
(2005) 04 PAT CK 0001
In the Patna High Court
Case No : CWJC No. 12314 of 2003

Sati Ranjan Jamaiyar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Citation : (2005) 2 PLJR 682

Hon'ble Judges : Shashank Kumar Singh, J

Bench : Single Bench

Advocate : Binod Kr. Kanth, Deepak Kumar Sinha, for the Appellant; A.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Shashank Kumar Singh, J.—The present writ application has been filed by the writ petitioner who is among the left over/wait list candidates prepared pursuant to the recommendation of the Bihar Public Service Commission arising out of advertisement No. 1/93 for a direction to the Respondent to appoint him as an Assistant in the Secretariat or its attached offices. For appreciation of the case of the petitioner, detailed fact has been brought on record and argued by Learned Counsel for the petitioner starting from advertisement No. 11/85 which was issued by the Bihar Public Service Commission for appointment as assistant. Written test was held and merit list prepared. Out of which 357 candidates were appointed.

2. Contention on behalf of the petitioner is that even after appointment of 357 candidates large number of vacancies were available but the same was not made available to the petitioner for their appointment on the vacant post though they were among the wait list candidates.

3. C.W.J.C. No. 2192 of 1991 was filed by such similarly situated candidates for a direction to the respondents to release all the vacancies and fill up the same from the successful candidates in order of merit. The aforesaid writ application

was heard by a Division Bench of this Court and by its order dated 11.10.1991 a direction was issued to the State of Bihar that it should identify the vacancies which occurred till July, 1990 and fill up the same from the left over empanelled candidates, pursuant to advertisement No. 11/85. The State preferred SLP against the said order of this Court being numbered as SLP (Civil) No. 7423 of 1990. The Supreme Court modified the order of the writ court, directing the respondents to advertise the vacancies within four weeks which occurred between 1.1.1989 to 31.12.1993. So far the left over candidates of advertisement No. 11/85 was concerned, the court directed that vacancies occurring till 31.12.1988 will be filled up from the said select list.

4. Pursuant to direction of the Supreme Court, advertisement No. 1/93 was issued. Written test was held and a list of 483 candidates were published against 591 vacancies which were notified in the advertisement. Thus according to Learned Counsel for the petitioner, even on their own reckoning 108 vacancies which were there were not filled up. Petitioner is one of the left over candidates of the aforesaid merit list pursuant to advertisement No. 1/93. Such other candidates including the petitioner filed C.W.J.C. No. 8697 of 1997 alleging that though a larger number of vacancies between 1.1.1989 to 31.12.1993 existed but the same was being suppressed by the State and not filled up. this Court taking into consideration the rival contention, directed the State of Bihar to re-identify the number of vacancies which were available between 1.1.1989 to 31.12.1993. It further directed that the petitioner should also cooperate with the Respondents in the process of identification of the vacancies in different attached offices of the Secretariat which may not have been taken into consideration while making calculation. Further direction was also given that even if vacancy prior to 1.1.1989 remained unfilled they should also identify and fill up from the candidates of petitioner's batch. Time was also given to the Bihar Public Service Commission to recommend the names of persons who were successful after the vacancies are identified.

5. On Ram Chandra Choudhary, Under Secretary of the Department of Personnel and Administrative Reforms was specially appointed for the aforesaid purpose to identify the vacancies. It is contended that the report of Ram Chandra Choudhary which was submitted to the Secretary would go to show that the cadre strength of the Assistant was 5338 and taking the aforesaid cadre strength Ram Chandra Choudhary calculated the vacancies between 1.1.1989 to 12.1.1993 as 413 which were required to be filled up from the left over candidates. It has further been contended that even the aforesaid calculation was a conservative calculation and other vacancies which were also required to be considered, were left out. However, the Secretary of the Department while considering the report of Ram Chandra Choudhary took into consideration the alternative calculation made by him which showed that only 241 vacancies were required to be filled up and issued orders to issue appointment letters to the 241 candidates as suggested in the alternative calculation.

6. Contention on behalf of the petitioner is that even if the aforesaid two vacancies are taken into consideration as only 68 candidates turned up for final verification, 173 posts admittedly even taking the stand of the State into consideration remained vacant due to non-joining. As such, a direction is prayed for consideration of the case of petitioner and issuance of appointment letter for joining on the post of Assistant. As appointment letters to other candidates were not being issued another writ application was preferred before this Court being C.W.J.C. No. 10627 of 2001 for a direction to the Respondents to issue appointment letter in favour of those candidates.

7. this Court disposed of the writ application by its order dated 10.9.2001 in the following words: "Considering the facts and circumstances of the case, I have no option but to direct the authorities to issue appointment letters to the petitioners and other eligible candidates for the post of assistants in the Secretariat."

8. The aforesaid order was challenged by the State by preferring L.P.A. No. 109 of 2002. The appeal was allowed and the order of single Judge was modified and taking into consideration the cadre bifurcated between the Bihar and the Jharkhand, Respondents were directed to appoint 2/3rd of 241 candidates as Lower Division Clerk (L.D.C.) in view of recommendation of fitment committee and implementation of central pay scale. Posting of Assistant became a promotional post and both the cadres of L.D.C. and Upper Division Clerk (U.D.C.) were merged and as the entry point was as L.D.C. the 2/3rd candidates out of 241 were required to be considered for appointment as L.D.C. Candidates aggrieved by the same preferred SLP before the Apex Court. The aforesaid SLP is still pending.

9. The State has also not controverted the aforesaid facts rather by filing counter affidavits and supplementary counter affidavit had brought all the facts including the report of fitment committee on record and it has been contended that after the bifurcation of the State into Bihar and Jharkhand the cadre strength of Assistant which was earlier 4547 was reduced to 2989 for Bihar and 1558 for Jharkhand. It was further contended that 1486 posts are sanctioned in the cadre of typist, Routine Clerk and Bill Clerk. Thus total strength in the Secretariat cadre including the assistants and clerk come to 4475 and due to report of the fitment committee as the strength of L.D.C, U.D.C. and assistant were divided in the ratio 1:1:1 and accordingly, the total cadre strength of Assistant, U.D.C. and L.D.C. has been earmarked as 1492, 1492 and 1491 respectively. It has further been contended that against 1492 cadre strength of assistant in the Secretariat and its attached offices, 1764 assistants were already working therefore, as there was no vacancy there was no question of appointment to the cadre of assistant.

10. From the third supplementary counter affidavit it would transpire that C.W.J.C. No. 10627 of 2001 was preferred by one Sanjiv Kumar, similarly situated candidate and the writ court directed for issuance of appointment letter within a period of fortnight but aforesaid order was challenged by filing L.P.A. No.

109 of 2002 and the Division Bench held that "As the writ petitioners were empanelled for their appointment as Assistant but now the entry point is the L.D.C, the State Government shall consider the case of empanelled candidates for their appointment to the post of L.D.C. and pass suitable orders within a period of one month from the date of this order."

11. In the counter affidavit it has further been contended that in view of direction of this Court fresh requisition has already been sent to Bihar Public Service Commission, calculating the vacancy in the State of Bihar for 161 posts and the B.P.S.C. in pursuance of this requisition has already recommended the names of 153 candidates and as no candidates in the scheduled caste category were available, no recommendation has been made on 8 remaining posts. It is further contended that the process of appointment of aforesaid persons was in process and was likely to be issued in near future.

12. In support of contention, the State counsel has relied upon a judgment in the case of Bihar State Electricity Board Vs. Suresh Prasad and Others, in which it has been held that candidates selected for appointment if do not join and in absence of any statutory rules to the contrary, the employer was not bound to offer the unfilled vacancies to the candidates next below the said candidates in the merit list. If further held that as far as waiting list is concerned, in absence of statutory rules to the contrary, the employer was not bound to prepare a waiting list in addition to the panel of selected candidates and to appoint the candidates in the waiting list in case the candidates on the panel do not join.

13. The aforesaid judgment has been relied upon to show that even if pursuant to order of this Court, appointment letters were issued and the candidates had not joined, the employer was not obliged to issue appointment letters to the other persons by asking for a recommendation from the B.P.S.C., as no vested right of the petitioner has been infringed.

14. When the aforesaid aspect was brought to the knowledge of Learned Counsel for the petitioner that matter has already been adjudicated by a Division Bench and SLP which is pending before the Supreme Court, no stay order has been granted and the order of Division Bench being binding on this Court, no order contrary thereto can be issued by this Court. It was argued that the only point which Learned Counsel for the petitioner was now raising, was that the Under Secretary of the Department One Ram Chandra Choudhary who was appointed in view of direction of the court has calculated vacancies, why his initial calculation was not accepted by the Secretary but his alternative calculation was accepted. The same was required to be gone into.

15. this Court feels that this is nothing but legal jugglery. Once this aspect has been considered by this Court rather allowed in favour of the petitioner in a writ filed by similarly situated candidate which was reversed and interfered by the L.P.A. Bench. The order of L.P.A. Bench is binding, till now not interfered by larger Bench or Supreme Court. this Court feels that once the cadres have been

merged, central pay scale has been introduced and the State of Bihar divided into Bihar and Jharkhand these intervening facts cannot be ignored while calculating the vacancies and as the entry point was not only L.D.C. they could have only been considered for the aforesaid post that too for the post which remained in the bifurcated State of Bihar. As such, as the posts have already been ordered to be filled up which in view of counter affidavit of the State process has already been initiated, recommendation of the B.P.S.C, received and appointment letters were being issued, this Court is not in a position to grant any further relief to the petitioner. The writ application fails and is accordingly, dismissed.