration which does not whisper, let alone, make any suggestion of any fake registration.

10. The requisitioning department, the Department of Revenue and Land Reforms, quite apply in its counter affidavit takes the stand that the Commission was only the recruiting agency. The conditions for eligibility had to be laid down by the requisitioning department and that Commission had then no option but to recommend names of the selected candidates. The resolution dated 31.3.2006 of the Commission which the Commission was very reluctant to place before this Court and ultimately chose not to place on affidavit but placed only the zerox copy of the same before this Court states that mere empanelment creates no right. That the selected candidates were from fake institution. Learned Counsel for the Commission then submitted that this aspect of "fake" was related to the issue that certificates were not issued from Government recognized institutions. The resolution dated 31.3.2006 of the Commission does not annul the earlier resolution of the Commission dated 22.11.2005 to make the recommendation. This Court considers it proper to keep on record the zerox copy of the resolution dated 31.3.2006 placed be-fore this Court on record.

11. Some of the candidates who were recommended for selection alongwith the petitioners had come with a similar grievance to this Court in CWJC No. 7338 of 2006 which was disposed-off on 22.1.2007 with a direction to make recommendation not latter than six weeks from the date of the order.

12. Having considered the submissions made on behalf of the parties, this Court

is satisfied that the writ application deserves to succeed.

13. The condition sought to be imposed by the Bihar Staff Selection Commission not originally incorporated in the requisition sent by the Department of Revenue and Land Reforms is of no avail. The Commission is directed to make recommendation of the selected candidates in accordance with law forthwith preferably within a period of four weeks from the date of receipt and or production of a copy of this order. The writ application stands allowed.