
(2007) 10 PAT CK 0037
In the Patna High Court
Case No : LPA No's. 1435 of 1998

Ram Chandra Choudhary	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Citation : (2008) 2 PLJR 696

Hon'ble Judges : Barin Ghosh, J; Anwar Ahmad, J

Bench : Division Bench

Advocate : M. Chatterjee, for the Appellant; R.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh and Anwar Ahmad, JJ.—Since facts of these matters are identical and law applicable thereto is also similar, we have decided to deal with these two appeals by this common judgment. Rule 151 of the Bihar Board's Miscellaneous Rules gives guidelines for appointment to the ministerial and other posts in Bihar and suggests that the same have been incorporated in Appendix-H to the rules. Appendix-H makes it mandatory for publication of an advertisement in Bihar Gazette for every vacancy to be filled in by the State Government. The said Appendix further makes it clear that an advertisement in the official Gazette may be dispensed with only in cases of really urgent nature and the circumstances of each such case should be reported as soon as possible to the authorities concerned.

2. Therefore, the normal rule is publication of an advertisement for recruitment in the official Gazette and same may be dispensed with only in urgent cases and when power is being exercised not to advertise, the matter must be reported forthwith to the higher authority. In the event, the advertisement is not published in the official Gazette, but is published in the newspaper, the same, though is not the mandate, but would serve the purpose for all practical purposes. Therefore, advertisement is a must, but exception thereto is the basis

of urgency which is justifiable.

3. By a letter dated 21st June, 1966 the Secretary to the Government informed other functionaries of the Government that all vacancies in the Government should be notified to nearest Employment Exchange. It stated that a minimum of three weeks notice must be given to Employment Exchanges concerned in respect of vacancies to be notified in the newspaper and of 10 days notice in respect of other vacancies. It, therefore, made clear that in respect of the vacancies to be advertised three weeks notice must be given but in case the vacancies are not to be advertised, i.e. if the vacancies are to be filled up urgently, 10 days notice must be given to the concerned Employment Exchanges. At the same time the said letter made it amply clear that whenever 5 or more vacancies are to be notified, the Employment Exchanges concern will advertise those vacancies in the newspaper. The obligation of the Employment Exchanges to notify vacancies of 5 and more would be static whether the vacancies concerned are advertised in the newspaper or are decided not to be advertised in the newspaper for urgency. The purpose of making the Employment Exchanges obliged to advertise the notification of 5 or more vacancies was to encourage people to get themselves registered with the Employment Exchanges and the same would be absolutely crystal clear from the said letter. That letter did not dispense with the otherwise requirement of publication of an advertisement and dispensation thereof in case of urgency. That letter made the Employment Exchanges also obliged to advertise when vacancies are five or more.

4. The appellants in these appeals were appointed as Assistant Teachers in the Welfare Department of the Government for teaching scheduled caste students. After having served for five years or so, they were removed, from their services without any show cause. Thereafter, the appellants approached Writ Court and writ petitions having been dismissed they have preferred these appeals.

5. There is no dispute that before the appellants were appointed, no advertisement was published either in any newspaper or in the official Gazette. On the strength of the said letter of the Government dated 21st June, 1966, appellants contended that inasmuch as vacancies were less than five, there was no necessity of publishing any advertisement. In the counter affidavits filed to the writ petitions it was contended by the State Government that in the year in question i.e. in the year 1991, 10 vacancies cropped up and those vacancies were filled up. in piecemeal manner. It was contended that while filling up 4 vacancies, one notification was issued and while filling up the remaining 6 vacancies, another notification was issued. A learned Single Judge, who dealt with the writ petitions, felt that only in case of vacancies being five and more, advertisements were required to be published, but in the instant case, although the vacancies were 10, no advertisement was published and, accordingly, appointments were illegal. The learned Judge thus concluded the matter.

6. Before us the learned counsel appearing on behalf of the appellants contended that during the year 1991 only 3 Assistant Teachers were appointed and the

same would be evident from the minutes of the meeting of the Selection Committee. She submitted that therefore, admittedly there were three vacancies in the post of Assistant Teachers and those three vacancies could not be clubbed with other vacancies for the purpose of making the vacancies five or more. It was also submitted that though 10 appointments were given in the year 1991, but those had been given to different establishments and accordingly vacancies cropped up in different establishments, which could not be added up for the purpose of determining vacancies at five and more.

7. As indicated above, it does not matter whether the vacancies are five or more or five or less. If there is one vacancy that is required to be advertised. The requirement can be lifted only in the case of urgency. In case of not so urgent appointments, for which advertisements are required to be published, the Employment Exchanges are entitled to three weeks notice, but in respect of urgent appointments for which advertisement may be dispensed with, the Employment Exchanges are entitled to 10 days notice. Even though the appointments are urgent and accordingly, advertisement for the vacancies has been dispensed with, but if the vacancies are five or more, the Employment Exchanges are required to advertise the same.

8. The contention that without notice to them and without giving them an opportunity of hearing before the orders impugned by the appellants were passed terminating their services, has now been settled by a Constitutional Bench Judgement of the Supreme Court rendered in the case of Uma Devi Reported in 2006(2) PLJR (SC) 363. In cases where the appointments are per se illegal, no one can fall back upon such illegality, it must perish and as such the question of applying the principles of natural justice of giving a pre-decision hearing is not applicable to such illegal appointments.

9. The appointments having been given without advertisement and accordingly, without giving an opportunity to other eligible candidates to offer themselves as candidates for filling up the vacancies in question, the logical conclusion would be that appellants cannot be permitted to contend that they were adjudged the best amongst other eligible candidates by the selection committee, for the other eligible candidates did not get any opportunity to appear before the selection committee. It may be true that an Employment Exchange forwarded the names of the appellants for the vacancies in question, but the fact remains that neither the said letter dated 21st June, 1966, nor any other decision of the Government denotes that vacancies in the State Government are to be filled up by only those persons, who have been sponsored by the Employment Exchanges and people, who are not registered with the Employment Exchanges, are not entitled to offer themselves as candidates for filling up such vacancies. On the other hand, while advertisement by the employing agency is a must, the same can only be dispensed with in case of real urgency, and in addition the advertisement by Employment Exchange is also a must, when vacancies are of 5 or more. Thus when advertisement was not published by the employing agency, whether

vacancies were of 5 or more hardly matters, the appointments cannot be said to be legal appointments.

10. In those circumstances, there appears to be no scope of interference with the judgment and order under appeal and thus, the appeals fail and are dismissed. After we had concluded the matter, the learned counsel for the appellant drew our attention to certain orders passed in certain other writ petitions quashing the orders of termination of service of people similarly situated, but unfortunately we are not in a position to follow suit for reasons as above.