
(2004) 08 PAT CK 0036
In the Patna High Court
Case No : C.W.J.C. No. 2236 of 2004

Salil Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-08-2004

Acts Referred:

Citation : (2004) 4 PLJR 136

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Rajendra Pd. Singh, Niranjana Kumar and Jay Shankar in 2236; Mr. Umesh Kumar Singh in 3220, for the Appellant; Naresh Dikshit, Ranjeet Kr. Pandey for B.P.S.C., M/s Ganesh Pd. Singh, Satish Chandra Mishra and Nurul Hoda for Intervenor and Mr. Ranjit Sinha for the State, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties. Both these writ applications since have been filed for common cause, they have been heard together and are being disposed of by this order.

2. At the very outset, learned counsel on behalf of the petitioner Salil Kumar Singh of C.W.J.C. No. 2236 of 2004 sought for permission to withdraw this application as the petitioner has already been considered for appointment on the post of Block Welfare Officer. This application, accordingly, is dismissed as withdrawn so far petitioner Salil Kumar Singh is concerned.

3. It appears that in this writ application, an intervention petition being I.A. No. 3011 of 2004 has also been filed by one Subhash Chandra Raj Kumar for the same cause of action and the intervention petition has already been allowed vide order dated 7.7.2004.

4. It is submitted by learned counsel for the petitioner, intervenor and writ petitioner of C.W.J.C. No. 3220 of 2004 that pursuant to advertisement no. 30/99, they had applied for their appointment on the post of Block Welfare

Officer and they appeared in the competitive examination held by the Bihar Public Service Commission (hereinafter referred to as "the Commission") where they were declared successful and the Commission recommended altogether 113 persons including the intervenor and the petitioners for appointment on the post of Block Welfare Officer vide communique dated 8.11.2002 much after bifurcation of the State of Jharkhand but the case of the intervenor and the petitioners was not considered and only 68 persons were considered for appointment by the State Government. Learned counsel further submitted that after coming into force of the Bihar Reorganisation Act, 2000, the cadre division with regard to the Block Welfare Officer has already taken place and as per decision of the State Advisory Committee, the strength of the Block Welfare Officer, so far as the State of Bihar is concerned, has been determined as 517 out of which 316 persons are working on the post and rest of the posts are yet to be filled up.

5. Two sets of counter affidavits have been filed on behalf of the respondents-State-one on behalf of the Secretary-cum-Commissioner, Personnel & Administrative Reforms Department and another on behalf of respondent nos. 4 to 6.

6. In paragraph 11 of the counter affidavit filed on behalf of respondent nos. 4 to 6, it is stated that the cadre division of the Block Welfare Officer has not been finalised by the State Advisory Committee. This affidavit was filed in this Court on 6.8.2004 though the same was affidavited on 29.7,2004.

7. J.C. to Standing Counsel No. III with reference to the counter affidavit submitted that since the cadre division of the Block Welfare Officer has not been finalised by the State Advisory Committee, the intervenor and the writ petitioners cannot be considered to be appointed on the post of Block Welfare Officers.

8. However, from reply to the counter affidavit filed on behalf of the intervenor, it appears that the cadre division of the Block Welfare Officer has already been decided by the State Advisory Committee vide its decision dated 23.5.2002 which would be evident from Annexure-1/3 and the cadre strength of the State of Bihar, so far as Block Welfare Officer is concerned, has been determined as 517. From Annexure-1/3, it further appears that this is the final decision taken by the State Advisory Committee where all members have signed the same.

9. It is almost surprising that even after cadre division so far as Block Welfare Officer is concerned, it is stated in the counter affidavit filed on behalf of respondent nos. 4 to 6 that the cadre division has not yet been finalised by the State Advisory Committee. Even after a lapse of two years, this statement is made by the State authority at the face of the material, as referred to above, which indicates that the cadre division so far as Block Welfare Officer is concerned, has already been finalised. The counter affidavit so filed on behalf of respondent nos. 4 to 6, thus, appears to be false and misleading one.

10. From the affidavits filed on behalf of the respective parties and materials on record, it appears that the intervenor and the writ petitioner both were recommended by the Commission as far back as on 8.11.2002 for their appointment on the post of Block Welfare Officers much after finalisation of the cadre division by the State Advisory Committee. The position of the intervenor in the recommendation letter has been shown at serial no. 67 whereas writ petitioner has been shown at serial no. 5. It is also manifest from the materials on record that out of 517 posts of Block Welfare Officers, 316 persons are working on those posts and 201 posts are yet to be filled up. It is also manifest from the counter affidavit filed on behalf of the State that out of 201 posts, only 68 persons have been considered for appointment as per recommendation of the Commission and 133 posts are still lying vacant.

11. It is also admitted fact that the Commission recommended for appointment on the post of Block Welfare Officers on 8.11.2002 whereas the cadre division was finalised by the State Advisory Committee on 23.5.2002. The fact remains that the Commission has recommended certain persons for appointment pursuant to the advertisement no. 30/99 but the recommendation has been made much after finalisation of the cadre division.

12. The question remains as to whether persons recommended pursuant to an advertisement issued much prior to coming into force of the Bihar Reorganisation Act, 2000 would be eligible for appointment against the vacancies which are said to have occurred in the State of Bihar.

13. This question is no more *res Integra* and it has been set at rest by the judgments of this Court. In CWJC No. 11491 of 2001 (Subhas Chandra Yadav & Ors. vs. The State of Bihar and others), the learned single Judge of this Court has held that recommendation made by the Commission even prior to coming into force of the Bihar Reorganisation Act shall not be infructuous necessitating *de novo* selection and the identified vacancies should be filled up on the basis of the recommendation of the Commission. This question had also fallen for consideration before this Court in the case of Joon Sangi Vs. The State of Bihar and Others, and a learned Single Judge of this Court again endorsed the same view as has been taken in the case of Subhas Chandra Yadav and others (*supra*).

14. Considering the facts and circumstances of the case and for the reasons aforementioned, both the writ applications are allowed and the respondents-authorities are directed to consider the case of the petitioner and the intervenor for their appointment on the post of Block Welfare Officer on the basis of the recommendation made by the Commission dated 8.11.2002, as referred to above, to fill up 133 vacant posts. This exercise, however, must be completed by the State authorities within a period of three months from the date of receipt/production of a copy of this order.

15. Before I part with this order, I would like to observe that in view of the findings as recorded above, I find that a false affidavit has been filed on behalf of

respondent nos. 4 to 6 duly sworn by one Sri Vijay Kumar Jha, Deputy Secretary, Department of Welfare, Government of Bihar, Patna. At the face of the materials on record, I have reason to believe that altogether a false affidavit has been filed saying that the cadre division of Block Welfare Officer has not been finalised by the State Advisory Committee though a decision in the matter has already been taken by the State Advisory Committee as far back as on 23.5.2002. Under the circumstances, issue notice to Vijay Kumar Jha, Deputy Secretary, Department of Welfare, Government of Bihar, Patna to show cause as to why a contempt proceeding should not be initiated against him for swearing false affidavit before this Court.