
(2004) 10 PAT CK 0032

In the Patna High Court

Case No : CWJC No"s. 9609 and 10796 of 2003

Shardendu Bhushan and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Citation : (2004) 3 BLJR 2318 : (2004) 4 PLJR 871

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Nilu Agrawal, Rajendra Pd. Singh and Niranjana Kumar, in 9609 and Ganesh Pd. Singh, in 10796, for the Appellant; Jawahar Dhari Singh, for the Respondent

Judgement

R.N. Prasad, J.—In both the writ petitions, similar questions are involved hence they were heard together and are being disposed of by this common order.

2. The prayer in both the writ petitions is to issue direction to the respondents to appoint the petitioners on the post of Assistant Engineer (Civil) in Road Construction Department, Government of Bihar, Patna on the basis of the recommendation of the Bihar Public Commission dated 6th of January, 2003 as per the requisition made by letter dated 30.1.1999.

3. The case of the petitioner is that pursuant to the requisition dated 30.1.1999 of the Road Construction Department, Government of Bihar, Patna, the Bihar Public Service Commission published advertisement No. 25/99 in daily newspaper "Aaj" inviting applications from the eligible candidates for appointment of 129 Assistant Engineers (Civil) under the Road Construction Department, Government of Bihar. Pursuant to the said advertisement the eligible candidates submitted their applications. A preliminary examination was held on 3rd of September, 2000 and the result of the same was published in daily newspaper (Prabhat Khabar). The successful candidates in the preliminary test were allowed to appear in the Mains examination held in the month of October, 2001. The result of the mains examination was published and interview letters

were issued to the successful candidates of mains examination. They appeared for interview on the date fixed. On 17.11.2002 the final result was published in the daily newspaper (Dainik Jagaran). The BPSC vide letter No. 1023 dated 6.1.2003 sent recommendation of 127, candidates in order of merit from all categories to respondent No. 5, the Deputy Secretary, Road Construction Department, Government of Bihar for appointment on the post of Assistant Engineer (Civil) out of 129 vacancies as requisitioned. Though the recommendation was made by the BPSC the appointment was not made and as such the petitioners have moved this Court for issue of direction to the respondents for their appointment on the requisitioned post of Assistant Engineer (Civil).

4. The stand of the BPSC in its counter affidavit is that it has already sent recommendation of 127, candidates out of 129, vacancies for appointment on the post of Assistant Engineer. In the counter affidavit filed on behalf of respondent No. 3 it has been stated that Bihar Public Service Commission has recommended names of 127, candidates for appointment on the post of Assistant Engineer. The requisition sent by the Road Construction Department was on the basis of vacancies of united Bihar. Due to division of State of Bihar on 15.11.2000, the Personnel and Administrative Reforms Department has cleared the roster of 85 posts out of recommendation of 127, candidates. It is for the Road Construction Department to appoint the candidates on the basis of recommendation of the BPSC. In the counter affidavit filed on behalf of respondent Nos. 4 and 5 it has been stated that the State of Bihar has been bifurcated and a separate State, namely, State of Jharkhand has been created on 15.11.2000, and as such, the Road Construction Department sought clarification on two points i.e. whether out of 127 candidates recommended by the BPSC only 85 (2/3rd) are to be appointed and also whether old or new Reservation policy will apply. In the supplementary counter affidavit filed on behalf of respondent Nos. 4 and 5 it has been stated that Personnel and Administrative Reforms Department has clarified that appointment will be made only against the vacancies available for post divided Bihar (Uttarvarti Bihar) from the recommendation of the Bihar Public Service Commission made pursuant to the requisition on the basis of reservation policy prevalent at the time of making requisition. Letter No. 1552(S) dated 25.2.2004 has also been sent to the BPSC for revalidation of the previous recommendation for further six months. In supplementary counter affidavit filed on behalf of the Road Construction Department it has been admitted that the Commission has revalidated the recommendation.

5. On 14.5.2004 the Secretary of the Road Construction Department, Government of Bihar was present in the Court. On query he did not say that appointment would not be made. However, he pointed out that according to the instruction of the Home (Special) Department, Government of Bihar, the appointment would be made only on 85 posts out of 127, recommended candidates as during the process of selection the State of Bihar was bifurcated on

15.11.2000 and a new State of Jharkhand was created, and as such, only two-third vacancies can be filled up. Counsel. for the petitioner however, submitted that about 200 vacancies for appointment of Assistant Engineers are available and as such, the rest of the candidates whose names have been recommended can also be accommodated against the existing vacancies.

6. The Court accordingly, directed the Secretary to proceed with the appointment of 85, recommended candidates on the post of Assistant Engineer immediately, with respect to rest of the recommended candidates direction was given to verify the vacancy of the Assistant Engineer (Civil) and file an affidavit stating the existing vacancies for appointment. The Court also passed order that the BPSC has already recommended the names of candidates and also revalidated the recommendation, now there shall be no need of any fresh revalidation of the recommendation in future and the respondents shall proceed with the appointment on the basis of recommendation already made.

7. A supplementary counter affidavit was filed on behalf of the respondent Nos. 4 and 5 pursuant to the direction as indicated above, stating therein that after roster clearance made by the Department of Personnel and Administrative Reforms on the basis of the reservation policy prevalent at the time of making requisition a list of 82, candidates was prepared, ST candidates are not available for appointment, on the advise of the Personnel and Administrative Reforms Department, a notification No. 5310(s), dated 31.7.2004 appointing 82 candidates on the post of Assistant Engineer has been issued, Annexure-N to the supplementary counter affidavit and in compliance of the direction of the Court as indicated above it has been stated in the supplementary counter affidavit that 156 posts of Assistant Engineer are vacant in the Road Construction Department, 42 posts in Water Resources Department, 57 posts in Public Health Engineering Department and 91 posts in Rural Engineering Organisation are vacant which are earmarked for advertisement No. 128/1996 for which recommendation has already been received in the Department.

8. Now the position emerges that requisition was made on 30.1.99 for appointment of 129, Assistant Engineers (Civil), advertisement was issued and the recommendation was made by the BPSC for appointment of only 127, candidates against the requisition for 129, Assistant Engineers (Civil). Out of 127, recommended candidates, the notification has already been issued on 31.7.2004 for appointment of 82 recommended candidates Annexure N to supplementary counter affidavit.

9. In respect of the remaining candidates of the recommendation made by the BPSC no step has been taken on the ground that during the pendency of the selection process Bihar Re-organisation Act, 2000 came into existence and out of the State of Bihar a new State Jharkhand was created on 15.11.2000. One-third vacancy out of the requisition and the recommendation of the BPSC has to be adjusted in the State of Jharkhand. In this regard it would be pertinent to mention that requisition was made for appointment of 129 Assistant Engineers

on 30.1.99 and the process of selection i.e. the Preliminary Examination was held on 3rd of September, 2000 i.e. before bifurcation of the State of Bihar. In the case of *Surendra Prasad v. State of Bihar and Ors.* 2002(1) PUR 519 a Bench of this Court held that recommendation of the BPSC has no binding effect in the State of Jharkhand and therefore no direction can be issued for appointment of the recommended candidates between the two nor can any direction be issued for allocation of the recommendees to the State of Jharkhand merely on the ground that when the advertisement was made and the written test etc. were held the State was one and the vacancies also comprised of the posts now allocated to the Jharkhand State. Therefore it is evident that the recommendation for appointment by the BPSC pursuant to the requisition would not be binding to the State of Jharkhand.

10. However, pursuant to the direction of the Court, the respondent Nos. 4 and 5 filed a supplementary affidavit in which it has been admitted that 156 posts of Assistant Engineer in Road Construction Department, 42 posts in Water Resources Department and 51, posts in the Public Health Engineering Department are vacant for appointment. It is also an admitted position that the remaining candidates have faced the rigors of test and thereafter the BPSC recommended their names for appointment, therefore, it cannot be said that they are meritless or no process of selection was made. The recommendation made by the BPSC is dated 6.1.2003, Annexure-10 wherein nothing has been stated that it will lapse by efflux of time. Moreover this Court has also passed order that there shall be no need of revalidation of the recommendation made by the BPSC. Thus, the recommendation is valid for appointment. In the case of *Union of India and Ors. v. Ishwar Singh Khatri and Ors.* 1992 (3) SCC 84, the Apex Court considered a similar case in which the Delhi Administration notified 654 vacancies of trained graduate. After process of selection of panel of 1492 candidates was prepared and it was mentioned that appointment will be made from the select list till the last candidate is appointed and out of the aforesaid panel 527 and 127. candidates were appointed and with respect to the rest no action was taken and as such, the aggrieved persons moved the Central Administrative Tribunal and the Central Administrative Tribunal directed to appoint the rest of the empanelled candidates. The said order of the tribunal was challenged before the Apex Court and the Apex Court held that it cannot be said that anticipated vacancies arising upto the preparation of the panels were not taken into consideration by the Selection Board while preparing the panels for recruitment. The Tribunal after examining the entire matter has concluded that the Selection Board headed by the Director of Education or the Additional Director on a few occasions was aware of the number of vacancies then available for finalisation of the panels of selected candidates and accordingly, the order of the Tribunal was upheld and direction was given to appoint the rest of the empanelled candidates. Therefore, it is evident that the requisition was made for appointment of only 654 candidates but the panel was prepared of 492, candidates, some of them were appointed and with respect to the rest direction

was issued for appointment by the Apex Court.

11. In the instant case requisition was made for 129, candidates, the recommendation was made by the BPSC only for 127 candidates out of which 82, candidates have already been appointed but the admitted fact is that even after bifurcation of the State of Bihar more than 200 posts are vacant for appointment. Thus, in the circumstances, the State Government cannot deny the appointment of the rest of the candidates, who are much less than the vacancies existing, on the ground that after bifurcation of the State rest of the candidates cannot be appointed in the State of Bihar.

12. Thus, on consideration as discussed above, both the writ petitions are disposed of. The respondents/respondent Nos. 4 and 5 are directed to take step for appointment of the remaining 45 candidates recommended by the BPSC on the post of Assistant Engineer. The entire process of appointment must be completed within a period of three months from the date of receipt/production of copy of this order.