
(2011) 01 PAT CK 0132
In the Patna High Court
Case No : CWJC No. 1792 of 2005

Sanjiv Kumar Chandhariyavi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : (2011) 59 BLJR 299 : (2011) 1 PLJR 1116

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—The Petitioner is an Advocate, who had applied for 25th Bihar Judicial Service Competitive Examination, the examinations whereof were conducted on the 25th January 2000 to 31 St January, 2000. The Petitioner participated in the said examination. Vide Memo No. 92 dated 06th July, 2000, Bihar Public Service Commission (hereinafter referred to as the B.P.S.C.) issued interview letter to the Petitioner. After the interview, the results were then published on 06th August, 2000 but in respect of Petitioner it was specifically mentioned that his results were withheld. Let it be noted that it was not stated that Petitioner had been disqualified, then started the controversy. Petitioner was asked to produce his testimonials in original. He claims to have produced the same. The B.P.S.C. disputes. The B.P.S.C. then published notice in the newspaper calling upon the Petitioner to produce his testimonials. This is what brought the Petitioner to this Court by filing a writ petition being C.W.J.C. No. 7224 of 2002 before this Court. The said writ petition was disposed of on the 10th July, 2002 and this Court directed the Petitioner to produce all his testimonials before the B.P.S.C. Petitioner then claims that on the very next day he went to B.P.S.C. to produce his testimonials in originals but B.P.S.C. refused to look into it, as such, Petitioner filed a contempt application being M.J.C. No. 1456 of 2002. While the contempt application was pending, by letter dated 2nd August, 2002 B.P.S.C. held out to the Petitioner that examination of the Petitioner was impersonalized by another. What was the basis for this serious allegation was not disclosed. Once this was disclosed to the Petitioner, Petitioner approached this Court by the

present writ petition being C.W.J.C. No. 1792 of 2005. In response to this, Petitioner immediately protested to the B.P.S.C. as to how suddenly such a serious allegation is made. Nothing further was done. Ultimately, the contempt application was disposed of on 6.11.2003. Once the contempt application was disposed of, then on 7.1.2004 B.P.S.C. cancelled the candidature of the Petitioner on the grounds of impersonation and a paper notice to that effect was published. It is this action of B.P.S.C. which has been impugned in the present case.

2. This writ petition was taken up for disposal on 31.7.2006. After a full hearing at that stage itself this Court (Barin Ghosh, J., as his Lordships then was) allowed the writ petition and set aside the B.P.S.C. notification cancelling the candidature of the Petitioner and directed B.P.S.C. to declare the results of the Petitioner as well as, if Petitioner had succeeded, as per the results, issue notification for appointment within seven days.

3. It appears that B.P.S.C, being aggrieved by the said judgment, filed an intra Court appeal being L.P.A. No. 576 of 2006. It appears from the proceedings of the said intra Court appeal that while the matter was being heard before the Division Bench, Petitioner was asked in the Court to be personally present and transcribe two pages, in his own handwriting in the Court itself. Ultimately, when the L.P.A. was taken up for final disposal, on behalf of B.P.S.C. it was urged that the writ Court had not taken into account the conduct of the Petitioner whereby the B.P.S.C. sought assistance of the Petitioner to verify the genuineness of the candidature, which according to the B.P.S.C, was not willingly acceded to by the Petitioner.

4. On consideration of those facts, the Division Bench allowed the appeal and by judgment and order dated 23rd March, 2009 remanded the matter to the writ Court for fresh consideration in accordance with law. It appears that upon remand when the matter was taken up by the writ Court, this Court thought it prudent to send the two pages handwritten by the writ Petitioner in Court to the Forensic Science Laboratory for testing Petitioner's handwriting and comparing it with original answer sheets. This was apparently what was also contemplated by the Division Bench in the Letters Patent Appeal but never acted upon. The Forensic Science Laboratory reverted pointing out that it needs for examination and comparison at least six pages of independent contemporaneous writing of the Petitioner. This was virtually impossible. As almost a decade had gone by but fortunately the Petitioner was present in the Court, the Director, Forensic Science Laboratory, a responsible Officer from B.P.S.C. and handwriting expert from Forensic Science Laboratory were then called in Court. After discussion in Court a practical, workable and correct solution was arrived at.

5. This Court directed that the answer sheets of the Petitioner in respect of the B.P.S.C. examination in question be typed out by the Registry of the High Court itself. Some of the typed copies alone then be made available to the Petitioner to transcribe under stress in the High Court in the presence of the Registrar (Vigilance) without seal or referring to the original answer sheets. Sufficient

number (in excess of 20 sheets) so transcribed which were copies of Petitioner's handwritten documents with the original answer sheets were sent to the Forensic Science Laboratory for comparison, testing and their report. The report has been forwarded by the Acting Director under Memo No. 13 dated 13.1.2011 to this Court. The handwriting expert whose opinion has been enclosed is Dr. Sharda Nand Singh and is signed by Shyam Kumar Singh as well who is also the State Examiner of Questioned Documents, Police Laboratory, C.I.D., Bihar, Patna. The opinion, as per handwriting opinion 109 of 2010, is short and clearly states that the disputed document and specimen, as sent, have been transcribed by the same persons.

6. Thus, on the scientific report having been obtained, there remains no dispute as to the genuineness of the answer sheets and the charge of impersonation falls to the ground.

7. Here, I may notice that in the writ petition itself Petitioner had been pleading mala fide. His consistent case was that even though he tried to cooperate with mala fide intention of officials of the B.P.S.C. dragging the matter, it is now a part of records that the only basis disclosed by B.P.S.C. for withholding the result of the Petitioner was an anonymous petition received much subsequent to the interview of the Petitioner. Beyond this, there was no material for withholding the result and/or cancellation of Petitioner's candidature. B.P.S.C. being a responsible body and a constitutional authority, was supposed to act with greater sense of responsibility. Once there was a charge of impersonation, B.P.S.C. then and there could have called the Petitioner and asked him to rewrite the answers or offered transcribes for comparison of his handwriting. It did not choose to do so, rather, it kept Petitioner running and without there being sufficient material, took such a drastic decision ex parte.

8. In view of the expert opinion and by the procedure, which was agreed by all the parties including the B.P.S.C, there remains little to be done. Annexure-12 the memo of B.P.S.C. dated 07.01.2004 by which the candidature of Petitioner was cancelled is once again quashed, on the facts and in the circumstances noted above. Consequently, the B.P.S.C. is directed to declare the result of the Petitioner and make effective recommendation from the same panel and from the same date for the appointment of Petitioner in the 25th batch of Bihar Judicial Officers. This should be done by the B.P.S.C. within a period of three weeks from today.

9. The report of the Forensic Science Laboratory, as referred to have, has been shown to all the parties and is kept on the record, which would form part of this writ petition.

10. Let photocopies of the said report and the covering letter be given to the learned Counsels for the Petitioner, State and the B.P.S.C.

11. The original answer sheets and documents, as received from the B.P.S.C, shall be returned by the Registry to B.P.S.C. immediately in sealed cover by hand

duly receipted.

12. With the above observations and directions, the writ petition is, accordingly, disposed of.