

(2007) 07 PAT CK 0067
In the Patna High Court
Case No : CWJC No. 1027 of 2000

Shiv Dayal Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-07-2007

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2007) 4 PLJR 344

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—These writ applications have been placed for analogous hearing in pursuance of the order dated 29.11.2006, passed in Civil Review No. 3 of 2005. Question involved in all these writ applications relate to appointment on Class IV posts in the Collectorate of Gaya and preparation of panel of daily wagers for such appointment.

2. Initially C.W.J.C. No. 1027 of 2000 and C.W.J.C. No. 11940 of 2000 were filed challenging inclusion of private respondents named in the panel of daily wager prepared for regularisation/appointment on Class IV posts, as appointment of private respondents was to be made on compassionate ground.

3. Petitioners case was that the Circular No. 16441 dated 3.12.1980 issued by the Department of Personnel and Administrative Reforms Government of Bihar provides that all appointments on Class-IV would be done from the panel prepared for each district separately of all aspiring individuals and who are selected for empanelment. The life of such panel would be one year and after the lapse of the year fresh panel would be prepared containing names of all those candidates who were in the list of previous year but could not be appointed as such eligible for appointment. Plea of the petitioners in these writ applications were that the appointment on compassionate ground cannot be made on the

post meant for the persons who are in the panel.

4. While these two writ applications were pending C.W.J.C. No. 5084 of 2003, C.W.J.C. No. 9042 of 2003 and C.W.J.C. No. 13292 of 2003 were filed challenging the panel of daily wagers prepared in the year 2000-2001, for appointment on Class IV posts in the district of Gaya. Grievance of the petitioners in these three writ applications were that in violation of Circulars of Personnel Department weightage has been denied to panelist of earlier years. Panel for selection has been prepared in violation of earlier direction of this Court relating to preparation of panel. These three writ applications were disposed of by order dated 1.11.2004. The order was consensus order as the counsel appearing for the State also admitted that necessary and required precaution needed to be followed have not been followed. Accordingly a direction was issued to the District Magistrate, Gaya to make a fresh advertisement within" one month from the date of receipt/production of the order and prepare a fresh panel strictly observing the circular and guidelines provided by the State of Bihar and as interpreted by this Court when such circular has come for consideration before this Court. Three months time was allowed for preparing a fresh panel. After disposal of all these writ applications some of the persons who were empanelled in the panel prepared for appointment on Class IV posts as well as writ petitioners of C.W.J.C. No. 1027 of 2000 preferred L.P.A. No. 1226 of 2004 and L.P.A. No. 62 of 2005. These two L.P.As. were disposed of in view of the judgment reported in AIR 1963 S.C. 1909 as the appellants were not party in the writ applications. While disposing of the L.P.A. it was observed that proper course for appellants will be either to file application for review or a fresh writ petition. In the light of such observation Civil Review No. 3 of 2005 was preferred by Manoj Kumar Verma and others. Civil review application was allowed and common order dated 1.11.2004, disposing of C.W.J.C. No. 9042 of 2003, C.W.J.C. No 13292 of 2003 and C.W.J.C. No. 5084 of 2003 was recalled. Panel of 2000-2001 was restored and a direction was issued that till disposal of the writ application no appointment will be made on the basis of this panel, writ applications were directed to be re-heard. The review petitioners were directed to file separate writ applications for adjudication of their own case which was to be taken up alongwith the aforesaid three writ applications. In this background all these writ applications have been placed for analogous fresh hearing and for disposal by a common order.

C.W.J.C. No. 5084 of 2003

5. Writ petitioner of C.W.J.C. No. 5084 of 2003 initially filed application for a direction to prepare the panel as per direction of the High. Court in C.W.J.C. No. 8011 of 2000.

6. During the pendency of the writ application panel was prepared and by filing I.A. application the panel was challenged as petitioner was not placed at correct serial in panel prepared in 2003, In this panel his name is at SI. No. 106 of B.C. category I.

C.W.J.C. NO. 9042 of 2003

7. Petitioners of C.W.J.C. No. 9042 of 2003 were working against Class IV posts as daily wagers. They filed this application for a direction to the respondents authorities to implement the panel prepared by the Collector, Gaya in the year 1999-2000 for fourth grade daily wages employees and to consider the case of the petitioners for regular appointment from panel prepared in the year 1999-2000.

8. Petitioners case was that by order dated 25.7.2003 the District Collector, Gaya has taken away their available right for maintaining the seniority in the panel. Petitioners were not included in the panel of 2000-2001 ignoring recommendations of the selection committee though they are entitled for weightage/preference on the basis of the recommendation of the selection committee.

C.W.J.C. No. 13292 of 2003

9. Petitioner of C.W.J.C. No. 13292 of 2003 had earlier filed C.W.J.C. No. 8011 of 2000 complaining that in the panel of 1999-2000 their names have not been empanelled though they were empanelled in 1995-96 list. Daily wagers who were working and empanelled in 1995-96 were not given weightage. Petitioners case was that in view of Article 16 of the Constitution of India a policy was envisaged that even in case of appointment on Class IV posts equal opportunity should be given to all eligible and interested persons by advertising the post. In compliance of this policy first such panel of daily wagers was prepared in the year 1988-89 in which 238 persons were empanelled and out of that 227 were appointed. Panelist of from 1988-89 panel were left, weightage needed to be given to them as per the circular No. 16441 dated 3.12.1980 of the Department of Personnel and Administrative Reforms was ignored. Second panel was prepared in the year 1995-96 in which 282 persons were empanelled, in which 138 were appointed and 144 persons were carried over to the next panel. 3rd panel was prepared in the year 1996-97 of 259 persons. 124 persons were carried forward from 1995-96 panel. In 1997-98 and 1998-99 no panel was prepared. In 1999-2000 an invalid panel was prepared which later on became genesis of all dispute. This panel of 228 persons was challenged in C.W.J.C. No. 8011 of 2000 which was disposed of by order dated 28.8.2000. Panel was quashed giving some guidelines for preparation of fresh panel. In compliance of the direction of this Court another panel was prepared in 2000-2001, which has been challenged in the present writ applications. Petitioners have admitted that the panel was prepared after publishing advertisement, calling names from employment exchange as provided in circular No. 16441 dated 3.12.1980. Their only grievance is that weightage needed to be given to earlier panelist has not been given violating circular No. 16441 dated 3.12.1980.

C.W.J.C. No. 513 of 2007

10. C.W.J.C. No. 513 of 2007 has been filed by the review petitioners as per the

direction of the Court. Petitioners are the persons who claim their inclusion in the selection list of Class IV employees in the district of Gaya prepared in pursuance of the advertisement dated 8.12.1990. Their case is that on account of analogous order dated 1.11.2004 passed in three writ applications their interest has adversely been effected.

11. Petitioners case is that the panel has been prepared in the teeth of the direction in C.W.J.C. No. 8011 of 2000. Petitioners are challenging only part of the panel starting from SI. No. 1 to 223. Empanelment of candidates at serial No. 1 to 223 has been challenged but rest of the panel according to petitioners duly been prepared and should survive.

C.W.J.C. No. 4486 of 2007

12. Petitioners in this case in response to advertisement No. 8 of 2000 had applied for their empanelment, but were not empanelled. They raised their objection and filed C.W.J.C. No. 10652 of 2003 but by the time their case was taken up for hearing by order dated 1.11.2004 three writ applications were disposed of and the panel of 2000-2001 was quashed, petitioners were directed to withdraw their applications. Petitioners thereafter applied for inclusion of their names in the panel which was not considered and they have filed fresh writ applications in the light of the order passed in review application and direction for revival of other writ applications. Petitioners prayer is that their names be included in the panel.

13. Counter affidavits have been filed in almost all the writ applications but latest counter affidavit has been filed in C.W.J.C. No. 513 of 2007. This counter affidavit is being considered for disposal of all the writ applications.

14. From the counter affidavit it is apparent that on account of objection raised by one or other group of persons there has not been any appointment on Class IV posts through the panel after 1997. The last appointment was made in the year 1997 through panel of 1996-97 consisting of 259 panelists.

15. Case of the respondents is that 223 panelists of 1996 panel were revalidated in the light of the Government circular contained in letter ho. 452 dated 26.5.1987, letter No. 342 dated 19.11.1990 as well as in compliance of the order passed in C.W.J.C. No. 9087 of 1992 persons at serial Nos. 1 to 223 are awaiting since 1989-90. The District Magistrate, Gaya in capacity of the Chairman of District Selection Committee for appointment to the post of Class IV revised the panel of 1998-99 in teems of the Government circular contained in letter No. 452 dated 26.5.1981 and letter No. 342 dated 19.12.90. Notices were issued to the earlier empanelled candidates for submitting required documents/informations by Notices were given to only such persons who were empanelled and not any one else. In the meantime C.W.J.C. No. 8011 of 2000 was filed making grievance that the writ petitioners name have not been empanelled though their names were in the panel prepared earlier prior to 1995-96. By that time for preparation of 1999-2000 panel application has already been called. The writ application was

disposed of by order dated 29.8.2000 directing the respondents not to make any appointment against Class IV posts without any advertisement in the newspaper and without following the procedure laid down by the State. In compliance of this direction advertisement bearing No. 18 of 2000 was published. Some of the old panelist of 1999-2000 have also filed C.W.J.C. No. 1027 of 2007 and C.W.J.C. No. 11940 of 2003. Petitioners have challenged the contents of advertisement No. 18 of 2000 and their grievance is in respect of age limit. In pursuance of the advertisement No. 18 of 2000 draft panel list of 750 candidates was published for the year 2000-2001 for Class IV employment in the district of Gaya. This draft panel was approved by the District Selection Committee. It was decided by the Selection Committee to accommodate applicants against advertisement No. 18 of 2000, 223 panelist were also decided to be accommodated in the light of the Government circular No. 452 dated 26.5.1987 and 342 dated 19.11.1990 as well as the orders passed by this court. This panel of 2000-2001 was challenged by filing three writ applications which were disposed of by order dated 1.11.2004 and direction was issued for preparation of fresh panel after advertisement.

16. Counsel for the State has submitted that the writ petitioners are representing three different groups. One who are working as daily wagers for several years and are empanelled. Second who are casual workers, but were not empanelled till 1999. 3rd panelist who are much below in the list. It has also been submitted that in compliance of order dated 1.11.2004 passed in analogous writ applications fresh Advertisement No. 1/04 has been published on 14.1.2005..

17. What I find that a very limited question is left for consideration i.e. whether weight should be given to empanelled candidates of previous panel who could not be appointed by giving relaxation on age upto 5 years as provided under Clause 3 of Government circular No. 342 dated 19.11.1990, Circular No. 16441" dated 3.12.1980, Letter No. 452 dated 26.5.1987 and Letter No. 342 dated 19.11.1990 issued by the Department of Personnel and Administrative Reforms are the guidelines for all appointments on Class IV posts. Subsequently the Deputy Secretary, Department of Personnel and Administrative Reforms vide letter No. 6771 dated 19.1.2000, reiterated that the life of such panel is valid for one year but in case any empanelist is not appointed then the panel of such left over candidates can be validated and carried forward for next year panel. In the new panel panelist of earlier panel as well as panelists in waiting lists of earlier panel are also needed to be impleaded. Appointment on Class IV posts is to be made in order of seniority from such panel. Persons whose names were in the panel of 1995-96 or in the subsequent panel if they could not be appointed, in such case as per the circulars of the Government their list is to be revalidated and included in the next panel giving weightage/seniority. If the panel is prepared by publishing advertisement calling names from employment exchange inviting applications and weightage is to be given to persons whose names were there in the earlier panel. It cannot be said that there is any illegality or irregularity if panelists of earlier panel are included in the new panel. Accordingly the prayer of the petitioner in C.W.J.C. No. 513 of 2007 cannot be entertained as

there is nothing which is illegal and irregular. The panel of 2000-2001 does not need to be quashed partially but should go in totality. The 2001-2002 panel which was under challenge in the earlier three writ applications have lost their force on account of expiry of time as well as interference of this Court. As informed by the counsel for the petitioners in different writ applications as well as the counsel appearing for the State that the advertisement No. 1/2004 for preparation of 2004-05 panel has already been published and the application have already been invited and submitted.

18. Accordingly direction is being issued to the respondent District Magistrate, Gaya to proceed in pursuance of the advertisement, already published and only relaxation should be given to such candidates who could not file their applications on account of pendency of the writ applications. Notice/corrigendum should be published extending the time for submitting applications. The process for preparation of panel should be completed within two months from the last date fixed of submitting applications. In case of preparation of panel the appointments against existing vacancies in order of seniority should be made within further one months time from the date of preparation of the panel. I have also been informed that some of the petitioners have become overage, they should be given benefit of relaxation on age up to 5 years as provided under clause 3 of Govt. Circular No. 342 dated 19.11.90. Accordingly all these writ applications are disposed of. The interlocutory application filed in these writ applications are rejected as infructuous.