
(1997) 11 PAT CK 0041
In the Patna High Court
Case No : C.W.J.C. No. 5710 of 1994

Sada Nand Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-11-1997

Acts Referred:

Citation : (1998) 1 PLJR 327

Hon'ble Judges : S.J. Mukhopadhyaya, J

Bench : Single Bench

Advocate : Rajeev Roy, Amrendra Kr. Sinha and Shailendra Kr. Singh, for the Appellant; Ganga Prasad Roy and Binod Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhyaya, J.—This case relates to recruitment against Class-III posts from amongst the Class-IV employees of the State of Bihar.

2. Originally, the writ petition was filed against the orders contained in letters dated 1st June, 1994 and 6th May, 1994, by which certain Class-IV employees were appointed against Class-III posts under the Collectorate of Purnea.

3. Initially, only one question was raised on behalf of the Petitioner as to whether class-III posts of an establishment, which are to be filled up from Class-IV employees, are to be filled up only from such employees working in the same establishment.

4. At the time of admission of the case, another question was raised as to whether Class-III posts, to be filled up from amongst Class-IV employees, can be reserved for "other Backward category" candidates or not.

5. The brief fact of the case shows that under the Respondents-State of Bihar, there are Muffasil Offices of different Departments situated in the districts. Initially, the Respondents laid down guidelines and fixed quota to fill up Class-III posts by its Resolution dated 11th February, 1986. Therein 25 percent of certain

Class-III posts were ordered to be filled up from amongst Class-IV employees through limited examination and rest 75 per cent by direct recruitment. The aforesaid Resolution No. 22 dated 11th February, 1985 was subsequently modified by Resolution No. 7027 dated 16th September, 1992. By the subsequent Resolution, it was ordered to fill up 50 percent of certain Class-III posts by direct recruitment and 50 percent posts from amongst Class-IV employees on the (sic) examination.

For filling up Class-III posts from amongst the Class-IV employees, seniority and merit was the criteria fixed at the ratio of 60 : 40. While 40 marks was fixed for written test, 60 marks was fixed for seniority to be counted @ 4-1/2 marks for each year of service.

The present case is concerned with 50 percent of Class-III posts which are to be filled up from amongst Class-IV employees on the basis of limited examination.

6. It appears that a number of persons have been appointed against Class-III posts on the basis of limited examination, whose names have been shown at Paragraph Nos. 11 and 13 of the writ petition. According to the Petitioners, the persons named at Paragraph No. 11 of the writ petition were working against lower class-III posts of Karmchari and being not Class-IV employees, were not eligible for appointment against 50 percent Class-III posts which were meant to be filled up from amongst Class-IV employees.

So far as the persons whose names have been shown at Paragraph No. 13 of the writ petition, it has been stated that those persons do not belong to the establishment of the Collectorate, in question, but were Class-IV employees of other Establishments/Muffasil Offices, and were not eligible to be appointed against Class-III posts of Purnea District Collectorate Cadre.

7. The counsel for the Petitioner placed reliance on Resolution dated 16th September, 1992 and submitted that it is only the Class-IV employees of the Establishment (Purnea District Collectorate Establishment in this case) who are eligible for appointment against Class-III posts, and not any other Class-IV employees of (sic) Offices Establishment.

Further, according to the counsel for the Petitioner, the Respondents cannot reserve any post for "other Backward Categories" in the light of Supreme Court decision in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,

Both the aforesaid submissions were made by the counsel for the Petitioner solely on the ground that the Class-III posts, 50 percent of which are fixed to be filled up from Class-IV employees are promotional posts of Class-IV employees. Appointments being made through limited competitive examination from amongst Class-IV employees amounts to "promotion".

8. A counter affidavit and a supplementary counter affidavit have been filed on behalf of the Respondents.

According to the Respondents, Class-III posts to be filled up from Class-IV employees through limited competitive examination, as laid down by Resolution dated 16th September, 1992, is an appointment by "direct recruitment". Therefore, according to the counsel for the State, it can be filled up from any person working as Class-IV employees under the State, irrespective of their cadre. Further, it was submitted that such appointment being "direct recruitment", certain posts are to be reserved for "Other backward category" candidates in terms with "The Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991" (for short Reservation Act, 1991).

9. From the pleadings made by the parties, it will be evident that the sole question to be determined in this case is as to whether the appointments against Class-III posts in Muffasil Offices from amongst Class-IV employees on the basis of limited competitive examination is an appointment by way of "direct recruitment" or "promotion".

10. The counsel for the Petitioner led much emphasis on the Resolution dated 16th September, 1992, particularly, Clause-KA of the opening paragraph of the said, Resolution. It was pointed out that the word "promotion" has been mentioned therein, while agreement was reached to fill up Class-III post from Class-IV employees.

11. I have perused the writ petition, counter affidavit and the enclosures thereto.

Before deciding the relevant issue, I may mention that the writ petition against the order of appointment is not maintainable, as the persons appointed by impugned letter dated 1st June, 1994 or 6th May, 1994, have not been impleaded as party-Respondents in the writ petition. In absence of such persons, no relief can be granted to the Petitioner and, accordingly, the writ petition is dismissed.

12. So far as the main question, as to whether the appointment, in question, is by way of "direct recruitment" or "promotion" is concerned, before giving any specific decision, it is necessary to look into the sources of recruitment.

13. So far as the appointment is concerned, it is a settled law that the appointment includes both "direct recruitment" and "promotion". In fact, "direct recruitment" and "promotion" are different sources of appointment apart from other sources. For example (i) direct recruitment from open market; (ii) direct from amongst certain class of persons (from amongst a class of employees/ retrenched employees, as also on compassionate ground) (iii) by promotion, (iv) by transfer, (v) by deputation, (vi) by regularisation, (vii) by absorption, (viii) by reappointment etc.

Generally, two sources of recruitment are being followed, in absence of law/ guideline, namely, (a) "direct recruitment" and (b) "promotion". The other sources of recruitment, as mentioned above, can also be resorted by the

appointing authority, if permissible under law.

14. So far as the definition of "direct recruitment" or "promotion" is concerned, no specific definition has been laid down with respect to them.

15. In the case of G.S. Venkatareddy v. State of Andhra Pradesh, reported in 1993 (Supp.) 3 S.C.C. 2425, the Supreme Court observed, as follows:

A person is said to be "recruited direct" to a post, category or class in a service, if his first appointment thereto is made otherwise than (i) by promotion, (ii) by transfer, or (iii) by re-employment.

16. From the aforesaid finding, it will be evident that if a person is appointed through a source other than "by promotion" or "by transfer" or "by re-employment", is to be treated as a "direct recruit".

17. So far as "promotion" is concerned, it amounts to appointment against a higher post with higher status with higher scale of pay. Generally members of cadre are eligible for such appointment.

In the present case, the Class-IV posts do not belong to a common cadre. Such posts are available in different nomenclatures like peon, Night Guard etc. Similarly, Class-III posts to be filled up in pursuance of the resolution dated 16th September, 1992 also do not belong to a common cadre, it includes different Class-III posts including the posts of correspondence clerk and clerk.

Thus, it cannot be construed that the Class-III posts are promotional posts of class-IV posts.

18. Accordingly, I hold that the submissions made by the counsel for the Petitioner and the judgment in the case of Indra Sawhney (supra), as cited by him, is not applicable in the present case. The appointment against Class-III posts from amongst Class-IV employees on the basis of limited competitive examination is a direct recruitment and, therefore, the Reservation Act is applicable. In such circumstances, the posts are to be reserved also for "Other Backward Category".

19. Further, as the source of recruitment is direct recruitment", I hold that the class-IV employees of Muffasil Offices within the jurisdiction of a Collectorate, are eligible for appointment against class-III posts meant to be filled up from Class-IV employees within the same district, irrespective of their Establishment/ Department.

20. For the reasons stated above, there being no merit in the case, I dismiss the writ petition. However, in the facts and circumstances of the case, there shall be no order, as to costs.