
(2011) 08 PAT CK 0103
In the Patna High Court
Case No : CWJC No. 8709 of 2004

Rishikesh Pathak

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Citation : (2011) 3 PLJR 950

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard learned counsel for the parties.

2. The writ Petitioner has obtained 388 marks in the competitive examination for filling up posts of APO (redesigned as APP) pursuant to advertisement No. 2/1996 issued by the Bihar Public Service Commission (hereinafter referred to as "the Commission"). He has made a claim for appointment on the ground that two candidates from general category, who had obtained 388 marks, were recommended and have been appointed and some vacancies still exist against which Petitioner's name can be recommended for appointment.

3. For showing that at least 19 posts were found to be vacant in the year 2001, reliance has been placed upon a judgment and order of this Court in another writ petition bearing CWJC No. 9910 of 2000 (Vijay Kumar & Ors. v. The State of Bihar & Ors.) passed on 26.4.2001 (Annexure-1). In that order the existence of 19 posts has been recorded and a review petition filed by the State seeking modification in that order on account of creation of State of Jharkhand was dismissed on 2.11.2001 (Annexure-2).

4. Thus, the claim of the Petitioner appears to be based on vacancies which remained unfilled after appointment of persons pursuant to advertisement No. 2/1996. The claim is also based upon a direction made in Annexure-1 that in the interest of proper functioning of criminal courts the vacant posts should be filled

up by the Respondents within three months with suitable candidates who may be available for such appointment in the merit list/wait list prepared on the basis of competitive examination in question.

5. From Annexures-3 and 3A, it transpires that after the said judgment and order, nine candidates were appointed by order dated 12.11.2003 and two more candidates were appointed by order dated 27.11.2003. It has been shown that out of such 11 appointees, only nine joined and two posts remained vacant. Thus, according to counsel for the Petitioner, out of 19 posts noticed to be vacant, only nine persons have been appointed and 10 posts ought to have been filled up by the Respondents with suitable candidates like the Petitioner.

6. The stand of the State is that four posts had to be earmarked for State of Jharkhand after it was created on 15.11.2000 and learned counsel for the Petitioner has seriously questioned the propriety and legality of such a decision or stand. However, on going through the facts mentioned by the Commission in its communication dated 17.10.2003 contained in Annexure-B to the counter affidavit filed on behalf of the State one finds full and complete justification as to why several available vacancies had to be left out because of non-availability of reserved category candidates for whom those posts were reserved. Out of 15 posts pointed out to be vacant, only four were for the general category candidates and against those general category posts, appointments were made vide Annexures-3 and 3A. In law, even a panelist does not have any vested right to claim appointment. In the present case, the Petitioner is not in the panel recommended by the Commission and hence, there could be no doubt that Petitioner has no vested right to claim appointment for himself. Under the general direction to fill up the vacancies with suitable candidates it is difficult to grant any relief to the Petitioner once the Commission has pointed out that several posts had to be kept vacant due to non-availability of reserved category candidates. It would not be proper for this Court to order for transposition of the persons from general category to the reserved category posts on the plea that such appointments are necessary for proper functioning of criminal courts. That aspect of the matter has to be looked into by the State and its authorities.

7. Thus, no merit is found in this writ petition. It is accordingly dismissed.

8. The intervention petitions are more or less based upon claims similar to that of the writ Petitioner. Hence, the intervention petitions are disposed of accordingly.

9. Before parting with the judgment, it is deemed necessary to note the submission that State has held the last competitive examination for filling up the vacancies in the post of APP in 1998 and it is not in the interest of criminal justice system to delay the appointment of APP for as many as 13 years. Considering this aspect of the matter, it is expected that the concerned departments of the State, particularly the Home Department shall apply their mind and make endeavor to begin fresh exercise for recruitment to the vacant

posts of APP within a reasonable time, such as six months.