
(1996) 02 PAT CK 0051
In the Patna High Court
Case No : LPA No. 173 of 1995

Ramji Tiwari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 2 PLJR 181

Hon'ble Judges : D.P. Wadhwa, C.J.;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh and Aditya Narain Singh, for the Appellant; Rajendra Prasad in LPA No. 173 of 1995 and Krishna Murari in LPA No. 175 of 1995, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—Both the Letters Patent Appeals arise out of a common judgment given in different writ petitions. They involve common questions of law, and for the said reason, they are being disposed of by this common order.

2. The brief facts of the case are given for the purpose of disposal of the cases. They are as follows.

Prior to 1985, the appointment to the post of Assistant Teachers in Primary Schools of State of Bihar were being made on the basis of residents of candidates of particular district. When advertisement was published in the year 1985 for appointment of teachers in different districts, on the basis of residents of candidates of such district, the matter was challenged before this Court. In the case of Anil Kumar v. Chief Secretary reported in 1987 PLJR 846, a Bench of this Court declared the panels, prepared district wise, on the basis of a particular district as unconstitutional, but did not disturb the appointments which had already been made in the meantime, in pursuance of the said panels.

Subsequently, a number of writ petitions were filed before this Court relating to

appointment out of said 1985 panel. In the case of Birendra Kumar Srivastava and Ors. v. State of Bihar and Ors. reported in 1991 (2) PLJR, this Court while relying on the case of Anil Kumar (supra), again declared the panels, prepared on the basis of district as unconstitutional, while so declaring, the appointments which had already been made, in the meantime, they were also set aside.

In the meantime, on the basis of decision of Anil Kumar (supra), the State Government issued a Circular dated 2nd July, 1989, directing to prepare a combined panel for appointment to the post Teachers. It was ordered that the candidates who were already in the panel but could not be appointed, they are also covered by the said Circular dated 2nd July 1989 CWJC No. 8595/89 was filed by certain persons for their appointment out of the said panel, which was dismissed and while so dismissing, the appointment (sic) teachers which had already been made they were also set aside. Subsequently other writ petitions were also filed before this Court, which were also dismissed.

Against numerous aforesaid judgment including the judgment given in the case of Birendra Kumar Srivastava and Ors. (supra), Special leave petitions were filed before the Supreme Court. A writ petition (Civil No. 911/95) was also filed before the Supreme Court for direction on the Respondents to appoint the Petitioners of the said case to the post of Assistant Teachers out of the said 1985 Panel. In the meantime, in pursuance of earlier decision of this Court, a combined panel was also prepared in the year 1988 and a number of persons were appointed out of the said combined panel.

The aforesaid special leave petitions, in which leave was granted, they were heard together along with the writ petition (Civil) No. 911/91 by Hon''ble Supreme Court and judgment was delivered in the case of Sabita Prasad and Ors. v. State of Bihar and Ors. reported in 1994 (1) PLJR 62 (SC). The Sabita Prasad's case was decided by the Hon''ble Supreme Court in the following manner:

Writ petition (Civil) No. 911 of 1991 and Civil Appeal No. 3216 of 1991 in which prayer was made for appointment of the Petitioners of those cases were dismissed. It was held that mere empanelment does not create any right in favor of the empanelist for being appointed.

Other Civil Appeal Nos. 3218/91, 3219/91 and 3220/91, wherein appointments of the Appellants earlier set aside by this Court, they were allowed to continue in the services as Assistant Teachers because of concessions given on behalf of the State.

Civil Appeal No. 3217 of 1991, preferred by unsuccessful non-appointed persons, who were Petitioners of CWJC No. 4843 of 1988, they were remitted back to this Court for consideration on the questions to whether any person before those Petitioners in the merit list had already been appointed or not. It was ordered to consider such cases and if it was found in case of any one of the Petitioners of said CWJC No. 4843 of 1988, that he is/they are senior to the persons who had

already been appointed, then to give them appointment in their favor.

Civil Appeal No. 2082 of 1991 was allowed on concession and Appellants of the said appeal, who had already been appointed, they were allowed to continue as Assistant Teachers.

Lastly, Civil Appeal No. 4252 of 1991 filed by some of the unsuccessful writ Petitioners of CWJC 3048 of 1988, was allowed on concession that the State will reconsider the cases of all such persons.

3. After the decision of the Hon''ble Supreme Court in the case of Sabita Prasad (supra), those who were already appointed out of 1985 panel, but whose services were terminated by High Court's judgment, they were allowed to remain in the services of the State Government as Assistant Teachers. Out of 1988 panel, which was prepared on the basis of the decision given in the case of Anil Kumar (supra), a number of persons were given appointment to the post of Assistant Teachers in between the years 1988-1989. Certain more persons, therefore, filed numerous writ petitions before this Court, which were disposed of in one or other manner in between 1993-94. In some cases, specific direction was given to appoint the Petitioners of those cases, taking into account that the persons junior to them in the merit list have already been appointed, whereas in some cases, writ petitions were disposed of with simple direction to consider the cases of Petitioners in some of the cases, simplicitor direction was given to Respondents to consider the representation of one or other writ Petitioners. All those cases were disposed of in between the years 1993-95, in the light of the decision given by the Hon''ble Supreme court in the case of Sabita Prasad (supra).

Further after such direction in one or other case some appointment have again been made, out of 1985 panel, which was followed by 1988 panel in between the years 1993 and 1995.

It further appears that the direction in the aforesaid manner continued to be given by this Court in one or other manner and the process of appointment followed even in the year 1993.

It is sometimes in the beginning of the year 1995, it came to the notice of a Bench of this Court that the appointments were continuing to be made in the aforesaid fashion for years together out of the panel which was prepared initially in the year 1985. Those process of appointment continued out of one advertisement for about ten years.

4. It is in the meantime, a number of writ petitions, including the present two writ petitions were filed before this Court. In the case of Ramji Tiwari and Ors. , prayer was made for direction on the Respondents to consider the cases of Petitioners (Appellants herein), for appointment to the post of Assistant Teachers in terms with the decision rendered by the Hon''ble Supreme Court in the case of Sabita Prasad (supra).

So far as the case of Sheo Kumar Prasad Yadav and Ors. are concerned, they filed writ petition with similar prayer and also challenged the order by which their prayer was rejected by the authorities. Similar other writ petitions along with the writ petitions of these Appellants were heard together and they have been dismissed by the impugned judgment reported in Binod Kumar Tiwary and Others Vs. The State of Bihar and Others . While dismissing the writ petitions, including the writ petitions of these Appellants, the learned Single Judge while taking into account all the relevant decisions of this Court as well as the Hon''ble Supreme Court, made the following observations:

In view of the unexplained long delay as also in view of the fact that the panels in question were prepared a long time back, and further in view of the fact that the judgment in Sabita Prasad's case rendered on concession is applicable inter-parte alone, it is not possible to consider the claim of the Petitioners in these writ petition. The writ petitions are, accordingly, dismissed.

The Director, Primary Education, is directed to dispose of all pending claims in the light of this order except those which are covered by specific orders of either this Court or the Supreme Court. He is further directed to advertise the vacancies, get fresh panels prepared in accordance with law and make the appointment. The claim of the Petitioners and Ors. shall be considered in accordance with rules.

5. The finding can be summarised, as follows:

(i) After unexplained long delay, no direction can be given to make appointment of Petitioners (Appellants herein) out of a panel which was prepared a long back (1985/1988);

(ii) The decision in the case of Sabits Prasad (supra) having been rendered in concession is applicable inter-parte alone;

(iii) All pending claims are to be decided on the basis of the observation aforesaid, but where there is a special order of the Patna High Court or the Supreme Court, the decision is to be taken by the Respondents (Director, Primary Education), in the light of such decision and direction by the Courts.

6. In the case of Appellants-Ramji Tiwari and Ors. L.P.A. 173/95, Counsel for the Appellants submitted that there was no delay on the part of the Appellants Delay was explained in the writ petition, and thereby the learned Single Judge has erred in dismissing the writ petition on the ground of delay. According to the Counsel, though the advertisement was issued more than ten years back, but all the appointments which were made out of panel, were set aside in the year 1988-89. Subsequently, by virtue of the order of Hon''ble Supreme Court in the case of Sabita Prasad (supra), the persons who were appointed out of the earlier panel they were allowed to retain in service which decision was rendered by the Hon''ble Supreme Court in the year 1993. It was submitted that subsequent revised panel was prepared in the year 1994, the cause, of action of the

Appellants-Ramji Tiwari and Ors. revived, wherein after they immediately moved before this Court.

7. So far as the cases of Sheo Kumar Prasad Yadav and Ors. LPA 175/95 are concerned, learned Counsel for the Appellants submitted that apart from the aforesaid submissions, these Appellants earlier moved before this Court by filing writ petition in the year 1993, when it was remitted back to the authorities to decide the representation, it was contended on behalf of the Appellants, that the Respondents-authorities should have decided the matter on merit and should not have rejected the representation on the ground of delay, when, there was a specific direction from this Court. It was submitted by the Counsel for the Appellants that the learned Single Judge has failed to take into account the aforesaid fact and erred in holding that there was a delay on the part of these Appellants.

8. Learned Counsel for the Respondents, on the other hand, submitted that the Letters Patent Appeals which were filed by the other writ Petitioners of the analogous cases, against the same very impugned judgment they have, already been rejected by this Court by its decision given in LPA Nos. 182/95 and 183/95 and other letters patent appeals. It was then submitted that when letters patent appeals against the same very impugned judgment were rejected by this Court, there was no occasion to allow the other letters patent appeals, otherwise the same would amount to reviewing the decision given by the Division Bench of this Court in the aforementioned LPAs i.e. LPA Nos. 182/95 183/95 and analogous cases.

9. Having heard the parties and gone through the decision rendered by the learned Single Judge, according to me, there is no illegality in the impugned judgment. Admittedly, the advertisement was issued as back as in the year 1985, and the first phase of appointment out of the said advertisement started since 1988. In the earlier judgment rendered in the case of Anil Kumar (supra), this Court took into note that the advertisement/panel which was issued/prepared on the basis of residents of a person, is violative of Articles 14 and 16 of the Constitution of India. Such decision practically stands confirmed by the decision of Hon'ble Supreme Court in the case of Sabita Prasad (supra). It is only because of certain concessions given by the Counsel for the State before the Hon'ble Supreme Court, certain directions were given in that case and thus it can be stated to be an inter-parte decision.

Admittedly, persons alleged to be junior to the Appellants-Ramji Tiwari and Ors. were given appointment in the year 1988, the Appellants of LPA 173/95 never choose to move before this Court not made any grievance for their appointment. There by the cause of action with regard to these Appellants took place in the year 1988. The writ petition was filed, for the first time, in the year 1994 i.e. after more than six years of such appointment. For the purpose of cause of action, the Appellants cannot stretch it forward in the year 1994 that ultimate panel was prepared in the year 1994. Such ultimate panel was prepared to

decide the matter with regard to the Appellants, who are Appellants before the Supreme Court. For the said reason, for all purposes, delay is to be counted since the first date of cause of action i.e. from the year 1988 and not on the basis of the subsequent cause of action of the year 1994. If such interpretation is not given, it will amount to giving fresh cause of action, while passing one or other judgments in favor of one or other persons. For example the writ petition of the Appellants-Ramji Tiwari and Ors. were filed in the year 1994. If the decision would have been given in 1995 in their favor and appointments would have been made in the year 1995, then there was a possibility that other persons will move before this Court with their claim that their fresh cause of action has started in the year 1995 because the appointment orders have been issued on the basis of the decision of this Court. Thereby the continuity of giving directions and making appointments out of an advertisement of the year 1985 will continue for years together to come. Admittedly, the advertisement was issued in the year 1985 and it is more than ten years that have passed, in my opinion, it is not desirable to make appointment out of such advertisement.

10. Now the next question is as to what will happen with respect to the persons in favor of whom already one or other directions have been given either by this Court and/or by the apex court. The learned Single Judge has taken due consideration of such situation and had made clear that the claim of such persons should not be rejected on the ground of delay, where there is a specific order of this Court or the Supreme Court, which will be evident from Paragraph-11 of the judgment.

The aforesaid fact and ratio is also applicable in the case of other Appellants, namely, Sheo Kumar Prasad Yadav and Ors. In their case, delay is to be counted from the date, when the first appointment was made in the year 1988. So far as the stand of these Appellants that they earlier moved before this Court by filing writ petition in the year 1993 is concerned, according to me, the aforesaid submission has no substance. This Court never passed any specific order and/or direction in favor of the Appellants Sheo Kumar Prasad Yadav and Ors. , for consideration of their appointments out of 1985 advertisement. Such being the position, the case of these Appellant-Sheo Kumar Prasad Yadav and other is also to undergo the test of delay.

11. Accordingly, I find no illegality in the impugned judgment, and I hold that the learned Single Judge has rightly rejected the writ petitions of both the sets of Appellants on the ground of delay.

12. Both the letters patent appeals are accordingly, dismissed.