
(2011) 11 PAT CK 0072

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14648 of 2010

Ranjit Rana and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Citation : (2011) 11 PAT CK 0072

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J. & Shivaji Pandey, J.—Heard the parties.

The five petitioners have preferred this writ petition on 1st September 2010 seeking a direction to the respondent authorities to appoint them as Assistant Engineer in the Road Construction Department, because their names find place in the recommendation made by the Bihar Public Service Commission (hereinafter described as "B.P.S.C.") in the panel dated 22nd February 1988 (Annexure-25). The recommendation was made by the B.P.S.C. against Advertisement No. 93 of 1985. The petitioners have also prayed that the authorities be directed to ascertain and confirm the total number of vacancies prior to 31st December 1987 which have remained unfilled due to non-joining of the earlier appointees.

2. Earlier, as will be clear from Annexure-2, a writ petition preferred by similar candidates who had formed an Association described as "Bihar State Un-employed Engineers (recommended by B.P.S.C) Association and others, fell for decision before a Division Bench of this Court and vide judgment contained in Annexure-2 dated 21st November 1995 this Court directed the authorities to act in accordance with decision of the Bihar Cabinet and fill up all the posts of Assistant Engineers in the Public Works Department available upto 31st December 1987, with the candidates included in the panel. The Division Bench failed to decide the number of vacancies or posts available till 31st December 1987 and, therefore, only a general direction was issued in the terms noticed above.

3. The matter was taken by the writ petitioners to the Supreme Court in Civil Appeal No. 7516-17 of 1996. The appeals were dismissed with an observation that although the High Court has failed to decide the vacancies, it would be for the Government to make fresh exercise to identify the existing vacancies meant for the general candidates or for the reserved candidates and if the vacancies could be identified, they should be filled up from amongst the candidates from the waiting list. In case the Government failed to find any vacancy then it was required to place a report before the High Court. This order of the Supreme Court dated 8th April 1996 is contained in Annexure-3.

4. The Bihar State Un-employed Civil Engineers" Association and others preferred a petition in C.W.J.C. No. 2093 of 1989 to persuade this Court to ascertain and declare the actual number of vacancies but the Court by order dated 30th August 1996 (Annexure-4) decided not to entertain such a plea in view of earlier judgment of this Court contained in Annexure-2 and the judgments and order of the Supreme Court contained in Annexure-3 by which the matter was left to be determined by the State Government which was to place a report before the Court, if the vacancies were not existing. At the instance of the Association a contempt petition bearing MJC No. 1533 of 1996 was filed. As appears from the final order in that case dated 12th December 1996 (Annexure-5), the Commissioner cum-Secretary, Road Construction Department, disclosed the availability of 72 vacancies which could be filled up in view of the Cabinet decision dated 2nd February 1998. This Court accepted the vacancy position made available to it and directed for appointment against 72 vacancies shown by the Government to be available. The Rule in the contempt matter was discharged.

5. After more than 14 years the petitioners preferred a contempt petition bearing MJC No. 2065 of 2010 for punishing the respondents for disregard of the order of the Supreme Court dated 8th April 1996 (nnexure-3). They alleged that the concerned authorities had disregarded the direction to find out the vacancies existing as on 31st December 1987 on the basis of which they ought to have offered appointment to the petitioners who were in the Select List/Waiting List for appointment to the post of Assistant Engineers (Civil). The Division Bench of this Court dismissed the contempt application on 8th July 2010 by order contained in Annexure-13 and observed that the order had become stale by more than a decade, hence, the Court was not persuaded to make any further enquiry. The Court held that such delay was fatal in the facts of the case and interest of justice also did not require taking penal action against the officials on the ground that they had submitted a report regarding the vacancies which was now alleged to be false. The Court however, observed that if the petitioners have any civil right enforceable through any Court proceeding, they would be at liberty to pursue the remedy in accordance with law. That observation has apparently led to filing of the instant writ petition on 1st September 2010.

6. On behalf of the petitioners, it was submitted that the delay is of no consequence, because the petitioners could know about the existence of

vacancies during the relevant period only on account of the subsequent information gathered from action of the authorities which showed that some persons had not joined their posts after they had been appointed to the post in question. For this reliance was placed upon Annexure-6, a Press Communique issued by the Road Construction Department in January 2007 disclosing that 32 Assistant Engineers were absent from their duties unauthorizedly. The petitioners claimed to have obtained further information in respect of some Assistant Engineers of the concerned Department under the Right to Information Act, as contained in Annexure-11 to show that in respect of nine Officers, the date of joining was not available nor there was any information as to where they were posted. The State in its reply has made a categorical statement that only in six cases, joining reports of the concerned Assistant Engineers have not been traced as yet. On that basis the petitioners have claimed that six posts should be treated as vacant and available for appointment of the petitioners. The petitioners have also relied upon averments in Paragraph 24 that there are 98 vacancies of Assistant Engineers as on 31st December 1987 in the Irrigation Department against which the petitioners can be appointed.

7. The panel in which the names of the petitioners find mention has been annexed as Annexure-25. That contains the recommendation of the B.P.S.C. dated 22nd February 1988. It contains the names of 702 candidates belonging to the general category. The last candidate appointed from the said recommendation is one Bal Krishna Sahay at Sl. No. 501. The names of the petitioners are placed much lower, such as, Sl. Nos. 566, 606, 656, 664 etc. Hence, against 6 posts claimed to be vacant on account of non-joining, individually the petitioners have no right of appointment. From column of age, it is evident that petitioners are now about 49-50 years of age and hence unsuitable for Government service as fresh recruits.

8. Petitioners have placed reliance upon judgments passed in cases of some individual candidates where this Court granted relief because persons lower to them in the panel had been appointed or some clear vacancy was notified. In our view those judgments stand on a different footing and are not relevant for deciding the issues arising in the case of the petitioners. The only right claimed by the petitioners is on the basis of judgment of this Court and of the Apex Court directing for filling up the vacancy existing till 31st December 1987. For the purpose of showing vacancy in the cadre of Assistant Engineers, the petitioners have placed reliance on a general proposition of law that vacancy caused due to non-joining should be treated to be vacancy available for the candidates belonging to the same panel. This proposition has been seriously opposed by the State of Bihar on the basis of circular dated 7th June 1977 contained in Annexure-B to the reply of the State to the rejoinder of the petitioners. Clause (xiv) of Paragraph 4 of that circular provides that the vacancies remaining unfilled due to candidates not joining the post or for any other reason shall be carried forward to the next year. According to the State counsel, this policy decision existing from before completely justified the earlier stand of the State

showing only 72 vacancies available prior to 31st December 1987. It is the case of the State that they could not have taken into consideration the vacancies caused due to non-joining or for any other reason as vacancies available for the persons, who had already taken the competitive examination earlier. Hence the vacancies had to be treated as vacancies for the next year.

9. In reply, the petitioners have referred to a judgment of this Court rendered by a Single Judge in which the Court, in the fact of that case, held that in some cases, the State has made appointments from the same panel on account of vacancies caused due to non-joining of persons higher in the panel and, therefore, the circular did not provide sufficient defense to the State. This judgment dated 15th May 2007 in C.W.J.C. No. 14385 of 2006, in our view does not lay down that the circular was bad in law or it was imperative in 1987 when the State was required to find out the vacancies existing on 31st December 1987. In fact, a Division Bench judgment of this Court dated 10th September 2008 passed in C.W.J.C. No. 12421 of 2008 (Alok Kumar Vs. State of Bihar and others) has placed reliance upon that circular of 17th June 1977 after referring to another judgment of a Single Judge in the case of Ranjit Kumar Singh Vs. The State of Bihar and Others, for coming to the conclusion that a candidate who is in the waiting list is not entitled to be offered unfilled vacancies because of non-joining of the candidates or leaving the service after joining. For this purpose, some judgments of the Supreme Court including one in the case of Bihar State Electricity Board Vs. Suresh Prasad and Others, was also relied upon.

10. Since the case of the petitioners is based upon a claim that vacancies remaining unfilled due to non-joining or for any other reason should be made available for them, we find no hesitation in rejecting the case as one without merits particularly in view of the Circular of the State Government dated 7th June 1977. That policy decision stood in the way of the State Government in treating the vacancies caused due to non-joining or for any other reason as vacancies available for the candidates of the same competitive examination.

11. It is further found that in terms of the Supreme Court judgments, the State Government was required to determine the vacancies available by 31st December 1987 and that exercise was completed by the State and accepted by a Division Bench of this Court when 72 vacancies were shown to exist leading to dropping of contempt charge. Thereafter the issue became concluded and cannot be permitted to be reagitated on the grounds mentioned in this writ petition.

12. We also find that as a general principle of law, the petitioners being lower in the select panel than the last person appointed on merits cannot have any right of claiming appointment, particularly by filing a writ petition in the year 2010 when the panel was recommended by the Commission in February 1988. Normal life of the panel is/was of one year and it was extended only till pendency of the writ petition which was disposed of by the Division Bench of this Court on 21st November 1995, vide Annexure-2.

13. On behalf of petitioners, a submission was advanced although not supported by pleadings, that 80 ad hoc Assistant Engineers are occupying the post in the concerned Departments and the conduct of the State in allowing such state of affairs is improper. The posts occupied from before by ad hoc appointment cannot be treated to be vacant because the ad hoc appointments have been made in the concerned Departments for historical reasons. These posts cannot become vacant till solutions are found in respect of such appointees as per law. This issue was rightly not raised at the earlier stage of litigation. Those ad hoc employees are not party to this writ proceeding. It may also be noticed that according to the State further recruitment process have already taken place in the year 1996, 1999, 2004, 2006 and advertisement has also been issued in the year 2011. It will neither be prudent nor desirable to order for an enquiry as to whether any vacancy existing on 31st December 1987 ha remained unfilled or not.

14. Hence, we find that the writ petition suffers from unusual delay and laches as well. For all the aforesaid reasons, we find no merit in this writ petition. It is, accordingly, dismissed.