

(2019) 08 PAT CK 0019

In the Patna High Court

Case No : Miscellaneous Jurisdiction Case No. 1035, 3471 Of 2012, 2178, 3397, 3511, 3677, 3856, 3860, 3968 Of 2016, 187, 252, 385, 1663, 1900, 2053, 2140, 2208, 2269, 2390, 531, 2901, 3166, 1256 Of 2017, 206, 214, 369, 521, 601, 680, 691, 824, 1293, 1479, 1620, 163

Shiv Pujan Sahay And Ors

APPELLANT

Vs

State Of Bihar Through Sri Navin Kumar Chief Secretary And Ors

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Citation : (2019) 08 PAT CK 0019

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Rajeev Ranjan Prasad, J

Bench : Division Bench

Advocate : Suman Kumar, Rajiv Roy, Pramod Mishra, Prahlad Kr. Bhagat, Suresh Prasad Bhakta, M.K. Ambastha, Rajive Ranjan Singh, Harish Kumar, Amrendra Kumar Jha, Pushkar Narain Shahi, Sanjay Sinha, Ashutosh Ranjan Pandey

Final Decision : Disposed Off

Judgement

Category-I cases are those in which the petitioners had admittedly moved this Court on or before the cut-off date i.e. 26.02.2016. Their cases being covered by the judgment of the Hon'ble Supreme Court in Special Leave to Appeal (c) No. 32079 of 2015 decided on 26.02.2016, they have made out a case for consideration.

As regards one writ application being C.W.J.C. No. 8216 of 2018 listed today under Category-II cases, learned counsel for the petitioners has placed before us a copy of the status of C.W.J.C. No. 6813 of 2016 obtained from the High Court Website showing that Panna Lal Yadav and others had moved this Court on 23rd February, 2016 in C.W.J.C. No. 6813 of 2016, therefore, their cases should be brought to the category-I cases.

Learned Advocate General representing the State agrees to this after looking at the status of earlier writ petition. Their claim shall be considered treating them in

Category-I and decision in respect of them shall be notified within 90 days from today.

Heard learned counsel for the petitioners, learned Advocate General for the State with other learned Government Advocates. This order will dispose of the Contempt Applications, one writ petition being C.W.J.C. No. 8216 of 2018 and M.J.C No. 1678 of 2018 and M.J.C. No. 1634 of 2018 which are either falling under Category-I cases or have been brought herein. This order will render L.P.A. No. 803 of 2019 infructuous.

We have heard the learned counsel for the parties at length. In ultimate analysis what has transpired is that the State has considered the cases of all the petitioners of contempt applications and is going to absorb all those persons who have been found fit for appointment from amongst the petitioners of these contempt cases.

It has been agreed by learned Advocate General that the judgment of the Hon'ble Supreme Court in Special Leave to Appeal (c) No. 32079 of 2015 lastly came on 26.02.2016. Therefore, within five years from the said date the State would be obliged to appoint those who have been found fit for appointment. We have been informed that recommendations in respect of some of the petitioners have already been made and as regards others who have been found fit for absorption the recommendation is likely to be made as early as vacancies are available but it will be before completion of 5 years. It has been agreed that in the matter of all these appointments, the date of birth category-wise of the candidate shall be the criteria and the elder in age will get precedence over the younger. It has been informed that a waiting-list of the candidates have already been prepared on the basis of the date of birth, category-wise, i.e. separate list for General/BC/EBC/SC/ST and the appointment will be made strictly as per the said list. In course of argument, it has also been transpired that the matter is being monitored at the level of the Chief Secretary and all the District Magistrates in different districts and departments of the State have been directed to furnish the vacancy position in their respective districts and department(s) so that maximum absorption could be made within the prescribed period from amongst the candidates who are there in the waiting-list.

We have requested the learned Advocate General to ensure that the vacancy position is furnished by the District Magistrates and the departments every month and steps be taken to fill up those vacancies immediately thereafter and preferably within a month from the date of the vacancy being available with the Government. We have been assured that the District Magistrates and the concerned departments will be asked to prepare a list of vacancies taking note of the incumbents who are likely to retire within next 2-3 months and that the vacancy position will be made available to the Government to ensure that the absorptions of these candidates are not delayed. We reiterate that in any case the candidates who have been found fit for appointment must get absorbed within the timeline of five years with effect from 26.02.2016.

Learned counsel for some of the petitioners have raised a grievance that the Government has rejected some of the petitioners on irrelevant considerations. It is not in dispute that the case of the petitioners in all those contempt applications have been considered by the Government. Some of the petitioners have been found fit for recommendation and they have been accordingly recommended, whereas, some of them are likely to be recommended for appointment immediately after the vacancy is available, still there are some petitioners who have not been found fit for appointment for various reasons which have been indicated in the chart produced before us as Annexure-1 to the second supplementary affidavit filed on behalf of the State. There are reasons recorded against the particular case number as to why some of the petitioners of the said case could not be recommended.

Learned Advocate General has informed us that the reason shown for rejection of the candidature of some of the petitioners are the same and one which have been notified on the website of the district concerned. It is his submission, thus, that those who have not been found fit for appointment have been provided with the reasons for the same and if they are aggrieved by those reasons, it is always open for them to either challenge the same or to approach the competent authority to examine their respective case(s). In fact, the learned Advocate General has submitted before us that in order to facilitate an early disposal of all such objections, he would propose to constitute a Committee which would examine the objections giving an opportunity to the persons concerned and shall take a decision thereon within a period of 90 days from the date of the filing of the objection. However, such objections as one time measure must be filed within 45 days from today. This will apply to the petitioners who are falling within the cases in Category-I and their names have not been found fit for recommendation.

We, therefore, grant them liberty to file their objection within 45 days from today which will be considered by the Committee and an appropriate decision will be taken thereon within 90 days thereafter.

The learned Advocate General has informed us that in fact the second committee which has rejected the candidature of these persons would be available to reconsider the matter taking note of the objections and shall pass an appropriate order as indicated hereinabove. In M.J.C. No. 1678 of 2018 and 1634 of 2018 learned counsel for the petitioners have shown that the petitioners had filed intervention application in the Special Leave Petition before the Hon'ble Supreme Court before the cut off date. Hence, this Court finds that learned counsel representing the petitioners in M.J.C. Nos. 1678 of 2018 and 1634 of 2018 have made out a case for consideration under Category-I cases as such these two cases also stand transferred from Category-III to Category-I cases. The claim of the petitioners in both the contempt matters shall be examined by the Committee and a decision thereon be notified within 90 days from today. C.W.J.C. No. 6540 of 2016 which has been brought in Category I shall also be

considered in similar manner, however, a separate order is being passed in C.W.J.C. No. 6540 of 2016 and 6 other contempt matters in terms of this order.

All the applications stand disposed of accordingly.