

(1997) 08 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 1849 of 1997

Sri Manikant Rajak

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Citation : (1997) 2 PLJR 631

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Awadhesh Kumar Mishra, for the Appellant; G.N. Sahay and S.K. Ghose, for B.P.S.C., for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The Petitioner filed the writ petition for direction on the Respondents to appoint the Petitioner against the post of Steno-cum-Typist. Further prayer has been made to pay him salary due since 1st of February, 1992.

2. According to the Petitioner he was appointed as Steno-typist on daily wages basis by order dated 31st of October, 1988. He continued on daily wages basis for certain period till 1st of February, 1996. It is alleged that though the Respondents invited applications for appointment to the post of Steno-typist on 15th of October, 1990 and on application the Petitioner and others were called for test and interview by Memo dated 5th of January, 1991 but till date the Respondents have not made regular appointment to the post of Steno-typist. it is further stated that the Petitioner has secured 47 per cent marks in the test, which is much more than the qualifying marks and that the Petitioner belongs to Scheduled Caste Category.

3. It is stated that those who belong to other category, like Scheduled Tribes they have already been provided with appointment in pursuance of the same test/selection.

4. A counter affidavit has been filed on behalf of the Respondents. In their counter affidavit it has been stated that the service of the Petitioner was

terminated on 10th of February, 1990 having no requisite speed at that point of time. With respect to the test conducted in the year 1991 it has not been denied that the Petitioner secured 47 per cent marks. However, the Respondents have taken a stand that the procedure of appointment has been changed and is now being made through Bihar Public Service Commission in the light of circular dated 6th of December, 1995, but they have not enclosed the copy of the said circular with the counter affidavit.

5. Mr. S.K. Ghose, the counsel for the B.P.S.C. is present in Court. When query was made from him by this Court as to whether they are also filling up the Class III post in mofussil offices in terms with the aforesaid circular dated 6th of December, 1995, he stated that in fact it is not the job of the B.P.S.C., but in terms with the provisions of the Constitution is liable to make recommendation for appointment against Class I, II and other gazetted posts. However, he states that when the State Government has put this liability on the B.P.S.C., they are following the same.

6. I am not deciding the issue in this case as to whether the Class III posts under the Respondent-State can be filled up on the basis of recommendation of the B.P.S.C. when the guideline for such appointment does not stipulate such recommendation. This will be evident from the circular of the State Government dated 3rd of December, 1980 for appointment against Class III posts in the mofussil offices.

7. In the present case as the posts were vacant in the year 1980 and process of selection started in the year 1990-91, according to this Court the guideline laid down by the State Government vide letter dated 6th of December, 1995 will not be applicable with respect to such vacancies. The Supreme Court in *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, held that the posts are to be filled up on the basis of rule as was existing on the date of vacancy. In *A.A. Calton Vs. Director of Education and Another*, it further held that once a process of selection started then the post are to be filled up on the basis of the old rule as was existing at the time of such selection and new rule cannot be made applicable in such selection till the rule is made retrospective.

The aforesaid two decisions were reiterated by the Supreme Court in *P. Mahendran and others Vs. State of Karnataka and others*, .

8. In the present case the guideline has been changed by circular dated 6th of December, 1995 and the same cannot be given retrospective effect. Thus, the Respondents are duty bound to make appointment against the aforesaid vacant post of Steno-typist on the basis of old rule/guideline and thus in this case there is no question of obtaining any recommendation of the B.P.S.C. .This apart, it appears that the selection was complete and a part panel was approved, out of which candidates belonging to Scheduled Tribes were appointed. In this background, the question of further approval of such panel by the B.P.S.C does not arise.

9. Accordingly, the Respondent, Deputy Commissioner, Sahebganj is directed to fill up the Class III post of Steno-typist advertised in the year 1990 out of the panel, which is still to be proved. The final order in this respect shall be passed by the Deputy Commissioner within a period of two months from the date of receipt/production of a copy of this order. If the Petitioner comes out successful, it is needless to say that he is to provide with such order of appointment.

10. So far as the arrears of salary is concerned, the Respondents having disputed the fact relating to working of the Petitioner since February, 1990, such prayer is rejected. However, it will be open to the Petitioner to bring to the notice of the Deputy Commissioner, Sahebganj the period in which he has actually performed duty after February, 1992 and amount if any, due to him. If such representation is filed within a month the Deputy Commissioner, Sahebganj will decide the same by reasoned order within a period of two months from the date of receipt/production of such representation.

11. The writ petition stands disposed of with the aforesaid observation and direction.