
(2004) 12 PAT CK 0014
In the Patna High Court
Case No : CWJC No. 6122 of 1999

Ram Nath Prasad Sahu

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Citation : (2005) 1 PLJR 230

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Vishwanath Prasad Singh and Nand Kishore Singh, for the Appellant; Uday Bhanu Roy for Respondent No. 6 and J.C. to S.C. VI, Yugal Kishore, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing a portion of the recommendation made by the Bihar College Commission dated 22nd of September, 1998 (Annexure-4) wherein respondent No. 6 has been recommended for appointment to the post of Lecturer in Psychology at Mahatma Gandhi College, Sundarpur in the district of Darbhanga. Further prayer made by the petitioner is to quash the communication dated 17th of May, 1999 (Annexure-10) of the Bihar College Service Commission to the Secretary of the Governing Body of the Mahatma Gandhi College (for the short the College) cancelling its earlier recommendation dated 21.1.1999. Shorn of unnecessary details, facts giving rise to the present application are that an advertisement was published in the daily newspaper "Hindustan" in its issue dated 7th of November, 1991 by the Secretary of the Governing Body of the College inviting applications for appointment to the post of Lecturers in various discipline including Psychology. Petitioner in pursuance of the aforesaid advertisement offered his candidature and was appointed as such by order dated 28.12.1991 (Annexure-2) by the Secretary of the Governing Body of the College. Bihar College Service Commission (for short the Commission) issued advertisement No. 756B of 1994,

inviting applications for appointment to the post of Lecturer in Psychology. Petitioner offered his candidature. When the petitioner came to know about the fact of the Commission holding the interview for appointment to the post of Lecturer between 7th April, 1998 to 30th April, 1998 and finding that no interview letter was issued to him, he filed an application before the Secretary of the Commission dated 28.4.1998 bringing the aforesaid fact to its notice, inter alia, contending that he, being eligible in terms of the advertisement, ought to have been called for interview. Plea of the petitioner is that his prayer was processed and he was interviewed on 30th of April, 1998. This assertion of the petitioner has not been denied by the Commission.

2. It seems that without considering the candidature of the petitioner, Commission by its letter dated 22nd of September, 1998 (Annexure-4) made recommendation and against the 3rd post of Lecturer, name of respondent No. 6 finds place at serial No. 1 which is arranged in order of preference. It is relevant here to state that the name of one Ram Nath Sah has been recommended at serial No. 2 and at serial No. 1 in the 1st and 2nd post of lecturer in Psychology, arranged in order of preference. Petitioner finding that his name has not been recommended, represented before the Commission. In the representation the petitioner stated that he had appeared at the interview and may be on account of the fact that he was separately interviewed and further another candidate with the same name was also a candidate and was recommended, petitioner's case might have been omitted to be considered. The representation of the petitioner was examined by the Commission and by letter dated 21st of January, 1999 (Annexure-7) addressed to the Governing Body of the College it made recommendation in which the name of the petitioner was at serial No. 2 and serial No. 1 against the 2nd and 3rd post respectively arranged in order of preference and the aforesaid Ram Nath Sah remained at the same place whereas the name of respondent No. 6 is at serial No. 2 against the 3rd post.

3. Respondent No. 6 aggrieved by the recommendation dated 21.1.1999 preferred CWJC No. 1416 of 1999 (Sudhanshu Kumar Roy vs. State of Bihar and others) before this Court. The Commission filed counter affidavit in the said case inter alia contending that when the fact of the petitioner's candidature being not considered came to its notice he was interviewed and recommendation made. However, before the matter could be finally adjudicated, the Commission by the impugned order dated 17th of May, 1999 (Annexure-10) withdrew its recommendation dated 21.1.1999 (Annexure-7) and when the writ application filed by respondent No. 6 came up for consideration before this Court on 18.5.1999, the writ application was dismissed as not pressed with liberty to the petitioner herein to challenge the same in a separate proceeding in accordance with law.

4. Mr. Vishwanath Prasad Singh, Senior Advocate appearing on behalf of the petitioner submits that although the petitioner offered his candidature, he was eligible for being considered for appointment as Lecturer but was not interviewed

and when this fact was brought to the notice of the Commission, the petitioner was interviewed. However, before making recommendation his candidature was-- not considered and when this fact was brought to the notice of the Commission, finding mistake, it rectified the same and made recommendation and in that view of the matter, the recommendation made later on ought not to have been rescinded. Mr. Yugal Kishore appearing on behalf of the Commission as also Mr. Uday Bhanu Roy appearing on behalf of respondent No. 7 submit that the Commission has no power of review and in that view of the matter, once the name of respondent No. 6 was recommended, it had no authority to make another recommendation and when the same was made, respondent No. 7 made a challenge and finding that the Commission has no power of review it rescinded the second recommendation. In support of the submission reliance has been placed on a Division Bench decision of this Court in the case of Dr. Awadh Kishore Prasad Yadav and Others Vs. State of Bihar and Others and my attention has been drawn to paragraph 12.3 of the judgment which reads as follows:--

"12.3. One of the main questions in this connection is whether they had any such power to withdraw such concurrence. It is well settled that the power of review cannot be easily implied when it is not expressly conferred. Reference may be made in this connection to the decision in Patel Narshi Thakershi and others vs. Pradyumansinghji Arjunsinghji (ibid) mentioned above. In this connection reference may also be made to the case of Gram Panchayat, Village Kanonda Vs. Director, Consolidation of Holdings, Haryana, Chandigarh and Others, . Realising this legal implications, this is why it is being contended on behalf of the Commission that it was not a case of "review" but only a case of "correction of mistakes." In my opinion, it is merely a play of words. The Commission had given its concurrence to such confirmation and thereafter it has withdrawn the same. By whatever name it is called, this, in my opinion, amounts to exercise of power of review which the Commission did not have. Reference may also be made in this connection to the case of Smt. Saraswati Mishra vs. Chancellor, Ranchi University (ibid)."

5. Having given my most anxious consideration to the submission advanced on behalf of the answering respondents, I do not find any substance in the same and the decision relied on is clearly distinguishable. It is trite that power of review is a creature of statute and a quazs-judicial authority cannot review its decision unless such power is conferred by statute, either specifically or by necessary implication. The basic philosophy inherent in it is the universal acceptance of human fallibility. However, the question in the present case is as to whether by rescinding the earlier recommendation, the Commission has reviewed its recommendation. In my opinion, a distinction has to be made between rectification of a mistake and review of a recommendation. In a case in which, later on some decision is reversed or some other decision is taken by entering into the merit of the case, there shall be no difficulty in holding that in such circumstance the power of review is exercised but in a case in which on account of some ministerial or clerical mistake, which is brought to the notice of the

authority at a later stage, same is corrected, I am of the opinion that the same shall be a rectification of a mistake and for that every authority has the power. The authority to rectify mistake starts from the fundamental principle that justice is above all.

6. Bearing in mind the aforesaid principle when test the present case, I find that petitioner offered his candidature and was eligible for consideration but unfortunately he was not issued the interview letter. He brought this fact to the notice of the Commission which interviewed him. These facts are not disputed by the Commission. Further petitioner's recommendation was not made on account of lack of merit or any other reason touching his qualification or experience or merit but on the ground that his candidature was not considered at all. This perhaps had happened because of similarity of the name with another candidate and taken interview taken separately. This may not be a happy situation but these facts have been admitted by the Commission. Petitioner when brought this fact to the notice of the Commission, finding the plea of the petitioner to be correct it made recommendation and although supported the case of the petitioner when a challenge was made by respondent No. 6 before this Court in the writ application but later on succumbed, on the purported misconception that it had no power of review. As stated earlier in the present case the Commission has not made the 2nd recommendation on a review of merit of the candidature of the petitioner or respondent No. 6 but on account of the fact that case of the petitioner was not at all considered. In my opinion, the action of the Commission shall not come within the expression "review" and this is nothing but to rectification of the mistake.

7. Now reverting to the decision of this Court in the case of Dr. Awadh Kishore Prasad Yadav (supra) the Commission made the recommendation which was acted upon and after about six years the Commission rescinded the concurrence entering into the merit of the claim of the candidates as also constitution of the screening committee and on these facts this Court come to the conclusion that it is not a rectification of mistake but review of a decision, which is not permissible. This is not the situation in the present case and hence the decision in no way supports the case of the answering respondents. In the result, the application is allowed, recommendation of the Commission dated 22nd of September, 1988 to the extent that respondent No. 8 is placed at serial No. 2 and serial No. 1 against the 2nd and 3rd post arranged in order of preference is quashed as also the letter dated 17th of May, 1999 (Annexure-10) rescinding the recommendation dated 21.1.1999 (Annexure-6). No cost.