

(2000) 09 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 5035 of 2000

Ramashish Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Citation : (2001) 1 PLJR 565

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh, Rajendra Pd. Singh, K.K. Thakur, Aditya Nr. Singh, Ganesh Pd. Singh and Sanjay Kumar, C.W.J.C. No. 6956 of 2000, for the Appellant; Ashok Kumar Choudhary, Anil Kuma Tiwary for B.P.S.C., B.N. Singh and Hari Shanker Ray for State, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—All these cases relate to appointment in the services of the State against Class-III posts in pursuance of advertisement No. 1/2000, commonly known as Special Limited Competitive Examination for appointment under Co-operative Department 2000. The applications of Petitioners having not forwarded, they have moved this Court.

2. As the matter stands settled in view of decision of the Supreme Court, it is not necessary to discuss all the facts, except the relevant one.

3. There are number of Primary Agricultural Credit Societies (P.A.C.S. for short), under the control of District Central Cooperative Bank in the State of Bihar. The paid Managers are employees of such District Cadre Co-operative Societies. They get their salary from their respective District Co-operative Societies borne by P.A.C.S.; Central Co-operative Bank and Bihar State Co-operative Bank at the ratio of 1.25%; 75% and 30% respectively. The ratio out of margin of short term agricultural loan distribution and loan collected are the main duty of the paid Managers. The parent bodies of paid Managers are Registered under Bihar Co-operative Societies Act, 1935 and governed by their individual bye-laws framed under Bihar Cooperative Societies Rules.

4. The State of Bihar initially gave certain assurance for absorption of paid Managers of P.A.C.S. in the State services and about 113 paid Managers were absorbed in pursuance of Govt. decision dated 17th May, 1986, circulated vide letter No. 1877 dated 6th September, 1986.

5. An Union of paid Managers at that stage, moved this Court in C.W.J.C. No. 2312 of 1999 for absorption of rest of the paid Managers in the State Services which was disposed of in their favour on 1st December, 1994 giving rise to Civil Appeal No. 7357 of 1996 before the Supreme Court.

6. The aforesaid Civil Appeal No. 7357 of 1996 was heard by the Supreme Court which, by its order passed in I.A. No. 5, made certain queries and also gave certain suggestions to the State of Bihar. The State of Bihar thereafter filed an additional affidavit and made the following statements before the Supreme Court:

5. That the State Government has considered the desire of this Hon''ble Court's order dated 4.3.1990 and is agreeable to resolve the dispute as suggested by the Court.

6. That the State Government is prepared to relax the age for appearing in General Competitive Examination conducted by Bihar Public Service Commission for filling up the vacancies of Class-III post upto the age of 50 years.

7. They will be able to avail three such examination to make them eligible for appointment. This decision has been communicated by the Personnel and Administrative Reforms Department who are in-charge of the recruitment to the Government employment to Bihar Public Service Commission by letter No. 3910 dated 11.4.1998. That the letter No. 3910 dated 11.4.1998 is annexed herewith and marked as Annexure-A to this writ.

8. If the paid Managers, who do not qualify for recruitment in Government Employment in accordance with law their service as paid Managers, will continue on same terms and conditions as is now prevailing, the same will be the fate of the paid Managers who failed in three examination referred above.

9. That the recommendation referred to in the paragraph 38 of the Division Bench judgment finds place at page 83 of the SLP paper book. The alleged decision of the Chief Minister referred to in this letter dated 6.9.1986 (page 83 of the SLP paper book) is in reality in a negotiation and discussion with the union of the paid Managers, and English translation of the Minutes of Discussion is annexed herewith and marked as Annexure-B to this Affidavit.

10. That the list of the paid Managers which was forwarded on 6.9.1986 for adjustment (recruitment) as per rules of the Government are annexed herewith and marked as Annexure-C to this Affidavit.

11. That in short the Government is agreeable to give effect to the suggestion contained in the order dated 4.3.1998 passed by this Hon''ble Court.

7. The Supreme Court by its judgment and order dated 20th August, 1998 while

accepted that the paid Managers appointed from 1974 onwards cannot be asked to sit for examination in competition with young new entrants for the purpose of absorption, on the peculiar facts of the case, made certain addition to the acceptance of the State Govt. as made in the additional counter affidavit and quoted above, as set out hereunder:

A reasonable number of posts available-including even there in the process of recruitment-be set apart for being filled up by the Respondents. A separate recruitment test/examination be held. They cannot be asked to take the same examination prescribed for fresh candidates for entering the Government service. The question paper(s) for the eligible Respondents must be so prepared bearing in mind the conditions of the Respondents such as age, past service, etc. After taking such examination(s), the eligible Respondents may be absorbed subject to reasonable conditions as to their past service, seniority and pension.

8. The State of Bihar thereafter issued Resolution No. 805 dated 8th March, 2000, as contained in Annexure-D to the counter affidavit and made requisition to B.P.S.C. to fill up the 1750 posts of Class-II under the Co-operative Department from amongst paid Managers of P.A.C.S.

9. In pursuance of such requisition, the B.P.S.C. published Advertisement on 9th April, 2000 in newspaper "AAJ" and other newspapers, calling for applications from paid Managers of P.A.C.S. for appointment against Class-III posts. The maximum age of 50 years was stipulated, as on 1st January, 1999 and a basic qualification of matriculation or equivalent. It was mentioned that the candidates should have a satisfactory service.

The Applicants were asked to apply before the Registrar, Cooperative Department in requisite format who (Registrar, Co-operative Department), in his turn, was required to forward the applications to B.P.S.C. by 8th May, 2000 after due scrutiny.

10. The B.P.S.C. fixed 29th June, 2000 as the date for such Limited Competitive Examination and number of candidates were provided with Admit Cards, but Petitioners having not provided with such Admit Cards to appear in the examination, enquired the matter from the Office of B.P.S.C. They having come to know that their applications have not been forwarded by the Registrar, Cooperative Societies to B.P.S.C, preferred these writ petitions to allow them to appear in the examination, in question.

11. Some of the writ petitions like C.W.J.C. No. 5035 of 2000 were filed prior to 29th June, 2000, wherein interim order was passed allowing the Petitioners to appear in the examination. Other writ petitions were preferred at such last stage, when there was no occasion to pass interim orders allowing them to appear. Thereby, many of the writ Petitioners could not take part in the Limited Competitive Examination held on 29th June, 2000.

12. In all these cases, the Petitioners claimed to be paid Managers working in

one or other P.A.C.S. and also claimed to have applied in pursuance of advertisement in question. They have made grievance that their applications have not been forwarded by the Registrar, Co-operative Societies, for the reasons best known to him and thereby they have been prohibited to derive benefit out of Supreme Court's decision.

13. On behalf of the Respondents State, while counter affidavits filed in different cases, no specific denial made relating to the claim of Petitioners that they are the paid Managers working under different P.A.C.S. Main plea taken is that a list of paid Managers was prepared in the year 1986 after discussion with the then Chief Minister. It is only those whose names are appearing, their applications have been forwarded to B.P.S.C.

The following criteria shown to have been fixed to sort out the applications of paid Managers:

- (i) Age-50 years or below on 1.1.1999;
- (ii) Satisfactory service; and
- (iii) Entry of the name of the list submitted in the Hon"ble Supreme Court.

14. From the assurance given by the State before the Supreme Court and the direction of the Supreme Court, it will be evident that a maximum age limit was prescribed. Thus, the 1st January, 1999 was the date fixed to determine 50 years of age and those above such higher age and excluded, I find no illegality in the same.

15. So far as satisfactory service is concerned, no such condition was imposed before the Supreme Court. On the other hand, it was agreed upon by the State to allow the paid Managers to take part in the competitive examination for their appointment/absorption, in accordance with law, as and when vacancies arise. It was also agreed upon to give three opportunities to paid managers to take chance for their absorption/appointment in the State service.

16. In the aforesaid background, by way of subsequent circular or the advertisement, they should not have deprived the paid Managers who are below 50 years of age and qualified, on the basis of service record, which Is not available with the State, but with the P.A.C.S. Those P.A.C.S. being not under the control of the State, it has also not been taken into consideration by the State of Bihar, nor given such opportunity to individual paid Managers to ascertain whether any such confidential reports were communicated or not.

17. So far as list of paid Managers prepared in 1986 is concerned, though it was annexed as Annexure-C with the affidavit of the State of Bihar before the Supreme Court, neither it was stipulated by the State nor such condition was laid down by the Supreme Court that the names of those will be forwarded, whose names figure in such list and not the others, whose names have not been reflected for one or other reason.

18. It is not the case of the State that such list of paid Managers was prepared in 1986 after giving opportunity to all paid Managers to raise objection.

19. In the facts and circumstances, while I hold that the Registrar, Cooperative Societies had jurisdiction to scrutinise the applications to exclude those who are ineligible, being more than 50 years, as on 1st January, 1999; not qualified (matriculation or equivalent); and/or who are not paid Managers, the Respondents State/Registrar, Co-operative Societies should not have withheld the applications on the ground of non-appearance of names in the 1986 list or unsatisfactory service record. If there was a doubt relating to claim of one or other individual, the Registrar, Cooperative Societies should have enquired the matter from the respective P.A.C.S. as to whether such Applicant is on roll of P.A.C.S. as paid Managers or not.

20. I may mention that in terms with State Government's decision, irrespective of service record and failure In the competitive examination, paid Managers are to continue in the services of the P.A.C.S. upto the age of 58 years.

21. For the reasons aforesaid, while I direct the BPSC to publish the result and, if so required, forward the names of successful Petitioners, who have been allowed to appear in the examination held on 29th June, 2000 by interim order of the Court. With respect to rest of the paid Managers/Petitioners, who missed the opportunity for one or other reasons, I pass the following directions:

(i) The paid Managers/Petitioners, who were otherwise eligible in terms with the advertisement, in question (No. 1/2000), be allowed to appear in the next examination for appointment in the State service against Class-III posts. As all the paid Managers are to be given three chances, subject to eligibility, those who were not allowed to appear in the examination in pursuance of the 1st advertisement, should be allowed to take chance in pursuance of next advertisement and, in their cases, the same should be treated as 1st chance for them. If one or other paid Managers was within age (50) as on 1.1.1999, the cut off date, as fixed in the advertisement, but become overage by the time the next advertisement is published, if not given Opportunity in the 1st examination, for them the same cut off date of 1.1.1999 be retained;

(ii) The Registrar, Co-operative Societies will take immediate steps for advertisement of rest Class-III posts for giving opportunity to paid Managers in terms with Supreme Court's directions, wherein those who have been allowed to appear in the present examination, may be allowed to appear as 2nd chance, but those who were not allowed for no fault on their part, it should be treated to be a 1st chance for them;

(iii) The Registrar, Cooperative Societies will assess the further vacancies within two months from the date of receipt/production of a copy of this order and forward the same to the B.P.S.C. with requisition to make selection;

(iv) The B.P.S.C., in their turn, will complete the process of selection of such next

Limited Competitive Examination of paid Managers, on an early date, preferably within three months from the date of requisition. The competent authority will thereafter act on the recommendation within a month thereof.

22. All the writ petitions stand disposed of with aforesaid observations and sections.