

(1992) 12 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 3603 of 1992

Ram Naresh Sharma and others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-12-1992

Acts Referred:

Citation : (1993) 1 PLJR 507

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : S.K. Sinha and Awadhesh Kumar Singh No. 2, for the Appellant; S.R. Alam for the State in CWJC 3603 of 92 and Mr. R.A. Singh for the State in CWJC No. 5431/92, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha and G.C. Bharuka, JJ.—As both these applications involve common questions of fact and law, they are being disposed of by this common judgment. The representative matrix of facts, however, would be considered from CWJC No. 3603 of 1992.

2. According to the petitioners the minimum requisite qualifications of a teacher in any Elementary school is matric trained or a physical trained. On 12.2.1988 an advertisement was issued by the District Superintendent of Education, Munger which is contained in Annexure-1 to the writ application. The petitioners applied for the said posts and their names were empanelled by the authorities concerned in the category of physical trained teachers.

3. The petitioners have contended that Several persons have been appointed out of the said panel but later on the same was cancelled by an order dated 20.5.1988. A writ petition was filed by the aggrieved persons being CWJC No. 4269 of 1988 and by an order dated 28.8.90 the order of the District Supdt. of Education was quashed.

4. The petitioners have contended that three persons namely Ganesh Pandit,

Pramod Chaudhary and Mala Rani had been appointed by the District Supdt. of Education by his letter dated 16.11.1991 pursuant to the order of this Court although they were not parties in the aforementioned writ application.

5. The petitioners have contended that 11 vacancies have been filled up and still there are 17 vacancies. The petitioners have also contended that they had been waiting for the result of CWJC No. 4262 of 1988 and after the judgment in the aforementioned case was delivered, they filed a representation before the District Supdt. of Education, Munger as also the District Magistrate on 4.3.1992 and 18.4.1992 respectively which are contained in Annexures 3 and 4 to the writ application respectively.

6. In this case a counter affidavit has been filed. In the said counter affidavit, it has been contended that out of 28 sanctioned posts for the physical trained teachers in the Munger District, 4 posts were reserved for the scheduled caste and scheduled tribe candidates and as candidates of the said categories were not available, only 24 candidates were appointed.

7. According to the respondents, they were not selected for appointment. It has been asserted that for filling up of the said posts, the same would be advertised according to the rules and regulations and appointment would be made accordingly.

8. It has further been stated the benefit of the High court judgment had been given to the candidates who had been selected for appointment.

9. Mr. S.K. Sinha, Learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

10. The Learned Counsel submitted that in terms of a notification dated 9.3.1961 issued under the provisions of Bihar and Orissa Local Self Government Act, 1885 the Committee is required to prepare a list of suitable candidates for appointment as teachers and arrange the same in order of preference according to minimum qualifications laid down by the Director from time to time.

11. It has, therefore, been submitted that the plea of the respondents that the Committee (sic) power to select or reject a candidate is misleading. It has further been submitted that a general direction had already been given to all the District Supdt. of Education, by a circular letter dated 7/M-7022/69 E-1640 dated 19.12.1970 to the effect that all the candidates should be kept in the list and only those who are physically unfit be excluded.

12. It has been submitted that by reason of the said letter the Government has instructed that only after appointing all the candidates in the year's list, another list should be prepared and the year of passing the training examination by a candidate shall determine his priority and position in the list.

13. Mr. Singh has further contended that in any event as has been admitted that at least three persons namely, Ganesh Pandit, Pramod Kumar Chaudhary and

Mala Rani had been appointed and thus the plea taken by the respondents that there had been a stay in appointment cannot be accepted.

14. The circular letters relied upon by the Learned Counsel for the petitioner had been issued prior to coming into force of the Bihar Non-Government Elementary Schools (Taking over of Management and Control) Act, 1976.

The circular letters issued by the State which were applicable by the Schools managed by the bodies under the Local Self Government Act, 1885 and the Schools which were being managed by the State earlier cannot have any application whatsoever after coming into force of the aforementioned Act.

15. It is also well known that the life of panel prepared for appointments is valid for one year only. If the State intends to extend the life of the panel, the same has to be done specifically and in terms of a valid order issued in this regard.

16. There cannot be any doubt that only because the petitioners had filed an application for appointment they were not entitled therefor. They had merely a legal right to be considered for appointment. Admittedly they were called for interview, but they were not selected. If they had not been selected by the Committee appointed for that purpose the petitioners cannot make any grievance in relation thereto.

17. The petitioners also cannot take advantage of the decision of this Court in CWJC No. 4269 of 1988 inasmuch as only question which arose for consideration in that application was as to whether the District Supdt. of Education could cancel the appointment of the petitioners thereof. The petitioners of the two writ applications admittedly had not been selected for appointment. For the reasons aforementioned, there is no merit in these applications which are accordingly dismissed, but without any order as to costs.