

(1990) 02 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 4898 of 1983

Ram Krishna Prasad

APPELLANT

Vs

The Director, Secondary Education-cum-Additional Secretary
and Others

RESPONDENT

Date of Decision : 22-02-1990

Acts Referred:

Citation : (1990) 38 BLJR 963

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Binod Kumar Roy, J.—Through this writ application the petitioner prays for issuance of a writ in the nature of mandamus directing and commanding the Director, Secondary Education cum-Additional Secretary (Respondent No. 1) the School Service Board (Respondent No. 2) and the Secretary of the School Service Board (Respondent No. 3) to include his name in the panel of the selected teachers in the subject of History and for his appointment as an Assistant Teacher in any of the taken over High School in the State of Bihar.

2. This writ application was filed on 11-10-1983. On 2nd November, 1983, it was put up for its admission. On that day it was adjourned for three weeks giving an opportunity to the petitioner to file a representation. Liberty was also given to the State for getting necessary instructions. This Application thereafter was put up on 25-11-1983, 28-11-1983, 29-11-1983, 1-12-1983, 2-12-1983 and 5-12-1983 for its Admission. On 5-12-1983, this application was admitted and was observed that one post in History may be kept reserved. From the record, it appears that attempts were made by the petitioner to get this application listed for its hearing. The application however, has been taken up its hearing only today.

The Facts:

3. The petitioner, a Scheduled caste, is Bachelor of Arts as well as Bachelor of

Education degree-holder. He also holds "B" certificate of National Cadet Corps. History was one of his subjects at graduation stage. By the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980 (Bihar Ordinance 146 of 1980), the High Schools in this State were taken over by the State Government. The Ordinance finally ripened as an Act (Bihar Act 33 of 1982), Section 10, thereof, postulates establishment of a Board for making recommendations for appointments of teachers of the Nationalised Secondary Schools. The Board prepares a panel after interview according to merit, out of which appointments are made by the Director, Secondary Education. The Board adopted a criteria for allotment of 70 marks out of 100 in regard to educational qualification experience etc. and remaining 30 marks for performance at the interview. Annexure 1 is a chart as prepared by the said Board. It shows that 6 marks as maximum is to be allotted in regard to the Matriculation examination. The maximum of 6 was reserved who obtained First Division, 4 marks who obtained second Division, 2 marks obtained Third Division and only 1 mark for the students who passed compartmentally, 10 marks were reserved for those students who obtained First Division in the Intermediate Examination, 7 who obtained Second Division, 4 marks who obtained Third Division and 2 marks to those who passed compartmentally in the said Intermediate Examination, 18 marks were reserved for Graduation Certificate holders, 14 marks for those students who merely obtained a Pass Bachelor of Degree and 18 marks for those students who obtained an Honors Bachelor's Degree giving different breakage for different division holders therein. The Board made an advertisement for appointment of teachers in the subject of History. The petitioner applied for appointment annexing with his application his educational qualification etc including the caste certificate granted by the District Magistrate, Deoria (Annexure-2). The petitioner was interviewed on 18th July, 1983. A final selection List was published by the Board in regard to 504 candidates without including the name of the petitioner. The list itself indicated 26 vacancies reserved for candidates belonging to Scheduled Castes/Scheduled Tribes but with a remark not available He did fairly well at the interview and obtained 27 marks in terms of the guideline (Annexure-1), 4 for having secured 45.4% in Matriculation. 4 for having secured 42.8% marks in Intermediate examination, 7 for having secured 39.2% marks in Bachelor of Arts examination, 10 for having secured 48% in Bachelor of Education Examination and 2 marks for the "B" certificate of National Cadet Corps. The petitioner tried to ascertain the cause of his non-selection but nothing divulged to him. He however, came to know that one Ramautar Prasad Roll No. 584, who has been selected in History could secure only 25 marks among other Uma Shankar Prasad Roll No. 677, who has been selected in Hindi could secure only 22 marks, both of whom were in the referred category being scheduled Caste. The petitioner apparently obtained marks more than the aforesaid two persons but the Selection Committee of the Board gave arbitrarily lower marks to him out of 3 marks allotted at the interview whereas if gave higher marks to their favorites and those the Board be directed to produce the marks from which their

arbitrariness would become apparent. There are Resolutions and Orders of the Government to relax, in favour of reserved category of candidates belonging to the Scheduled Castes and Scheduled Tribes and thus the Government be directed accordingly Even there are vacancies meant for reserved categories, they going to be filled up by the candidates, belonging to the general category. A supplementary affidavit dated 5-4-1984 was filed by the petitioner, though wrongly mentioning it as counter-affidavit on behalf of the petitioner. In the supplementary affidavit it has been stated that pursuant to the direction dated 2-11-1983 the petitioner filed a representation before the Board on 3-11-1983 which has been rejected as baseless by the Board as communicated to the petitioner by the Respondent No. 3 vide his letter dated 3-8-2-1984 ; Annexure-3).

4. No counter-affidavit has been filed by any of the respondents. The submissions:

5. Mr. Ganesh Prasad Singh, learned Counsel appearing for the petitioner b1 submits as follows:

(i) the representation of the petitioner has been disposed of, without assigning any reason in Annexure-3, and thus it should be quashed:

(ii) then non-denial of the facts averred in the writ application, in absence of any counter-affidavit and in absence of any cogent reason should be accepted by this Court. The allegation that the Board at the interview adopted an arbitrary and mala fide procedure to favour its favorites is thus apparent; and

(iii) in any view of the matter, the vacancies meant for reserved categories in regard to which the candidates have been stated to be not available and which are illegally going to be filled up by the candidates belonging to the general categories is liable to be depreciated and should be quashed.

6. Mr. Ganesh Prasad Singh also produced before me the original of Annexure-3 as also another communication made to the petitioner by the Respondent No. 3 contained in letter No. 1002, dated 22-12-1983 which has been kept on the record.

7. Mr. Abhay Kumar Singh, learned J.C. to G. P. VI submits as follows:

(i) The petitioner of having been found fit at the interview and thus no recommendation was correctly made by the Board. Accordingly the petitioner is not entitled to the relief's claimed:

(ii) It is true that no counter-affidavit has been filed but nevertheless this Court need not accept the self serving statement of the petitioner specially when the pleading of mala fide set forth in Paragraph-19 is unspecific and vague. Merely because the petitioner was not fortunate successful at the interview, it cannot be said that there was mala fide on the part of the Board;

(iii) From the original of Annexure-3. it appears that the representation of the

petitioner has been considered and found without any substance and thus rightly rejected:

(iv) In absence of reference to any definite Circular/Instruction Order the statement made be paragraph-26 of the writ application that vacancies meant for reserved categories are illegally going to be filled up by the candidates of the general categories should not be accepted.

8. Mr. Uday Shankar Satan Singh, learned Counsel appearing for the Respondents 2 and 3, apart from adopting the arguments made on behalf of the Respondent No. 1, submits that the marks allotted to the petitioner and Ors., if directed can be produced for perusal of this Court but the allegations made by the petitioner are prima facie devoid of any substance. The Discussions and Findings:

9. Coming to this submission of mala fide first, I find that the statements made in Paragraphs-19, 20 a ad 25 are vague. It has not been stated as who were the favourites of the members of the Board to whom higher marks than that of the petitioner at the interview were granted and that when the petitioner was asked by the members of the Board to oblige them. The petitioner has not appended a copy of his representation filed to show as to whether therein also he had pleaded the question of mala fide. Accordingly, I do not find any substance and I reject the said plea.

10. By letter dated 22-12-1983; it appears that an opportunity was given to the petitioner by Respondent No. 3 to produce himself for an enquiry. It has not been stated by the petitioner either in the writ application or even at the Bar by Mr. Singh as to whether the petitioner produced himself before the Board. In the said back drop. I do not find any substance in the submission that the Board has committed an error in communicating that the representation of the petitioner has been found to be baseless in Annexure-3.

11. My attention has also not bean drawn to any Government Resolution or orders referred to in Paragraph 23 of the writ application showing permissibility of relaxation to title candidate) belonging to the Scheduled Castes/Scheduled Tribes. The matter, however, does not rest there. The petitioner admittedly belongs to a Scheduled Caste category. From the undisputed facie, it is clear that he had fetched more marks than at least two persons named by him except at the interview consisting of 30 marks out of 100. By now he has been crying hard for justice. People belonging to the Scheduled Castes and the Scheduled Tribes and to other weaker sections of the society in India, as observed by the Supreme Court in P and T Scheduled Caste/Tribe Employees" Welfare Association (Regd.) and Others Vs. Union of India (UOI) and Others, , were held to be the zealously perfected children of the Indian Constitution. The statement made by the petitioner in Paragraph-6 that there are vacancies meant for reserved categories but the same have been kept vacant due to non-availability of the candidacies and that they are going to be filled up by the general candidates has not bean

denied. If this be a fact then it would be just and proper for the Respondent to accommodate the petitioner or similar situated persona like him and discharge their constitutional duties. Detailed facts are lacking in this regard and thus it is difficult for me to issue a clear-cut mandate thus, as requested only in favour of the petitioner. This matter, I am satisfied, requires a farther scrutiny and examination at the hands of the Respondents themselves in this regard, would be thus expedient in the interest of justice to grant at least a limited relief to the petitioner in this regard following P. and T. case (supra).

The Direction:

12 For the reason aforementioned, the writ application is allowed to this limited extent only that if there were vacancies meant for reserved categories and which were vacant due to non-availability of the candidates and which were/are going to be filled up by the candidates belonging to the general category in that event, Respondent Nos. 1 to 3 shall reconsider the entire matter and find out the number of candidates of the Scheduled Castes/ Scheduled Tribes and/or other reserved categories and shall then find out the position of the petitioner vis-a-vis those candidates and if the petitioner is found to have higher marks, he should be recommended by the School Selection Board for his appointment as an Assistant Teacher of History, as prayed for by him, and the follow up be taken by them.

13. There shall be no order as to cost.

14. Let a direction issue accordingly.