

(1992) 08 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4110 of 1991

Smt. Urmila Kumari

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 19-08-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1993) 1 PLJR 226

Hon'ble Judges : U.P. Singh, J;Aftab Alam, J

Bench : Division Bench

Advocate : S.J. Mukhopadhyaya, Shivendra Kishore and Ambar Nath Banerjee, for the Appellant; P.K. Shahi for State, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—This writ application is directed against the order of the Bihar Public Service Commission dated 10th April, 1991, by which respondent no. 3 was recommended for appointment against one of the posts of Parabhilekhalpal/Sahayak Parabhilekhalpal/Research Assistant in the scale of pay of Rs. 880-1510/-. The petitioner claims that she should have been recommended for the said post reserved for the Backward category person since she was the only eligible person for being appointed on the said Class III post of Parabhilekhalpal/Sahayak Parabhilekhalpal/Research Assistant. On the request made by the State of Bihar for sending the names of eligible candidates for filling up the vacant posts in the Cabinet Secretariat and Coordination Department, the Bihar Public Service Commission advertised on 22.5.1990 calling applications for number of posts, including the vacant posts of Parabhilekhalpal/Sahayak Parabhilekhalpal/Research Assistant. It was mentioned that for the aforesaid posts three reserved posts were available, out of which, one post was to be filled up from amongst Backward category person (Backward Category II). The only qualification one required was a Degree in M. A. in Modern Indian History, with one or more papers, and with at least 2nd Division of marks. The petitioner being an eligible

candidate applied for the said post in pursuance of the said advertisement dated 28.5.1990.

2. The petitioner took part in the examination for the Master's Degree in History in the year 1986 from the Magadh University, Gaya, and the examination was held in the month of December, 1987. The result was published in September-October, 1988, and, on 4.10.1988, the petitioner obtained the marks-sheet securing 407 total marks.

3. It may be stated that, in accordance with the provision, the Magadh University allows the candidate to appear in a number of papers, maximum of 3 papers even after passing, of the M. A. Examination. After such appearance in 3 papers, if a person improves the marks, the same is taken into consideration and the original marks-sheet is substituted with the improved marks of different papers up to three papers and, if a person fails to improve the marks in a particular paper, then the marks obtained in the original marks-sheet continues to remain the same in respect of such paper.

4. The petitioner decided to improve her marks in three papers and she appeared in M. A. Examination 1987 batch in the year 1987 in three papers. She improved marks in two out of three papers and in Paper II she improved and secured 47 marks in place of 37 marks earlier obtained by her, Likewise in the 3rd Paper, she improved and secured 50 marks in place of 48 marks obtained earlier. The improved marks obtained by her by a total of 419 marks in place of 407 originally obtained by her and the substituted marks were provided to her by the mark-sheet on 5.10.1990 (Annexure 3).

5. It may be noticed that the advertisement in question had been published on 20.5.1990, prior to the issuance of the aforesaid mark-sheet dated 5.10.1990. Therefore, the substituted marks-sheet had not been provided to the petitioner before the advertisement was published. For this reason, the petitioner had mentioned, while making application for appointment, that she had obtained 2nd Class in M.A. examination and attached only the first marks-sheet of 1986 M.A. examination dated 4.10.1988. The petitioner was called to appear at the interview on 9.4.1990 at 9. A. M. with all relevant documents, including the marks-sheet of M. A. 1986 examination. She appeared before the Bihar Public Service Commission and produced the original marks-sheet of M. A. 1986 examination as also the revised marks-sheet dated 5.10.1990 along with other documents, such as, original marks-sheet of B. A. (Honours) Examination; B. A. Examination and Matriculation Examination. Just the next day on 10.4.1991, the impugned letter was issued recommending to respondent no. 3 for her appointment against such reserved post for Backward Category and soon thereafter on 11.4.1991 the petitioners filed a representation before the Bihar Public Service Commission requesting them to calculate the marks on the basis of the revised M. A. History Examination marks-sheet dated 5.10.1990 wherein she had secured 419 marks and not 407 marks as indicated in the first marks-sheet. She learnt the reasons for not recommending her when she was awarded

46 marks/points towards the educational qualification and 35 marks/points towards the interview, thus, securing in total 81 marks. Respondent no. 3 was awarded 46 marks for educational qualification and 35 marks for interview, also securing total 81 marks. But, on the ground of age, respondent no. 3 was recommended. It was alleged by the petitioner that she was provided 46 marks/points towards the educational qualification only on the basis of the unrevised marks and the Public Service Commission had not awarded any marks to her on the basis of the revised marks-sheet in which she had obtained 419 marks out of 800. Thus, the Bihar Public Service Commission illegally awarded marks to her on the basis of the unrevised marks-sheet and respondent no. 3 was arbitrarily recommended. It has been affirmatively asserted by petitioner that, if the marks would have been calculated in her favour on the basis of the revised marks-sheet and 35 marks as obtained by her in the interview would have been added to the same, the petitioner would have been provided a total by 82 marks and not 31 marks and thus, the position of the petitioner would have been above respondent DO. 3 in the merit list. All these facts were pointed out in the representation filed just the very next day on 11. 4.1991 and a request was made that the Commission should calculate the marks of the petitioner on the basis of the revised marks-sheet. Both marks-sheets were attached along with the representation. A subsequent reminder was also sent to the Chairman of the Bihar Public Service Commission for correction of the marks but no action was taken. It was thus, contended that non-consideration of the marks obtained by her on the basis of the revised marks of M. A. 1986 examination, was an arbitrary action on the part of the Bihar Public Service Commission violative of Articles 14 and 16 of the Constitution. Awarding marks towards the educational qualification on the basis of unrevised marks-sheets, the revised marks-sheet had been made available to the Commission at the time of the interview, is arbitrary and discriminatory. A categorical assertion has been made that the petitioner has been deprived of the revised marks because of mala fide action on the part of one of the high officials of the Bihar Public Service Commission who supported the case of respondent no. 3 since She is the wife of the personal Assistant of the Chief Minister of Bihar.

6. An officer on special duty in the office of the Bihar Public Service Commission has sworn the counter-affidavit on behalf of the Commission stating that the petitioner did not mention the fact in her application that, in accordance with the provision or the Magadh University for improvement in the percentage of marks of M. A. examination, she had appeared for the second time in the M. A. History examination. It was alleged that the petitioner did not produce the revised marks-sheet before the Interview Board and the Commission had no knowledge about it till the date of the interview. The stand taken was that at the time of the interview she only produced the original marks-sheet which is manifest from the evaluated interview sheet and it does not mention that she had submitted the revised marks-sheet. As per the existing norms, respondent no. 3 being older in age than the petitioner got preference in recommendation, since both had

secured one and the same total marks towards the educational qualification and 35 marks/points in the interview. The petitioner's date of birth as pointed out is 15.2.1963 and that of respondent no. 3 is 24.11.1962. It is pointed out in the counter-affidavit that her representation was rejected on two grounds :?

(a) Since she did not submit the revised marks-sheet at the time of the interview, her revised 419 marks could not be taken into account and only the original marks 407 was taken into account ; and

(b) She represented on 11.4.1991 when the recommendation had been forwarded on 10.4.1991.

7. On a consideration of the facts emerging from the application, counter-affidavit and the reply thereto, there is no denying the fact that the petitioner has secured higher marks than respondent no. 3. The admitted position is that, in accordance with the advertisement, a candidate was required to state his qualification in the application form and there was no requirement for stating the percentage of marks obtained by such person in any examination, including M. A. examination. The division which the candidate secured was required to be written in the application form. Thus, obviously, the question of mentioning the improvement of percentage obtained by such candidate in the revised examination was not required to be stated in the application form. The original marks-sheet obtained by the candidate was attached along with the application form. There is further no dispute on fact that respondent no. 3 had also produced revised marks obtained by her at the time of the interview. The petitioner also claims to have produced the revised marks-sheet on the date of the interview before the Selection Board of the Bihar Public Service Commission. There is no dispute on fact that the revised marks-sheet had been obtained later after the submission of the application form and it had been obtained prior to the holding of the interview. In this situation, it is inconceivable that the petitioner having obtained the revised marks-sheet prior to the holding of the interview, would not produce it before the Selection Board which was for her own benefit. Therefore, the categorical assertion of the petitioner that she did produce the revised marks-sheet before the Selection Board at the time of interview cannot be lightly brushed aside unless the contrary is proved. Undoubtedly, the revised marks-sheet produced by respondent no. 3 was taken into account and the petitioner has alleged that, while taking into account the revised marks-sheet of respondent no. 3, the Bihar Public Service Commission quite arbitrarily and illegally did not take into account such revised marks-sheet of the petitioner which is discriminatory and arbitrary.

8. The petitioner has alleged that, in order to give advantage to respondent no. 3, because of high political approach, it was falsely alleged that the revised marks-sheet was not produced by the petitioner at the time of interview. It would again not be possible to accept that, at the time of interview, while the petitioner produced other certificates and marks-sheets having lesser marks, she would not have produced the revised marks-sheet. In these circumstances, we,

therefore, directed the Bihar Public Service Commission to produce the Register and/or any other paper in order to establish the nature of papers and documents produced by each candidate, on the date of interview, because, if such record is not maintained by the Commission then it would be very easy to deprive any person from valid appointment, like the petitioner, and it would be easy for the dealing assistant, who accepts such certificates at the time of interview, to remove or misplace any document in order to make such person ineligible for appointment. The contention raised on behalf of the Commission that the remarks of the Interview Board on the papers of each candidate would have recorded the production of such certificates at the time of interview, is again not borne out from the remarks recorded by the Board. There is no mention at all about the nature of documents produced before them. The Learned Counsel appearing for the Commission could not produce any further Register or paper in order to establish any procedure adopted by the Commission for recording of such documents produced by the candidates at the time of interview. Neither such Register is maintained nor the same was produced. Thus, the fate of such candidates hang on the sweet will of the Commission where no proper procedure has been adopted ensuring fair play eliminating arbitrariness and discrimination.

9. The papers of the Interview Board were produced by the Commission which establishes the fact that the petitioner secured 46.22 marks calculated on the basis of the marks obtained in the Matriculation, I. A., B. A. and M. A. Examinations and 35 marks on the basis of the oral examination, thus a total of 81 marks, whereas in the case of respondent no. 3, she secured 45.56 marks calculated on the basis of the marks obtained in the Matriculation, I. A., B. A. and M. A. Examinations, and 35 marks on the basis of oral examination, but, in order to make it 81 marks in total, the said 45.56 marks obtained by respondent no. 3 was rounded up to 46 marks and in this manner respondent no. 3 was made to secure 81 marks by giving 46 marks after rounding up 45.56 marks. Whereas, in the case of the petitioner, 46.22 marks was not rounded up and .22 marks obtained by her was considered to be of no significance in her case. This is another example of arbitrariness established from the papers produced by the Commission. Added with this, further facts are that just when the interview was over on 9.4.1991, the very next day, the recommendation for appointment of respondent no. 3 was hastily made. Till now, the Commission has not been so prompt in making the recommendation the very next day after holding the interview but in this case haste was shown. When it came to the notice of the petitioner, she made a representation the very next day on 11.4.1991 alleging in categorical and unequivocal terms that her revised marks-sheet showing 419 marks was ignored and not taken into account and only 407 marks as obtained by her in the first marks-sheet was taken under consideration. As against this, the revised marks-sheet of respondent no. 3 was taken into account which was equally produced at the time of oral interview. The Bihar Public Service Commission owes constitutional duty and obligation in making fair and impartial recommendation after conducting the examination in a most fair manner. The

present case is an example of arbitrariness and partiality in the way and the manner in which respondent no. 3 has been favoured. If such is the behaviour of the Commission then the people of the State would start losing faith in such institution. The mistake, as pointed out, could have been corrected if hot haste in the recommendation of respondent no. 3 on the very next day of the oral interview would not have been shown. In the representation of 11.4.1991 everything had been brought to the notice of the Commission and by any test, the petitioner had certainly secured higher marks than respondent no. 3 and she was the only eligible candidate for such appointment on the post reserved for the Backward Category (Backward Category II). We seriously condemn the manner in which the Bihar Public Service Commission has conducted itself in recommending respondent no 3. We hope and trust that the Commission shall hereafter adopt and establish some proper procedure of recording of such documents, which may be produced by the candidates, at the time of oral interview and a proper Register should be maintained and/or any such method should be adopted as may be thought necessary in order to ensure fairness. Each candidate must be satisfied that the papers and records produced by them at the time of oral interview are placed before the Selection Board and not ignored leaving it to the whims of such person who may be otherwise interested.

10. In the facts and circumstances of the present case, I am left with no option but to quash the recommendation of the Bihar Public Service Commission contained in its letter dated 10.4.1991 and set aside the appointment of respondent no. 3 made in pursuance thereof. It is further directed that since the petitioner was the only eligible candidate for the post she should be recommended by the Bihar Public Service Commission for her appointment as against the said post on which respondent no. 3 had been illegally appointed. It has been stated that two more posts of Parabhilekhpal/Sahayak Parabhilekhpal/ Research Assistant, which were lying vacant, are still vacant. Therefore, the Bihar Public Service Commission may advertise those posts afresh for appointment on those two posts that are still vacant in order to select the best ones after holding such examinations as may be required for it. In the result, this application is allowed but there shall be no order as to costs.

Aftab Alam, J.

I agree.