
(2020) 05 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1728 Of 2020

Ravi Ranjan Giri And Others

APPELLANT

Vs

State Of Bihar And Others

RESPONDENT

Date of Decision : 19-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 14
Bihar Municipal Act, 2007 — Section 36, 37

Citation : (2020) 05 PAT CK 0018

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Chakrapani, Sanjay Kumar Singh, Rajiv Roy

Final Decision : Dismissed

Judgement

Madhuresh Prasad, J

The matter has been listed today for consideration through Video Conferencing in view of the Nationwide Lockdown on account of the Covid 19 pandemic.

The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual court proceedings from their homes, all with the aid of audio visual technology.

Heard Mr. Chakrapani, learned counsel for the petitioner and Mr. Rajiv Roy (GP 1), the learned counsel for the State.

The petitioners are before this court challenging advertisement dated 10.01.2020. The advertisement invites applications from the candidates desirous of contractual appointment as Junior Engineers in the Urban Development Department. The advertisement prescribed requisite qualification of

Diploma in Engineering. The grievance of the petitioner is that the advertisement supersedes the earlier advertisement dated 15.12.2019, which

provided for giving weightage to the candidates' experience based on contractual working in the Urban Local Bodies as Junior Engineers.

Brief factual background of the case is that Four Human Resources Agency, including Vani Enterprises, entered into an agreement with the State

Government in the Urban Development Department for providing the requisite man power. The contract executed on 9.3.2016 was subsisting only up

till October 2015. The petitioners services were provided by Vani Enterprises to perform duties as Junior Engineers in the Urban Local Bodies in the

State of Bihar.

The petitioners however claim that after termination of the contract between the State of Bihar And Vani Enterprises, they were employed on

contractual basis directly by the Urban Local Bodies even after October 2015. It is their submission that the Empowered Standing Committee of the

respective Local Bodies has continued to take work from the petitioners on contractual basis, which was being renewed for six months from time to

time.

Mr. Chakrapani, Learned counsel appearing for the petitioners submits that ever since 2007 till 2015 it has been the consistent policy of the State

Government to give due weightage to experience, based on services rendered on contractual basis, while making appointments.

In accordance with the policy of the State Government, advertisement was issued by the Urban Development Department on 13.12.2019 for

appointment of Junior Engineers on contractual basis, which contemplated grant of weightage for experience based on services rendered on

contractual basis. However, the process was aborted.

Advertisement dated 10.01.2020, which was subsequently issued by the Urban Development Department for appointment of Junior Engineers on

contractual basis, however, does not contemplate such stipulation for granting weightage for earlier contractual services rendered by the petitioners.

To that extent the advertisement is in violation of Clause 6 of the guidelines dated 18.07.2007 issued for contractual appointment by Personal and

Administrative Reforms Department, Bihar. Even Clause (9) & (10) of the notification dated 15.01.2016 contemplated grant of such weightage for

services rendered as contractual employees. The notification dated 15.01.2016 was amended on 07.03.2018 by a notification (Annexure 5). The said

amendment also reiterated the policy for granting weightage to experience of contractual employees in the process of selection.

Mr. Chakrapani, learned counsel appearing for the petitioners, submits that the impugned advertisement dated 10.01.2020, being contrary to the

guideline dated 18.07.2007, notification dated 15.01.2016 as well as the amended notification dated 07.03.2018 is not sustainable. The impugned

advertisement has been issued ignoring the experience of the contractual employee. The advertisement in so far as it does not grant any weightage to

the petitioners' experience based on contractual services rendered in the Urban Local Bodies is also causing grave prejudice to the petitioners, and is

therefore fit to be quashed.

Petitioners Counsel has further submitted that petitioner Nos. 1, 7, 12, 14, 18 & 20 could not apply pursuant to the advertisement since their online

application was not being accepted as they were degree holders. In the supplementary affidavit it has been stated that some other Degree Holders

have been allowed to apply offline. Other than a bald assertion to this effect, petitioners have not given any details as to who has been allowed to

make offline application based on a degree. There are no details as to the number of such persons, the dates on which applications have allegedly

been made, or any details whatsoever, so as to make out a case for seeking the respondents response. It is also submitted in the supplementary

affidavit filed by the petitioners that petitioners nos. 17 & 18 did not apply because they have crossed the maximum age limit of 40 years prescribed in

the advertisement.

The factual position therefore is that petitioner nos. 1, 7, 12, 14, 17, 18 & 20 are not even applicants in response to the advertisement.

The further case of the petitioners on the basis of Annexure 9 of the supplementary affidavit is that policy of giving due weightage to the services

rendered as contractual employee in the process of selection/appointment is being followed in other departments. The Urban Development

Department therefore is an isolated example where contractual services of the petitioners are being ignored to the prejudice of the petitioners and in

violation of the guidelines dated 18.07.2007 (Annexure 3), notification dated

15.01.2016 (Annexure 4) and amended notification dated 07.03.2018 (Annexure 5).

One Interlocutory Application (IA No. 1 of 2020) has been filed. The prayer in the Interlocutory Application is for staying the process of counseling

which was scheduled to be held from 6th May to 11th May 2020. The matter has been placed before this Court for consideration on 19.05.2020.

Counseling therefore has already been completed, even as per petitioners' case. Question of staying the concluded counseling, therefore does not

arise. It is in these circumstances that Mr. Chakrapani, learned Counsel for the petitioners has prayed that the petitioners should be allowed to continue in their contractual appointment.

Pleadings are already complete. The parties are also in agreement that the matter may be heard for final disposal. This court has therefore heard the parties at length in these virtual court proceedings for its final disposal.

It is the submission of Mr. Roy, learned counsel for the State, that even during subsistence of the contract in between 11.11.2014 up till December

2015 the petitioners had no contractual relationship with the State Government. There has never been any contractual relationship of the petitioners

with the State Government. Their existence in between 11.11.2014 to December 2015 was incidental to the subsisting contract between the State

Government and the Human Resources Agency which were providing the manpower. The petitioners' relationship, if any, was only with the

Agency which has provided the petitioners' services, namely Vani Enterprises.

Referring to Annexure R-1/A of the counter affidavit as well as Annexure R1/B of the counter affidavit, dated 09.03.2016 and 12.02.2019

respectively, he submits that the petitioners along with all others similarly situated have served in the Department on the basis of contractual

relationship, between their service provider and the State Government. The authorities had discontinued the practice and terminated the contract with

the service provider. The department has also specifically directed all Urban Local Bodies vide Annexure R1/B not to take any work or continue the

services of petitioners and others similarly situated, as the contract with their service providers had been terminated.

The petitioners' claim that they continued to serve on contractual basis in the Urban Local Bodies contrary to the specific direction of the State

Government contained in Annexure R1/B cannot inure to their benefit. It is pointed out by Mr. Roy, learned counsel for the State that Annexure 2

which has been brought on record by the petitioners clearly shows that the petitioners have managed to get their Service Books opened at the Urban

Local Bodies, after issuance of the specific direction dated 12.02.2019 (Annexure R-1/B), which clearly directed not to take any work from the

petitioners, or others similarly situated.

The further submission is that the petitioners cannot claim any benefit from the Department for such experience based on local arrangement with the

Urban Local Bodies in stark violation of Department's instruction (Annexure R-1/B) to the contrary. If any weightage or recognition is granted for

such illegal existence the same shall be prejudicial to the interest of others, who in the mean time have been qualified for selection in terms of

advertisement dated 10.01.2020.

Learned State Counsel has also submitted that the application of some of the petitioners was rightly not accepted online, or offline, as they were not

Diploma Holders but were Degree Holders. The refusal to allow Degree Holders to participate in the selection process meant for Diploma Holders is

sought to be sustained on the basis of judgment of the Division Bench of this Court in the case of The Bihar State Power (Holding) Company Limited

through its Chairman & ors. vs. Md. Asif Hussain & ors. reported in 2019(1) PLJR 718. It is his submission that the Division Bench has upheld the

classification between the Degree Holders and Diploma Holders in a process of selection, so as to exclude the Degree Holders. Thus the petitioners,

who are Degree Holders cannot be heard to insist that since the case of Diploma Holders are being considered in a selection process, they must also

be considered.

On consideration of rival submissions, this Court would observe that the contract for providing man power (Junior Engineers) was between the State

Government and the H. R. Agencies. One of such Agencies was Vani System Private Limited. The petitioners' services were provided by the said

Vani System Private Limited. The petitioners therefore had no contractual relationship with the State Government during subsistence of the contract

with Vani System Private Limited in between 11.11.2014 to October 2015. It is clear from Annexure R-1/A, i.e. office order dated 9.3.2016 issued by

Urban Development and Housing Department that the State Government had taken a specific decision not to renew the contract with the H. R.

Agencies including Vani System Pvt. Limited, through which the petitioners had been deployed in the Urban Local Bodies. Annexure R-1/B i.e. letter

issued by the Principal Secretary to the Urban Local Bodies on 12.2.2019 makes it clear that the Local Bodies have been directed to ensure

compliance with the earlier decision communicated to them, that they were not to take work from the man power earlier deployed by the H. R.

Agencies.

These communications of the State Government have to be viewed in light of the provisions contained in Sections 36 and 37 of the Bihar Municipal

Act, according to which prior sanction of the State Government is required in matters of creation of posts and appointment thereto of certain class of

employees, including Junior Engineers. The petitioners by way of example have brought on record one Service Book (Annexure 2) purported to have

been opened by the Executive Officer, Nagar Panchayat, Sonapur in respect of petitioner No. 2. It is the case of the petitioners that they have all

been continued by their respective Urban Local Bodies in the same manner. Bare perusal of Annexure 2 makes it clear that the Service Book of the

petitioners has been opened on 26.4.2019 i.e. more than two month after the Department had written to the Local Bodies by Annexure R-1/B calling

upon them to ensure compliance with earlier decision of the Department not to continue with the services of the petitioners and others similarly

situated, who had earlier served through their H. R. Agencies.

The petitioners have chosen not to implead their respective Urban Local Bodies in the instant writ proceedings. Thus, it is not open to ascertain as to

how the Local Bodies took work from the petitioners and opened Service Book for them contrary to the direction of the State Government contained

in Annexures R-1/A and R-1/B of the counter affidavit filed by respondent Nos. 1 to 5. Even if it were to be assumed that the petitioners continued to

serve their Urban Local Bodies, contrary to the mandate of the State Government, the petitioners would not be in a position to claim any benefit from

the State Government for such services rendered under the Urban Local Bodies. In so far as the State Government is concerned, the petitioners could

not have been permitted to serve the Urban Local Bodies after October 2015.

The claim of the petitioners that they should be given weightage for such services rendered under the Urban Local Bodies, contrary to the direction of the State Government, amounts to seeking perpetuation of an illegality, on account of their existence in the Urban Local Bodies, which is illegal and contrary to the mandate of the State Government. If any benefit is to be granted for such services, that would also offend Article 14 of the Constitution of India. The petitioners cannot be given any weightage for such illegal services so as to steal a march over other applicants in the process of selection. The other applicants cannot be placed at undue disadvantage merely for the illegal continuance of the petitioners by the Urban Local Bodies, contrary to the clear and explicit mandate of the State Government, to the contrary.

In between 11.11.2014 to December 2015 the services of the petitioners had been provided by the H. R. Agencies (Vani System Private Limited).

Even during this period the petitioners' deployment in the Urban Local Bodies was incidental to their services under the H. R. Agencies. The

petitioners in this period also had not been in direct contractual employment under the Urban Local Bodies, based on which they can claim any benefit

from the State Government.

In so far as the petitioners 1, 7, 12, 14, 17, 18 and 20, this Court would observe that even their forms had not been accepted as they were disqualified

on account of either possessing the degree in stead of diploma for which the selection process had been initiated, or had crossed the maximum age of

40 years prescribed for participating in the process of selection. On account of such disqualification the petitioners have rightly not been considered as

candidate in the process of selection.

The judgment of the Division Bench in the case of The Bihar State Power (Holding) Company Limited through its Chairman & ors. vs. Md. Asif

Hussain & ors. reported in 2019(1) PLJR 718 cited by the State Government fully supports their case that in a process of selection for diploma

holders, the degree holders may be excluded/disqualified.

It is further admitted case that the instant petitioners were not applicants pursuant to earlier advertisement dated 15.12.2019, in supercession of which

the impugned advertisement dated 10.1.2020 has been issued. No right has been created in favour of the petitioners therefore under advertisement

dated 15.12.2019 as they chose not to participate/apply pursuant to the said advertisement. They cannot contend that any prejudice has been caused

by abandoning the process of selection initiated under advertisement dated 15.12.2019.

No case has been made out by the petitioners for quashing the advertisement dated 10.1.2020.

The writ petition is devoid of merit and the same is dismissed.