
(2005) 01 PAT CK 0060

In the Patna High Court

Case No : CWJC No's. 7388 and 5136 of 1999

Ramesh Kr. Patel and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2005) 1 BLJR 309

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Since similar questions are involved in both the writ applications, they are being heard together and disposed of by a common order.

2.. Petitioners in CWJC No. 7388/1999 have filed this writ application to a direction to the respondent authorities to permit them to join their duties as driver in the Saharsa Collectorate pursuant to their appointment contained in order bearing memo No. 126-2 dated 20.2.1999 issued under the order of Collector, Saharsa, Annexure-3. They contend that other daily wagers who served the Collectorate either at Saharsa or at some other place as driver had approached Ranchi Bench of this Court in CWJC No. 3865/1995 (R) for a direction to the respondent authorities to consider their case for regularisation. This Court disposed of the said writ application with a direction to the State Government to take steps for filling up the post of drivers within a period of six months. In compliance of the order of this Court in the said writ case. State Government issued instructions contained in letter No. 7003 dated 31.7.1997, Annexure-1, wherein they instructed every District Magistrate/deputy commissioner to take steps for appointment of the drivers within their collectorate within a period of six months in the light of resolution of the State Government bearing memo No. 5939 dated 18.6.1993. Further case of the petitioner is that pursuant to the aforesaid instructions dated 31.7.1997; Annexure-1, Collector, Saharsa issued advertisement No. 33/1997, Annexure-2,

which was published in the Aryavarta, Patna Edition dated 14.12.1997. Pursuant to the aforesaid advertisement No. 33/1997 petitioners applied for regular appointment on the post of driver and also appeared before the selection committee which having found them fit for appointment as driver in the Collectorate made necessary recommendations and in the light of the recommendation of the selection committee order bearing memo No. 126-2 dated 20.2.1999, Annexure-3, was issued under the signature of the deputy Collector with approval of the Collector. After issue of the appointment order dated 20.2.1999, Annexure-3, petitioners appeared before the Civil Surgeon-cum-chief Medical Officer, Saharsa for their medical fitness and physical verification and on their being found medically fit necessary certificate dated 22.2.1999, Annexure-4 series was issued.

3. Having obtained the necessary medical fitness certain petitioners submitted their joining on 26.2.1999, as would appear from the absentee issued by the Block Development Officer and other officers under whom they served, as would appear from the documents contained in Annexure-5 series. Later under the order of the Commissioner, Saharsa Division, their joining was not approved which was communicated under memo No. 255-2 dated 2.7.1999, Annexure-6. When the petitioners received the aforesaid instructions of the Commissioner, Saharsa Division, not approving their joining they approached this Court in CWJC No. 7388/1999 4.8.1999 praying, inter alia, to direct the respondent authorities to honour their own order appointing the petitioners as drivers pursuant to an advertisement and completion of selection process.

4. State-respondents have filed a counter-affidavit which has been affirmed by Sri Raj Naryan Jha, Deputy Collector, D.R.D.A. Saharsa. Perusal whereof indicates that authorities have not disputed the averments of the petitioner made in the writ application that they were appointed in the light of the instructions of the State Government dated 31.7.1997 in compliance whereof advertisement No. 033/1997 was issued pursuant where to petitioners appeared in the selection process and after being considered by the selection committee order appointing them dated 20.2.1999, Annexure-3, was issued.

5. Learned State counsel, however, with reference to the order contained in letter No. 368 dated 31.5.1999, Annexure-A to the counter-affidavit states that the joining of the petitioner pursuant to the appointment order, Annexure-3, has not been accepted as there were several irregularities during the selection process. Perusal of the letter dated 31.5.1999, Annexure-A to the counter-affidavit, however, does not indicate any particular (sic) committed during the selection process by the selection committee, only a bald statement has been made that irregularities were made during the selection process.

6. Learned counsel for the petitioner appearing in the connected case namely, CWJC No. 5136/1999 who are also drivers working on daily wages and had no opportunity to apply for being considered for regular appointment on the post of driver pursuant to the instructions of the State Government contained in letter

dated 31.7.1997, Annexure-1, submitted that when the aforesaid fact that petitioners of CWJC No. 5136/1999 had no opportunity to apply for regular appointment pursuant to instructions dated 31.7.1997 and advertisement No. 033/1997 were brought to the notice of Commissioner, Saharsa Division, he issued instructions contained in letter dated 31.5.1999, Annexure-A to the counter-affidavit on the basis of which formal order cancelling appointment of the petitioner dated 20.2.1999, Annexure-3, was issued vide memo No. 105-1 dated 8.7.1999, Annexure-A to the counter-affidavit filed in CWJC No. 5136/1999.

7. Having heard the learned counsel for the petitioners as also the learned counsel for the State in the two cases and having considered the averments made in the counter-affidavit and the annexures appended thereto it is evident that the order of the Commissioner dated 31.5.1999 and formal order of cancellation dated 8.7.1999 both Annexure-A to the two counter-affidavits filed in the two cases were issued without giving any opportunity to the petitioners of CJWC No. 7388/1999 to show cause as to why their appointments made under order dated 20.2.1999, Annexure-3, be not cancelled and, as such, on that score alone the two orders dated 31.5.1999 and 8.7.1999 are required to be quashed as violative of Article 14 of the Constitution and accordingly quashed with direction to the authorities to verify the fact as to whether advertisement No. 33/1997 was ever published in any newspaper including Aryavarta dated 14.12.1997 and, if that was published they should give effect to the order of appointment contained in memo Nos. 126-2 and 127-2 both dated 20.2.1999, In the event it is found that advertisement No. 33/1997 was not issued in the press including Aryavarta dated 14.12.1997 then the order of appointment bearing memo Nos. 126-2, 127-2 dated 20.2.1999, Annexure-3, should not be given effect to and the authorities should proceed from the stage of publishing advertisement in the light of the instructions of the State Government contained in letter dated 7003 dated 31.7.1997, Annexure-1, and the entire exercise should be completed within a period of six months from the date of receipt/production of a copy of this order. It goes without saying that necessary age relaxation should be allowed to the petitioner of the both the cases in terms of the relevant Government circular to the extent they have served as daily wagers.

8. This disposes of both the applications. No cost.