

(2008) 06 PAT CK 0005
In the Patna High Court
Case No : CWJC No. 2397 of 2007

Sanjay Kumar Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-2008

Acts Referred:

Citation : (2008) 3 PLJR 539

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondents 1 to 4 and 6. No one appears on behalf of the respondent no. 5 despite having filed counter affidavit. An advertisement was published for appointment of District Accounts Manager in the District Health Society, Saharsa under the aegis of the State Health Society. The vacancy was solitary.

2. The petitioner and respondent no. 5 were applicants amongst others. In pursuance of the process of selection both the petitioner and respondent no. 5 were selected after process of written examination, computer test and interview. The respondent no. 5 was empanelled at serial no. 1 of the panel while the petitioner was at serial no. 4.

3. The entire thrust of the writ petition was primarily that the selection of respondent no. 5 was vitiated inasmuch as his father, respondent no. 6, was a member of the Interview Panel thus according favorable treatment to the said respondent. That the petitioner in his opinion was better suited, more eligible and competent for appointment. Learned Counsel for the petitioner fairly acknowledged from the original official records which had been submitted that he finds it difficult to demonstrate that the respondent no. 6 was a member of the interview panel and had participated during the selection of respondent no. 5.

The counter affidavit on behalf of the official respondent also quite apart from respondents 5 and 6 themselves, have all specifically denied this aspect. That puts this aspect of the matter at rest.

4. Learned Counsel next urged that the entire process of selection was vitiated due to irregularities and that therefore this Court should set aside the selection process and direct issuance of fresh advertisement. This Court is not persuaded to do so for the reason that the petitioner participated in the selection process without demur and having been placed below in the panel now seeks to question the entire selection process. He cannot be permitted to do so. Reliance may be placed on the judgment of the Supreme Court on the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, . To this Court the fact of inclusion of the name of the petitioner in the panel of successful candidates is per se evidence of fairness of the process of selection. This Court is satisfied that the only effort of the petitioner now is to somehow to dislodge the persons above him in the panel so as to secure appointment taking precedence over them.

5. The next contention that the respondent no. 5 during interview did not produce necessary certificates of his C.A. qualification. That the petitioner had applied for copies of the application of respondent no. 5 under the Right to Information Act but only the curriculum vitae of respondent no. 5 has been supplied to him but not any enclosures to the same. Learned Counsel therefore wants the Court to draw an adverse inference at this stage. On the contrary counter affidavit of the respondents state that all certificates were duly produced. Nothing has been pointed out from the original records to suggest to the contrary. Learned Counsel for the State has rightly pointed out that under the Right to Information Act if incomplete documents are furnished the petitioner has his remedy under that very Act itself. On facts, it is not in controversy that the respondent no. 5 has resigned after having joined in pursuance of his selection. The petitioner has not been able to point out any illegality in the selection of respondent no. 5. If after having joined the respondent no. 5 has resigned the vacancy has exhausted itself and no further appointment can be made from the panel. The only option now left to the respondents is to go for fresh advertise merit and proceeding in accordance with law unless any subsequent policy decision is taken with regard to the vacancy in question. In State of Punjab Vs. Raghbir Chand Sharma and Another, . a single vacancy was advertised. A panel of three candidates was prepared. The person at serial 1 joined but then resigned. The second candidate showed disinterest when claim for appointment was made by the third candidate. The Apex Court at Paragraph 4 of the judgment held in the relevant extract as follows:-

"4. ...With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has out lived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of subsequent resignation of the person

appointed from the panel or any other vacancies arising subsequently...."

6. The writ application is therefore, dismissed.