
(2010) 09 PAT CK 0048
In the Patna High Court
Case No : CWJC No. 1526 of 2010

Rajesh Kumar Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0048

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioners, for the State of Bihar in. the Department of Higher Education, the Bihar Rashtra Bhasha Parishad (hereinafter referred to as the "Parishad") and for the Intervenors.

2. The Parishad is stated to be an autonomous institution functioning under the aegis of the State of Bihar in the Department of Higher Education and indisputably comes within the definition of "State" under Article 12 of the Constitution of India.

3. This Court in C.W.J.C. No. 2852 of 2006 and analogous cases on 20.3.2009 gave directions to fill up 50% vacant posts in the Parishad by regular appointment. It was noticed that the State Government had pervasive control over the entire functioning of the Parishad and recruitment required prior approval of Government. The State Government in the Department of Higher Education by a policy decision dated 15.11.1996 had prohibited any appointment in the Parishad, temporary, ad hoc or daily wage without such approval.

4. The Department of Higher Education on 17.4.2009 in the pen of the Deputy Director (Higher Education) with reference to the order of the Court dated 20.3.2009 issued directions to the Director of the Parishad enclosing the order of the Court that it may be complied with. Necessary steps may be taken for the same under intimation to the department. An advertisement was then issued by the Parishad on 22.10.2009 inviting applications for 6 vacancies of Class-IV posts and which is the subject matter of the present controversy. Several persons

applied. During the pendency of the selection process; two more vacancies are stated to have occurred by reason of two promotions made from Class-IV post to Class-III leading to a total of 8 appointments. Appointment letters were then issued on 29.12.2009, temporary in nature, terminable at any time. The incumbents joined.

5. On 11.1.2010 an instruction was issued by the Deputy Secretary, Department of Higher Education that no further steps should be taken in pursuance of the advertisement and instructing the Director to appear before the Secretary of the Department. Thereafter followed the order of termination of the Petitioners on 12.1.2010 stating simplicitor that their appointments were cancelled.

6. It is not in controversy that the Intervenors were also applicants in response to the advertisement but have failed to compete and have not been selected. The primary attack of the Intervenors is on the ground of nepotism in the appointments when the members of the Selection Committee have selected their own near and dear one. The details of the constitution of the Selection Committee are mentioned at Paragraph-2 of the intervention application. The original records have been produced by the Parishad. The understanding of the Intervenors with regard to the constitution of the Selection Committee is apparently wrong. Sri Dinesh Prasad Yadav was not a member of the Selection Committee but one Sri Ram Bujhawan Singh was the Chairman of the Selection Committee. Sri Basudeo Das and Sri Satyendra Kumar were members. Dealing with the allegations of appointment by the latter two of their own relatives, the Petitioners have filed an affidavit mentioning full details and clarifying that they had no relationship with the latter two members. On the face of the record, the Court is satisfied that the Intervenors have attempted to fish in troubled waters to make out a case for themselves after they have failed to qualify. The Intervenor application is therefore rejected.

7. Learned Counsel for the Petitioner submitted that no error has been committed in appointment of 8 persons against specified 6 vacancies in the advertisement. The two vacancies having occurred during the selection process, there was no error in appointing two more persons from the panel prepared in accordance with law. He relies upon a judgment of the Supreme Court reported in Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another, The next submission on behalf of the Petitioners is that the reason given by the Department of Higher Education in its counter affidavit of a ban on appointments by letter dated 15.11.1996 is completely non est in view of the own letter of the department dated 17.4.2009. If that be the illegality in the appointment of the Petitioners, and the counter affidavit of the Department of Higher Education makes otherwise generalized allegation of violation of roster etc., there is no illegality in fact in their appointment.

8. Paragraph-15 of the counter affidavit of the Parishad is illuminating and acknowledges of having acted on the verbal dictates of the Secretary of the Higher Education without furthermore.

9. Counsel for the State fairly submits that he is unable to assist the Court by reasons why the order dated 11.1.2010 came to be issued in absence of any discussion or consideration recited in the order of the circumstances under which it was being issued.

10. The facts are eloquent. This Court passed certain orders to fill up vacancies. The Department of Higher Education on 17.4.2009 instructed the Parishad to fill up the vacancies. Advertisement was issued and appointments made. The three member Selection Committee comprised of the Deputy Secretary, Planning and Development Department, Old Secretariat, Government of Bihar also. The allegations of nepotism have been found to be unsubstantiated in the proceeding. This Court therefore does not find any infirmity in the procedure of the selection process in so far as 6 appointments are concerned.

11. The reliance of the Petitioners on the case of Benny T.D. (supra) to support the two further appointments is misconceived. The facts noticed therein at Paragraphs makes it apparent that vacancies notified were 85 as probable vacancies not definite. In that context, 112 appointments were made. In the present case, the advertisement was specific for 6 vacancies with no reservation clause in the advertisement that the vacancy could increase or decrease. This Court therefore holds that any appointment in excess of vacancy advertised was therefore impermissible in law. The appointment of the two juniormost persons from the panel is held to be illegal and writ application has to be dismissed with regard to them.

12. The Supreme Court in Mukul Saikia and Others Vs. State of Assam and Others, has held as follows:

15. At the outset it should be noticed that the select list prepared by APSC could be used to fill the notified vacancies and not future vacancies. If the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised, even though APSC had prepared a select list of 64 candidates. The selection list got exhausted when all the 27 posts were filled. Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The fact that evidently and admittedly the names of the Appellants appeared in the select list dated 17.7.2000 below the persons who have been appointed on merit against the said 27 vacancies, and as such they could not have been appointed in excess of the number of posts advertised as the currency of select list had expired as soon as the number of posts advertised are filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies meant for direct candidates in violation of quota rules. Therefore, the Appellants are not entitled to claim any relief for themselves. The question that remains for consideration is whether there is any ground for challenging the regularization of the private Respondents.

13. This view has been reiterated in (2010) 6 SCC 777 : 2010 (3) PLJR (SC) 165

(State of Orissa v. Raj Kishore Nanda) at paragraph 11.

14. The duty of the officials of the State Government is not to behave as private litigants but to assist the Court in the dispensation of justice. Unlike a private litigant, functionaries of the State have a solemn duty and constitutional obligation to state the truth in the Court proceeding. All litigants are expected to state the truth in Court proceedings. The duty of the Government functionary is more onerous. They are required not only to state the truth, but also the correct facts as the Court relies upon them heavily in the belief that they have no personal axe to grind and shall state the true and correct facts only to enable the Court to arrive at a proper conclusion after adjudication in accordance with law. Their duty is to place correct facts and leave the rest for the Court to decide.

15. The counter affidavit on behalf of the Department of Higher Education has been affirmed by one Sri Sheo Mangal Singh (Deputy Secretary) in the Department of Higher Education, an officer senior in rank. The writ petition involves termination of persons who claimed to secure appointment after advertisement. The order of termination is based on an instruction issued by the Department. Both, the instructions issued and the order of termination are non-speaking. The counter affidavit of the Deputy Secretary states that the appointments were contrary to letter No. 666 dated 15.11.1996 of the Human Resources Department by which the Director, Parishad was directed not to make any appointment without prior approval of the State Government. The letter has been noticed in C.W.J.C. No. 2852 of 2006. The counter affidavit is completely silent with regard to the subsequent instruction dated 17.4.2009 given by the Deputy Secretary in pursuance of the order of this Court in C.W.J.C. No. 2852 of 2006 to proceed in accordance with law for making appointments. The manner in which the Deputy Secretary has tried to present twisted facts before the Court severely disappoints the Court. It was a matter serious enough to be considered in the contempt jurisdiction but the Court refrains from doing so. This Court does not consider it necessary to give any credence to the counter affidavit which borders on irresponsibility and apparently is making incorrect statement of facts attempting to mislead the Court.

16. Any order having adverse civil consequences is required to be reasoned. Reasons are stated to be the control of arbitrariness and lend transparency to an order. Reasons are the heart and soul of the order and facilitate judicial review. It enables the Court to understand the cause, nature and materials on which the decision has been taken. The necessity of reasons in an order having adverse civil consequences in light of the aforesaid discussion is not a reason enunciation of the law. Time and again the Courts have held that an order which does not contain reasons is liable to be set aside without furthermore. A non-speaking order cannot be explained in a counter affidavit so as to build-up upon it.

17. In Union of India (UOI) Vs. Mohan Lal Capoor and Others, the need for reasons has been explained at paragraph 28 that:

28. ...Reasons are the links between the materials on which certain conclusions are based and the actual conclusions.

18. It is also not in controversy that no show cause notice was issued to the 6 persons whose appointments have been upheld by the Court. If the appointments had been made on 29.12.2009, the instruction issued by the Department of Higher Education on 11.1.2010 not to proceed with the advertisement was a non est order. A Government established under the rule of law cannot function on verbal orders but on written orders only. The order dated 11.1.2010 is non est. If it is non est, any order of cancellation dated 12.1.2010 based upon it also becomes non est.

19. This Court therefore formally pronounces the annulment of the orders dated 11.1.2010 and 12.1.2010 only in so far as the 6 persons appointed first in the panel are concerned. The last two appointments from the panel are held to be illegal requiring no interference with their orders of termination.

20. This Court expects that the Secretary of Department of Higher Education Department of Human Resources shall adequately look into the manner and nature of the counter affidavit filed.

21. The administrative aspect of this irresponsible conduct of the deponent is for the Chief Secretary of the State to decide. This case is made a mandatory case study for framing of the State Litigation Policy by the order of the Court. Let a copy of this order with complete set of the records be forwarded by the Registry of the Court to the Chief Secretary.

22. The writ application stands allowed to the extent indicated with all consequential benefits.