

(2015) 10 PAT CK 0068

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9008 of 2001

Sadanand Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 10 PAT CK 0068

Hon'ble Judges : Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Pradeep Ranjan Tewari and Sanjay Kumar, Advocates, for the Appellant; Ashok Kumar, SC-11, for the Respondent

Final Decision : Dismissed

Judgement

Birendra Prasad Verma, J.—The petitioners, five in numbers, who all are/were class-IV employees in the Purnea Collectorate, have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the orders contained in memo Nos. 725 and 726, both dated 01.06.1994, as also the order contained in memo No. 628 dated 6th May, 1994, all issued under the signature of the respondent District Collector, Purnea, as contained in Annexure-7 series to the writ petition, whereby and whereunder the respondent Nos. 5 to 8, 10 to 18 and 20 to 30, the respondent Nos. 9 and 19, and the respondent Nos. 31 to 41, respectively had been appointed/adjusted on the posts of Clerk and/or other equivalent class-III posts in the prescribed pay scales mentioned in the impugned orders. The petitioners have also prayed for issuance of a direction to the official respondents to consider their cases for their appointment/promotion on class-III posts in the Purnea Collectorate. Besides the above, other incidental and consequential relief(s) have also been sought for on behalf of the petitioners.

2. Before embarking on the pleadings of the parties with respect to the relief(s) sought for on behalf of the petitioners in the present writ petition, this Court

feels it necessary to portray the chequered history of the present case and the issues raised herein in the present proceeding, which are as follows:--

3. The petitioners had earlier moved this Court in CWJC No. 5710 of 1994 assailing the validity and correctness of the impugned notifications, as contained in Annexure-7 series, and for almost identical relief(s), but the aforesaid writ petition was dismissed by a learned Single Judge (Coram: S.J. Mukhopadhaya, J. as His Lordship then was) of this Court by a judgment dated 28.11.1997 on merits as also on the ground of non-joinder of the necessary parties i.e. the persons who were appointed on class-III posts by the impugned orders. The petitioners, being aggrieved by the aforesaid judgment dated 28.11.1997 (Annexure-B to the counter affidavit) passed by the learned Single Judge of this Court, filed LPA No. 18 of 1998, which was finally heard and dismissed by a Division Bench of this Court by an order and judgment dated 02.09.1998, and the judgment and order passed by the learned Single Judge was not interfered with. The petitioners, still being aggrieved by the aforesaid two judgments and orders, moved the Hon''ble Apex Court by filing SLP(C) No. 441 of 1999, which finally gave rise to Civil Appeal No. 3751 of 2000. The aforesaid Civil Appeal No. 3751 of 2000 was finally disposed of by the Hon''ble Apex Court by an order dated 14th July, 2000 (Annexure-1 to the writ petition), whereby the petitioners were permitted to withdraw the aforesaid writ petition filed by them before the High Court with a leave to file a fresh writ petition after impleading all the necessary/affected parties. This was, in fact, the first round of litigation at the behest of the petitioners with respect to the issues raised in the present proceeding.

4. In the light of the observations made by the Hon''ble Apex Court by the aforesaid order dated 14th July, 2000 (Annexure-1 to the writ petition) and in view of the leave granted, the petitioners filed the present writ petition on 17.07.2001, which has been registered as CWJC No. 9008 of 2001. In the second round of litigation in the same subject matter, the present writ petition was heard by a learned Single Judge of this Court (Coram: Shiva Kirti Singh, J. as His Lordship then was) and the writ petition was finally dismissed by an order dated 16.10.2008. The petitioners, being aggrieved by the aforesaid order dated 16.10.2008, preferred LPA No. 955 of 2008, which was finally heard and was dismissed by a Division Bench of this Court by an order dated 20.05.2009 on merits as also on the ground of claim having become stale; and thereby the order passed by the writ Court was affirmed. The petitioners, being still aggrieved by the aforesaid orders passed by the learned Single Judge as also by the Division Bench of this Court, moved once again before the Hon''ble Apex Court by filing SLP(C) No. 16468 of 2010, which finally gave rise to Civil Appeal No. 907 of 2014. The aforesaid Civil Appeal was finally disposed of by the Hon''ble Apex Court by an order dated 24.01.2014, whereby the order passed by the High Court was set aside and quashed, and the matter was remanded back to the High Court for re-consideration of the writ petition filed on behalf of the petitioners on merits after giving an opportunity of hearing to all the parties.

Before the Hon"ble Apex Court, the parties were represented in the aforesaid Civil Appeal No. 907 of 2014 and all of them gave undertaking that they shall appear before the High Court for disposal of the writ petition filed on behalf of the petitioners on merits. Hence, it was observed that fresh notice would not be necessary to be issued to the parties. The operative part of the aforesaid order dated 24.01.2014 passed in Civil Appeal No. 907 of 2014 is reproduced hereinbelow:--

"Learned counsel for the parties have stated that they shall all appear before the Court on any date that may be fixed. We, therefore, direct the parties to appear before the High Court on 28th February, 2014. Since the parties will be appearing before the High Court on the aforesaid date, it would not be necessary to issue fresh notice to any of the parties. The High Court can proceed to hear the writ petition on the basis of the service already effected and the presence of the parties on 28th February, 2014."

5. In view of the aforesaid remand order passed by the Hon"ble Apex Court, the record of the present writ petition was revived for the third round of litigation in the same subject matter. In the light of the observations of the Hon"ble Apex Court the matter was taken up for consideration on merits.

6. Learned counsel appearing on behalf of the petitioners and learned SC-11 appearing on behalf of the respondent Nos. 1 to 4 were heard on different dates at great length. However, despite undertakings given before the Hon"ble Apex Court, none appeared on behalf of the private respondent Nos. 5 to 42 to contest the matter, although they all, excepting the respondent No. 42, had already entered appearance on earlier occasion by filing their duly executed vakalatnama through their learned counsel. In above view of the matter, at one stage, this Court was inclined to issue fresh notice to the respondent Nos. 5 to 42 enabling them to contest the matter on merits. However, the learned counsel appearing on behalf of the petitioners insisted that in view of the undertakings given before the Hon"ble Apex Court and in view of the observations made in the order dated 24.01.2014 passed in aforesaid Civil Appeal No. 907 of 2014, reproduced hereinabove, fresh notices are not required to be issued to the private respondents and the matter may be disposed of on merits on the basis of the materials available on the record. In above background only the learned counsel appearing on behalf of the petitioners and the learned SC-11 appearing on behalf of the respondent Nos. 1 to 4 were heard at length. They filed their separate written submissions also.

7. The matter at issue is the appointments made on class-III or its equivalent posts in the year 1994 at Purnea Collectorate by the respondent District Collector, Purnea.

8. The learned counsel appearing on behalf of the petitioners submitted that the respondent State of Bihar came with a resolution dated 16th September, 1992 (Annexure-2), wherein it was provided that 50% class-III posts of Clerk shall be

filled up from amongst the class-IV employees on the basis of the limited written test as also on the basis of their seniority. He contended that in the Purnea Collectorate altogether 70 class-III posts of Clerk were vacant and for filling up 50% of those posts, a notice dated 11.03.1994 (Annexure-3/A) was issued by the respondent District Collector, Purnea inviting applications from the eligible class-IV category employees working under Purnea Collectorate for consideration of their claims for their appointment on class-III posts of Clerk, which were earmarked for them. It was contended that the petitioners, besides others, who all were working on class-IV posts in Purnea Collectorate, submitted their applications in the prescribed proforma, whereafter Deputy Collector (Establishment), Purnea issued separate letters dated 10th May, 1994 to all the eligible candidates including the petitioners informing them that their preliminary examination shall be conducted on 26.5.1994 and, on being successful in the said examination, they will have to appear in the written competitive examination on 28.05.1994. According to him, the procedure indicated by the aforesaid letter dated 10th May, 1994 was contrary to the procedure prescribed by the government vide resolution dated 16th September, 1992 and therefore, whole selection process had vitiated. It was highlighted by the learned counsel that the respondent Nos. 31 to 41, who all were working earlier as Revenue Karamchari/Panchayat Sevak, could not have been appointed on class-III posts of Clerk, which were earmarked and was required to be filled up from amongst the class-IV employees. According to the learned counsel, on that ground alone, the appointments/adjustment of respondent Nos. 31 to 41 by the impugned order contained in memo No. 628 dated 6th May, 1994, which is part of Annexure-7 series, is fit to be quashed and set aside by this Court.

9. To a query made by this Court, the learned counsel appearing on behalf of the petitioners fairly conceded that during the pendency of the present writ petition petitioner No. 2 Bholanath Tiwary and the petitioner No. 3 Ramji Tiwary have already superannuated from service on completion of age. However, he was not in a position to inform this Court as to whether from amongst the respondent Nos. 5 to 42 any of them has superannuated from service or all of them are still in service.

10. The matter has been contested on merits by the respondent Nos. 1 to 4 by filing a detailed and comprehensive counter affidavit on behalf of the respondent Nos. 3 and 4 way back on 20th November, 2001. In compliance of the order of this Court, they further filed supplementary counter affidavit on 14.11.2014. A reply on behalf of the respondent Nos. 1 to 4 to the written submissions filed on behalf of the petitioners was also filed on 24.11.2014, after service of its copy upon the learned counsel for the petitioners, but the stand taken in all these affidavits are almost same and common.

11. Learned SC-11, appearing on behalf of the respondent Nos. 1 to 4, has submitted that the petitioners have not come with clean hands and have not disclosed all the facts correctly; therefore, the writ petition is liable to be

dismissed with heavy costs. According to him, on the basis of the notice issued by the respondent District Collector, Purnea, the applications were invited from the eligible class-IV employees for their appointment on Class-III posts of Clerk. The claims of the petitioners as also that of respondent Nos. 5 to 30 were considered for their appointment on class-III posts earmarked for them. However, it was pleaded that so far respondent Nos. 31 to 41 are concerned, they were already appointed on the posts of Revenue Karamchari/Panchayat Sevak and all of them were entrusted the works of Typists in different offices. Therefore, on the basis of the resolution dated 08.09.1993 of the Divisional Establishment Committee and the letter issued by the Divisional Commissioner, Purnea, they were appointed on the post of Office Assistant vide order contained in memo No. 628 dated 6th May, 1994. It was further pleaded by him that the appointment of respondent Nos. 31 to 41 on the posts of Office Assistant was prior to the limited written test held for class-IV employees on 26.05.1994. It was asserted on behalf of the respondent Nos. 1 to 4 that the appointment of the respondent Nos. 31 to 41 on the posts of Office Assistant, a class-III post, was not against the post earmarked/reserved for class-IV employees. So far the case of the respondent Nos. 5 to 30 is concerned, it was contended by the learned State counsel that the limited written examination was held on 26.05.1994 for all the eligible candidates including the petitioners and, accordingly, merit list was prepared. It has further been asserted that the mistake occurring in the letter dated 10th May, 1994 regarding holding of fresh written examination was corrected subsequently and, in fact, on 28.05.1994 no written examination was conducted, rather documents of all the eligible candidates were verified and, accordingly, final merit list was prepared. It is the specific case of the respondent Nos. 1 to 4 that the petitioners are/were the general category candidates, and out of total posts of Clerk reserved for class-IV employees, only 17 posts were required to be filled up by the general category candidates, but the petitioners' position was below in the merit list; therefore, they could not be appointed on class-III post of Clerk. By referring to the pleadings in the aforesaid counter affidavit as also supplementary counter affidavit, the learned State counsel submitted that the writ petition is devoid of merits and is fit to be dismissed with costs.

12. At this place, it would be relevant to mention here that the averments made in the counter affidavit filed on behalf of the respondent Nos. 3 and 4 way back on 20th November, 2001, which were reiterated in the supplementary counter affidavit filed on behalf of the aforesaid respondents in compliance of the order of this Court, have not been controverted by the petitioners by filing any rejoinder affidavit on their behalf.

13. After having heard the parties and on consideration of the materials available on the record, this Court finds that the process for selection for filling up vacant class-III posts of Clerk, earmarked for class-IV employees, started in the year 1994 by issuance of notice dated 11.03.1994 by the respondent District Collector, Purnea, as contained in Annexure-3/A to the supplementary affidavit

filed on behalf of the petitioners. In response to the aforesaid notice, the petitioners as also the respondent Nos. 5 to 30, besides other eligible candidates, submitted their applications and, accordingly, limited written competitive test was held on 26.05.1994. Their certificates and other documents were verified on 28.05.1994 and, accordingly, final merit list was prepared, on the basis of which by the impugned orders of appointment, as contained in memo No. 725 Purnea dated 01.06.1994 and memo No. 726 Purnea dated 01.06.1994 (Annexure-7 series), the respondent Nos. 5 to 30 were appointed on the post of Clerk in the prescribed pay scale and since then they have been working on the said post. Though, this is the 3rd round of litigation at the behest of the petitioners, as noticed above, but at no point of time, the appointment of respondent Nos. 5 to 30 on the post of Clerk was ever stayed. Thus, it is evident that the respondent Nos. 5 to 30 have been working on the post of Clerk for more than 21 years and most of them are practically at the verge of their retirement, if not already retired. So far the respondent Nos. 31 to 41 are concerned, their appointment on the equivalent post of Clerk in the prescribed pay scale was made by the order contained in memo No. 628 Purnea dated 6th May, 1994, which is also part of Annexure-7 series and has also been brought on record as Annexure-A to the supplementary counter affidavit filed on behalf of the respondent Nos. 1 to 4. In fact, the aforesaid respondent Nos. 31 to 41 were earlier working on the post of Revenue Karamchhari/Panchayat Sevak and their appointment was made pursuant to the letter dated 16.09.1993 issued by the Divisional Commissioner, Purnea and the resolution dated 05.05.1994 of the District Establishment Committee; therefore, they have not been appointed on class-III posts against the posts reserved for class-IV employees. Apparently, the appointment of respondent Nos. 31 to 41 was made prior to the limited written competitive test held for the said purpose on 26.05.1994. Thus, it is evident that their appointment was not part of selection process started by notice issued by the respondent District Collector, Purnea, as contained in Annexure-3/A. Hence, the challenge made by the petitioners to the appointment of aforesaid respondent Nos. 31 to 41 is completely misconceived and on unfounded facts. Evidently, the respondent Nos. 31 to 41 are also in service on equivalent class-III posts of Clerk since the year 1994 i.e. for more than 21 years and most of them are practically at the verge of the retirement, if not already retired.

14. So far the respondent No. 42 is concerned, the petitioners have neither challenged nor brought on record any order, whereby he was appointed on class-III post of Clerk. The official respondents have also not stated in their counter affidavit/supplementary counter affidavit about his appointment on class-III post of Clerk. The respondent No. 42 did not appear at any point of time before this Court. The deemed service of notice upon respondent No. 42 was treated to be valid. In absence of challenge to any specific order appointing the respondent No. 42 on the post of Clerk, the writ petition as against him is liable to be dismissed on that ground alone.

15. Now coming to the plea taken on behalf of the petitioners that the procedure

prescribed for limited written competitive examination of class-IV employees was not strictly in accordance with the procedure prescribed by the government resolution dated 16th September, 1992 (Annexure-2) is concerned, this Court finds that the petitioners participated in the aforesaid selection procedure initiated by the respondent District Collector, Purnea and waited for a favourable order in their favour, and once their selection was not made after completion of aforesaid selection procedure they cannot be permitted to turn around and challenge the aforesaid selection process in view of the well settled principle of law. If the petitioners were, at all, not satisfied with the procedure followed by the respondent District Collector, Purnea for appointment on class-III posts earmarked for class-IV employees, then they could have challenged the procedure at that time itself, but they participated in the said procedure and waited for favourable order. Hence, now they cannot be permitted to challenge the same on that ground.

16. From the un-rebutted pleadings of respondent Nos. 1 to 4, it is evident that the claims of the petitioners were also considered for their appointment on class-III post, but their place in the merit list was below than that of respondent Nos. 5 to 30, therefore, they could not be appointed on class-III post of Clerk. Indisputably, the facts asserted in the counter affidavit as also supplementary counter affidavit in this regard have not been controverted by the petitioners by filing any rejoinder affidavit. Therefore, this Court has no option but to accept the aforesaid assertion made on behalf of the respondent Nos. 1 to 4.

17. From the facts noticed above, it is evident that the respondent Nos. 5 to 41, who all were appointed on class-III posts of Clerk or equivalent posts by three different orders in the year 1994, are in service for more than 21 years and most of them are at the verge of retirement, if not already retired. Out of the five petitioners, two of them have already superannuated from service, as noticed above. Therefore, on the ground of equity also, this Court does not feel persuaded to interfere with the orders impugned after more than 21 years, and thereby unsettled the things, which have since been settled for more than 21 years.

18. For the reasons recorded above, this Court is of the considered opinion that the present writ petition is devoid of merits and is, accordingly, dismissed, but there shall be no order as to costs.