

(2009) 07 PAT CK 0107

In the Patna High Court

Case No : CWJC No"s. 10444, 12409, 12774 and 13122 of 2005

Shankar Singh and Others

APPELLANT

Vs

The State of Bihar and Others
 Krishna Manjhi and
Others Vs The State of Bihar, The Secretary, Personnel and
Administrative Reforms Department, Government of Bihar
and The Collector, Eastablishment
 Ashok Manjhi and
Others Vs The State of Bihar, The Commissioner, Saran
Division, The Collector cum District Magistrate (Chairman,
Dist. Establishment Committee) and The Deputy Collector

 Lal Babu Singh Vs The State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 — Section 4(6)

Citation : (2010) 1 PLJR 453 : (2009) 3 PLJR 950

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Namrata Mishra, A.K. Sharma and Archana Jha, Y.V. Giri, Raj Kishore Prasad and Tej Bahadur Roy, in C.W.J.C. No. 10444 of 2005, D.K. Sinha, A.K. Sharma and Harendra Pd. Singh, in C.W.J.C. Nos. 12409 and 13122 of 2005 and Jitendra Kr. Srivastava, in CWJC Nos. 12774 and 13363 of 2005, for the Appellant; Rajesh Kumar Singh, A.C. to AAG-2, for the Respondent

Judgement

V.N. Sinha, J.—Heard learned Counsel for the parties.

2. Petitioners in these writ applications as also interlocutory applicants had served as candidate peon/daily wagers in the Collectorate at Gopalganj or its attached offices or other government offices, including government schools and hospitals situate within the district of Gopalganj. They had submitted application for being considered for appointment on Class IV post in the light of the Advertisement dated 14.6.2001, as contained in Annexure-3 appended with C.W.J.C. No. 10444 of 2005. After consideration of the case of the applicants, a panel was prepared, which is dated 20.7.2004 and is contained in Annexure-5

appended with C.W.J.C. No. 10444 of 2005. In the light of the panel, Annexure-5, petitioners of C.W.J.C. Nos. 12409 and 13122 of 2005 have been issued with orders of appointment and those orders have been challenged by filing C.W.J.C. No. 10444 of 2005, as contained in Annexures-6 and 7 to the said writ case. It is contended that the appointment letter in the light of the panel, Annexure-5 has been issued taking into account the accumulated vacancies for the reserved classes, which is not permissible in the light of the contents of the advertisement, the advertisement was issued for preparing a panel considering the length of engagement as Candidate Peon/daily wager and there was hardly any occasion for issuing appointment orders by applying the Sub-section (6) of Section 4 of the Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991 (hereinafter referred to as the Act) and treating the available vacancies as accumulated vacancy for the reserved classes. Appreciating such submission, this Court, by passing interim order, stayed further appointment and in the light of the interim order passed by this Court, those who have been included in the orders, Annexures-6 and 7, were not allowed to join. Petitioners in C.W.J.C. No. 13122 and 12409 of 2005 have filed the writ application for direction to the State respondents to go ahead with the order of appointment, Annexures-6 and 7, as the panel, Annexure-5 and the appointment orders, Annexures-6 and 7 have been issued in compliance of the direction of the High Court in the M.J.C. application referred to in the advertisement, Annexure-3. Petitioners in C.W.J.C. No. 12774 and 13363 of 2005 have come to this Court with prayer to direct the authorities to reconsider their position in the panel, Annexure-5, as while including them in the panel, they have not been given benefit of entire length of engagement rendered by them as candidate peon/ daily wager and until their position in the panel is corrected, not to give effect to the appointment orders, Annexures - 6 and 7.

3. As the prayer made in C.W.J.C. Nos. 10444 of 2005, 12774 of 2005 and 13363 of 2005 run counter to the prayer made in C.W.J.C. Nos. 13122 of 2005 and 12409 of 2005, these matters have been heard together and the State respondents have filed counter affidavit and several supplementary counter affidavits. In paragraph 8 of the first supplementary counter affidavit filed in C.W.J.C. No. 10444 of 2005, the deponent has admitted that there has been mistake in preparing the panel as several candidates, who were over/underage and lacked the required qualification have been included in the panel. In paragraph 9 of the said supplementary counter affidavit, it was further admitted that the panel has been prepared contrary to the instructions of the Government contained in the resolution of the State, bearing No. 16441 dated 3.12.1980 as the persons, who had no knowledge of cycling and did not possess the minimum qualification and were over/underage on the cut off date, have been included in the panel.

4. It is relevant to point out that the resolution of the State, bearing No. 16441 dated 3.12.1980 empowers the Collector of the District to prepare the panel for

appointment on Class IV post in the Collectorate, attached offices and Government offices, including School(s)/Hospitals as also provides for the guidelines for such empanelment. In the light of the aforesaid admission of the authorities made in paragraph Nos. 8 and 9 of the supplementary counter affidavit, the Court ought to have disposed of the writ applications by setting aside the panel, Annexure-5 and the orders of appointment, Annexures- 6 and 7, but the matter was kept pending with liberty to the State respondents under order dated 23.4.2007, passed by Aftab Alam, J. as his Lordship then was in presence of counsel for I.A. No. 2517 of 2007 who was permitted to participate in the subsequent proceedings, to come out with fresh panel and the said panel is contained in Annexure-C to the 4th supplementary counter affidavit in which all those who are petitioners in these writ applications have been included, but the intervenors, namely, the applicants in I.A. Nos. 2517 of 2007, 1086 of 2008 and 4479 of 2009 have been left out, although the intervenors claim that they have also served the Collectorate, attached offices or the government offices in the capacity of candidate peon/daily wagers within the district of Gopalganj and ought to have been considered and included in the panel, Annexure-C.

5. Learned Counsel for the petitioners in C.W.J.C. Nos. 12409 of 2005 and 13122 of 2005, however, submitted that notwithstanding the admission of mistake in the first supplementary counter affidavit about the preparation of the panel, Annexure-5 and the appointment orders, Annexures-6 and 7, this Court should uphold the panel and the appointment orders, as the said panel and the appointment orders have been made/issued in compliance of the direction of this Court itself in the MJC application referred to in the advertisement, Annexure-3.

6. I regret not to accept such submission. After orders having been passed in the contempt application, the Collector of the district noticed mistake in the panel on the basis of which appointment orders, Annexures-6 and 7 have been issued, this Court should not allow the mistake to be perpetuated, accordingly, while setting aside the panel, Annexure-5 and the appointment orders, Annexures-6 and 7 as also the subsequent panel, Annexure-C, direct the Collector, Gopalganj to prepare fresh panel in the light of the advertisement, Annexure-3 from amongst those who were the applicants pursuant to Annexure-3 taking into account the length of engagement rendered by the applicants in the Collectorate, its attached offices, government offices, including, government schools and hospitals situate within the district of Gopalganj. While preparing the fresh panel, the Collector, Gopalganj shall allow all those who are included in the panel, Annexure-5, Annexure-C as also the interveners to put forth their case, if they are willing to satisfy the Collector, Gopalganj about the length of engagement rendered by them as candidate peon/ daily wager in the Collectorate, attached offices, Government offices, including Government School/Hospital situate within the district of Gopalganj. Having prepared the panel, the Collector, Gopalganj will make appointment in the Collectorate and attached offices on the basis of the roster finalized by him and recommend for appointment in the other government offices, including Government School and Hospital from the panel as per the

requisition furnished by the respective appointing authority, which shall be prepared considering the length of engagement in the light of this order. While preparing the panel, the Collector, Gopalganj shall grant the benefit of age relaxation for the period between the date of advertisement till the date of publication of the panel in the light of this order. While making appointment against the 158 vacancies notified in the advertisement, there is hardly any occasion for making appointment by applying Sub-section (6) of Section 4 of the Act as the appointment on those posts were never deferred on account of non-availability of suitable candidates. It was for administrative reasons that the appointments were deferred and delayed. In case of delay in appointment on account of administrative reasons, Sub-section (6) of Section 4 of the Act has no application, which applies only in case of non-availability of suitable candidates.

7. As the advertisement is about eight years old, it is directed that the panel in terms of this order be prepared as early as possible, in any case within three months from the date of receipt/production of a copy of this order and in the light of the panel, appointment/ recommendation letters be issued within the same time and be acted upon forthwith. These writ applications are, accordingly, disposed of.