

(2006) 03 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 14836 of 2005

Rajniti Kumar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 110 FLR 409 : (2006) 2 PLJR 268

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Ahsanuddin Amanullah and Mithilesh Kumar Pathak, in C.W.J.C. Nos. 14824, 14825, 14836, 14844 and 15186/2005, Pushkar Narain Shahi, Ritesh Kumar No. 1 and Sanjeet Kumar, in C.W.J.C. No. 15186/05, for the Appellant; Hemendra Pd. Singh, S.C., for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—As in all these writ petitions, the facts and the questions involved are more or less common, with consent of the parties, they have been heard together for final disposal.

2. The first four writ petitions have been filed for quashing the order dated 24.10.2005 (Annexure 19 to C.W.J.C. No. 14836 of 2005), by which the Home Secretary, Bihar has issued direction to cancel the promotion given to the petitioners from the post of Jail Clerks to the post of Assistant Jailors and. also the consequential office orders issued under the signature of I.G., Prisons, dated 23.11.2005 (Annexure 20), whereby and whereunder pursuant to the said direction promotions given to the petitioners have been cancelled after over lone six years. In the other two writ petitions (C.W.J.C. No. 14824 and 14825 of 2005), the petitioners have prayed for quashing of the same order, whereby and whereunder the Home Secretary has directed to cancel the promotion given to them from the post of Warders to the post of Jail Clerks and also the consequential office order issued on 23.11.2005 (Annexure 14) by the I.G..

Prisons, whereby and whereunder the said promotions have been cancelled after over long six years.

3. In short, the case of the petitioners is that they were promoted on the aforementioned posts after complying with all the requirements . such as appearing before the Selection Committee. headed by the then I.G., Prisons. Bihar," Patna and being medically examined by a duly constituted Medical Board. The I.G., Prisons by his letter No. (sic)946 dated 10.11.1998 to all the Superintendents of Jails in Bihar requested them to send the names of all eligible candidates for promotion, whereupon they were interviewed by the Departmental Promotion Committee (in short "D.P.C."),which recommended their cases for appointment and their names were included in the list of the recommended candidates by the D.P.C. The petitioners were promoted on the respective posts and posted in various jails vide Department's Order dated 24.12.1998 issued by the then I.G., Prisons (respondent no . 4). They joined the respective places of posting as Assistant Jailors in the first four writ petitions and as Jail Clerks in the last two writ petitions.

4. In the first four writ petitions, the petitioners joined pursuant to the order dated 24.12.1998 and. in the last two writ petitions. they joined pursuant to the order of promotion dated 6.11.1999 , Some of the petitioners also passed the Noting and Drafting Examination for Clerks. However, after taking work from them for about two to three years, in October. 2001 show cause notice was issued to them as to why their promotion be not cancelled. The petitioners submitted their show cause, but it is contended that the Secretary, Department of Home, Government of Bihar (respondent No. 2) without considering their show cause cancelled the order of promotions, vide impugned orders. after six to six and half years of taking work from them on the promoted post, Learned counsel appearing for the respective petitioners have contended that the impugned orders of cancellation of promotion of the petitioners have been passed pursuant to the order of Hon"ble Jail Minister purporting to be on review by him in the matter of such promotion/promotion-cum-appointment, but the impugned orders themselves would show that the show cause filed by the petitioners have not at all been considered which alone vitiates the impugned orders being in (sic)tter violation of the principles of natural justice, apart from arbitrariness.

5. Learned counsel submitted that the promotions were made on the recommendation of the duly constituted D.P.C. after following the procedure. According to the learned counsel for the petitioners, it is not even alleged that there was any irregularity committed in the conduct of the proceeding of the D.P.C. nor in the impugned orders or in the counter affidavit filed by the respondents it is even alleged that any individual promotee did not fulfil the requisite qualification/criteria and that the so-called irregularities as mentioned in the impugned orders violate any rule or governmental decision or the constitutional provision, such as Articles 14 and 16 of the Constitution of India.

Learned counsel for the petitioners submitted that the grounds mentioned in the impugned orders for cancellation are wholly irrelevant besides being unfounded. The impugned orders simply make vague allegation regarding the so-called irregularities and thus the action of the respondent-authorities is wholly arbitrary and mala fide as some of their favourites could not get the promotion. Thus, according to the learned counsel, the impugned orders are not sustainable even on merits.

6. Counter affidavits have been filed on behalf of the respondents, in which it is not disputed that the petitioners were promoted after selection by the D.P.C., headed by the I.G., Prisons and other members.

7. Learned counsel for the State has not been able to show any rule or governmental decision laying down any criteria for the aforementioned promotions. He, however, referred to Rules 247 and 248 of the Bihar Jail Manual regarding the appointment of Assistant Jailors and Probationary Assistant Jailors. which, in my opinion, are not at all relevant as they relate to direct appointment on advertisement in Bihar Gazette and do not relate to promotion, It is not the case of the respondents that the posts upon which the petitioners have been promoted were not meant for them or that the same were not their promotional avenue. Moreover, that is not the ground taken in the impugned orders.

8. However, according to the learned counsel for the State. the Committee in its proceeding dated 16.11.1998, as contained in Annexure 5 of C.W.J.C. No 14836 of 2005. came to the conclusion that out of the total sanctioned post of Assistant Jailors. 50% posts have to be filled up from Jail Clerks and Chief Head Warders. but subsequently the Committee decided that since some of the Typists had also made a representation for promotion on the post of Assistant Jailors, their cases should also be taken into consideration and accordingly the Committee decided to consider the case of two Clerks and three Chief Head Warders along with the Jail Clerks for promotion on the post of Assistant Jailors. although, according to the decision. their cases were not required to be considered. which, according to the learned counsel for the State, clearly tells much about the process of consideration.

9. The stand of the State in the last two writ petitions is that the replies submitted by the petitioners pursuant to show cause notices were also considered while passing the impugned order (Annexure 14). Further stand of the State is that there was no representation of the nominated officer to represent Scheduled. Caste or Scheduled Tribe in the meeting of D.P.C. It is stated that in the earlier D.P.C. meeting, I.G. prisons directed the Director, Administration, vide order No. 1406 dated 31.3.1999. to check the confidential working performance, inflicted punishment and pending departmental enquiry of the appearing candidates. But without waiting for compliance of its own direction, the I.G., Prisons called the meeting of D.P.C. on 15.6.1999 and 15.11.1999 and finally the D.P.C. recommended the name of even those candidates whose confidential reports and other descriptions were not available.

It is further stated that the report submitted by the I.G., Prisons would itself reveal that the answer sheet was given to the candidates directly by the I.G., Prisons and he himself collected the copy. There was no signature on the : answer book except the signature of I.G., Prisons, It is further stated that the I.G., Prisois himself examined the copy. Thus. he worked himself both as Superintendent of Examination Centre and also of Evaluator.

10. I am unable to appreciate the said submission of the learned counsel for the State, I find it difficult to express doubt about the bona fide action of the Committee in which high officials were as its members and was headed by the I.G., Prisons. especially in the absence of any rule or Government decision laying down any particular criteria to be followed for consideration of the cases for promotion. Moreover, it is not the case of the State that any action has been taken against any member of the Committee for the aliened irregularity, if any. It is not even alleged that these petitioners managed to get themselves selected by influencing the members of the Committee. In any view of the matter, the petitioners have no role in the process of selection and, as such, in my opinion, they cannot be penalised on such vague allegation of so-called irregularities committed by the Committee more so when it is not the case of the respondents that these petitioners were not qualified or that there was any supersession wrongly made by the Committee in recommending their cases for promotion. Learned counsel for the State submitted that the proceeding of the committee reveals that it has not taken into consideration the information which it had sought from, the Jail Superintendent nor had fixed any criteria such as the points with reference to seniority, character roll, physical fitness etc. According to the learned counsel for the State, no merit list was prepared rather in one line, the Committee recommended the case of 16 persons and later in the case of some recommended their case for appointment without holding any physical test or considering the C.R. etc.

11. I am unable to appreciate the said bald submission made by the learned State Counsel appearing on behalf of the respondents without reference to any particular case. In my opinion, the respondent-authorities were not justified in issuing the impugned orders on the basis of the order of Hon''ble Jail Minister about whom it is claimed that he passed the order on overall review of the matter relating to promotion and promotion-cum-appointment. Once the show cause notice was issued to the petitioners, the respondent-authorities were obliged to consider the same and take any such decision only upon finding any irregularity in case of any individual and not that they can legally be justified in cancelling the promotions of the petitioners merely on the basis of the above mentioned order of Hon''ble Jail Minister without applying their mind to the facts of the individual case especially when it is not the case of the respondents that the D.P.C. was not properly constituted or that it was not competent to recommend the case for promotion.

12. In the facts and circumstances aforementioned, in my opinion, the impugned

orders suffer from vagueness and are arbitrary and mala fide as well.

13. In the result, all these writ petitions are allowed. The impugned orders of cancellation of promotions of the petitioners are quashed. However, in the facts and circumstances, there shall be no order as to costs.