
(2011) 09 PAT CK 0049

In the Patna High Court

Case No : LPA No. 1114 of 2005 in CWJC No. 8629/2000

Sri Shankar Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Citation : (2011) 09 PAT CK 0049

Final Decision : Allowed

Judgement

1. The appellants are directed to pay the court fee individually within a period of three weeks from today. This appeal arises out of the order dated 21.9.2005 passed in C.W.J.C. No. 8629 Ed.-Reported in Anil Kumar Sharma and Others Vs. State of Bihar and Others, whereby the writ petition filed by the petitioners-appellants herein for quashing the impugned order of termination was dismissed by the learned Single Judge.

2. The prayer of the writ petitioner-appellants herein in the writ petition was for quashing the Memo No. K/Kara- 5/98-1178/-, Patna, dated 21.8.2000 as contained in Annexure-20 of the writ application passed by the Home Commissioner, Government of Bihar holding that the selection process of the appointment of Jail Wardens for the Bhagalpur Central Jail, Bhagalpur is bad in law.

3. The facts reveal that the petition-ers-appellants herein have applied for the post of Jail Wardens in pursuance to the advertisement dated 5.10.1994 published in the daily newspaper for 157 posts of Jail Wardens as per eligibility criteria set out in the said advertisement. The appointments were to be done by the Superintendent of Jail under the supervision of the Inspector General of Prisons. A Selection Committee comprising Seniormost Jail Superintendent of the Circle, the Seniormost Jail Doctor, one Scheduled Caste/Scheduled Tribe Superintendent of Jail and a Psychologist was constituted and the last two members were to be nominated by the Inspector General of Prisons. The physical verification was to be done at Bhagalpur between 27.12.1997 to 29.12.1997, but

the same was shifted to 15th March, 1998 on account of the Parliamentary Election. The venue was also shifted at a short notice to the B.S.F. Ground, Meru Camp, Hazaribagh to be held from 23.3.1998 to 25.3.1998.

4. It is alleged that after completion of process of selection a selection list of the candidates who have been selected numbering 198 was prepared in order of merit. But, however, appointment letters were issued to 157 candidates only including all the petitioners-appellants herein. The appointment letters have been annexed as Annexure-14 to the writ application. After undergoing the process of medical examination and other requirements the petitioners-appellants herein have joined to their respective posts in the Central Jail, Bhagalpur and received their salary for one and half months, but suddenly their salaries were stopped in pursuance of the order dated 16.2.1999 passed by the Commissioner of Bhagalpur Division, Bhagalpur as contained in Annexure-15 to the writ application. This order was followed from the Inspector General of Prisons to the Superintendent of Bhagalpur Central Jail informing that the appointments of all the 157 Warden's were cancelled because of non-observance of the rules in the selection process.

5. Aggrieved by the aforesaid order the petitioners-appellants herein filed a writ petition being C.W.J.C. No. 1956 of 1999 which was allowed by this Court vide order dated 10.4.2000 as contained in Annexure-16 to the writ application by quashing the order dated 16.2.1999 contained in Annexure-15 and the matter was remitted back to the concerned Departmental Secretary (the Home Commissioner) to examine the matter and pass orders in accordance with law. As the petitioners-appellants herein were not allowed to join duty they filed a contempt petition being M.J.C. No. 1879 of 2000 which was disposed of by this Court vide order dated 8.8.2000 (Annexure-17) directing the respondents to accept joining of the petitioners within a period of two weeks and it was further directed that operation of the fresh advertisement is also stayed until the decision of the Home Commissioner. The fact reveals that there was lot of litigation between the appellants and the State by filing M.J.C. No. 3454 of 2000 as also C.W.J.C. No. 8629 of 2000 and on 8.9.2000 an interim order was also passed by this Court to the effect that until further order, the respondents will not issue any individual letter of termination with regard to petitioners in pursuance of the order dated 21st August, 2000 (Annexure-20), if not yet issued. They will also not to fill up the posts against which the petitioners were appointed.

6. From a perusal of charges as envisaged in the show cause, it would reveal that the State Government has found irregularities suo motu in the selection process on the complaint lodged by one political leader, namely, Deepak Singh, President of District Youth Samta Party, and has initiated an action to enquire into the allegations. It further appears that when the said Deepak Singh, President of District Youth Samta Party was called for to appear before the Enquiry Officer for questioning with regard to the allegations made by him in the

complaint he has chosen not to appear before the Enquiry Officer.

7. It is contended on behalf of the appellants that the entire selection process was conducted in accordance with the prescribed procedure and there was no infirmity or irregularity in the selection process or appointments and according to them even assuming that there was some irregularities the same was minor in nature for which the appellants cannot be blamed and they cannot be held responsible leading to their termination by the Home Commissioner. It is also further contended both before the learned Single Judge and before us that even assuming that there was some irregularities in the selection of five candidates namely appellant nos. 11, 12 and 19 who are relatives of the then Chairman, late Shayam Mohan Mishra as also appellant nos. 3 and 40 who are relatives of a Clerk, namely, Anand Kumar, but for such action the rest of the appellants cannot be blamed and no drastic action of termination should be taken against them for the action on the part of the then Chairman as also the concerned clerk. It is further contended on behalf of the appellants that there was minor irregularities in the process of selection as stated in the charge memo which are 17 in numbers to which they have to reply to the show cause, but the State Government should not take drastic action of termination of their services as there was no bias or choice in the process of selection of the appellants who are 157 in numbers. It is contended that the allegation as alleged was very cryptic in nature and most of them were remained unproved except the irregularities in the selection of five appellants, namely, appellant nos. 11, 12, 13 and 40 who are relatives of the then Chairman and a clerk of the concerned department. It is further contended that the learned Single Judge has accepted that on the basis of the enquiry report termination orders have been passed without furnishing a copy of the same to the appellants so as to file their objections.

8. The respondents have contested the matter before the learned Single Judge by bringing notice of the Court with regard to charges as also the enquiry report and the learned Single Judge has dealt with the matter in extenso by charge-wise and gave his findings in paragraph 10 of the judgment which resulted into dismissal of the writ petition and also thereby the stay granted by this Court was also vacated.

9. We had also the occasion to go through the explanation given by the appellants herein and the order of the learned Single Judge. So far facts are concerned, we are of the opinion that the same need not to be repeated as the learned Single Judge has dealt with the facts in the judgment which remain undisputed by both the sides. In our opinion findings of the Home Commissioner in saying that the process of selection of the appellant was illegal is baseless as there was no material available in support of such allegation as it was passed only on suspicion. It has been contended on behalf of the appellants that even assuming that there were irregularities in selection of five persons who were favored by the then Chairman and a concerned clerk of the department, it cannot be said that the entire process of selection with regard to 157 candidates is also

vitiated who were not responsible for such irregularities committed in the process of selection.. It is mentioned in the order of the learned Single Judge with regard to charge no. 2 that as the senior- most physician had already retired and second seniormost doctor had been transferred therefore Dr. Subodh Narain was included in the Selection Committee. With regard to charge no. 3 it is mentioned that one Rama Shankar Mishra, Clerk was entrusted to a job of reading and writing but as he had expressed his inability to work because he was going to superannuate soon therefore one Anand Kumar Sinha, Clerk was entrusted with the said work. We are of the opinion that in such action of the Chairman there was no fault as the said Clerk, namely, Anand Kumar Sinha has been entrusted work due to inability expressed by Karapal Rama Shankar Mishra who was going to retire soon. In such circumstances association of other clerk cannot be termed as selfish motive or any irregular act.

10. The charge with regard to procedural infirmity adopted by the Selection Committee is concerned, on perusal of the judgment it appears that the enquiry conducted by the Home Commissioner was purely on the question of facts which has to be dealt with by the Home Commissioner by going into evidence either oral or documentary available before him, but it would reveal that the entire exercise has been done on the basis of suspicion. The suspicion cannot perhaps be a good ground for determining the pure question of facts without any corroborative evidence especially in the matter of service jurisprudence. For example in charge no. 7 which deals with receipt of applications would reveal that 14679 applications were received but only 2243 applications were found to be in order. That be so, it has to be observed that it is not a case where any applicants claimed that they have not been called for in the particular selection. In absence of any claim being made by an aggrieved person it has to be determined whether this Court can interfere in such process of selection. There is no material placed before the learned Single Judge or before us that any one of the aggrieved persons numbering 2243 have put forth their grievance either before the State Government or before any other authority to claim that their applications neither have been considered nor rejected. In absence of any such plea forth coming from any of the applicants, it cannot be said that this Court should go into the question how 2243 applications were found to be in order.

11. From perusal of the charges as also the findings of the learned Single Judge it appears that except the allegation of favoritism with regard to appellant nos. 11, 12, 19, 3 and 40 who are said to be the relatives of the then Chairman and a clerk of the concerned department there is nothing to support the allegations as with regard to remaining candidates.

12. So far shifting of venue and dates are concerned, it cannot be made a basis to pass order of cancellation of the appointments. So far Charge No. 16 is concerned the Home Commissioner has mentioned that there was some cuttings and interpolations found in the proceeding. In this regard it has to be observed that in absence of any grievance coming forth from any of the applicants it

cannot be said that the selected candidates should be penalized for such markings as it is not a case of the respondents that they could get their appointment for extraneous consideration or by fraud and misrepresentation. The findings given by the learned Single Judge with regard to Charge No. 16 is to the effect that this has given scope to a lot of misuse and bungling and has rendered the selection process unreliable, but however it has to be observed that there is no allegation with regard to mis* use or bungling in the process of selection having actually occurred during process of selection. In absence of any evidence available as with regard to such cuttings or interpolations as per allegation in Charge No. 16 no explanation has been called for from any member of the Selection Committee and under such circumstances, such allegation cannot be made a basis for coming to a conclusion of misuse or interpolation.

13. So far charge no.17 is concerned, there was allegation to the effect that two successful candidates were related to the Jail Superintendent and two other candidates were related to Anand Kumar Sinha, a Clerk. The Selection Committee ought to have informed the authority with regard to such relationship and action should be taken to release them from the membership of Selection Committee on the day. the relatives appeared for interview. In absence of such action by the Selection Committee in spite of knowledge of the fact that the then Chairman, Jail Superintendent and a clerk were conscious of the fact that their relations were also appearing in such interview and the Selection Committee was duty bound to inform the concerned authority with regard to the aforesaid fact, we are of the opinion that appointments of such candidates who have been figured as appellant nos. 11, 12, 19, 3 and 40 are said to be bad in law for the reasons that the persons, whose close relatives were also appearing in the selection process, should have withdrawn their membership from the selection process for the particular day. The selection of such candidates has to be termed as bad coupled with bias.

14. In that view of the matter, we have no hesitation in holding that the appointments of the aforesaid candidates who are relatives of the members of the Selection Committee are bad in law.

15. We have been informed during the course of argument that the then Chairman of the Selection Committee has expired. It has been contended by the learned senior counsel appearing on behalf of the appellants that more so with regard to the case of those particular appellant nos. 11, 12, 19, 3 and 40, it is not the case of the State that the continuance of such persons in service would be prejudicial to the working of Wardens of Jail. In absence of any such plea forth coming from the respondents, we are of the opinion that so far as the aforesaid appellants are concerned," though we held that their appointments are bad in law, but we leave it upon the discretion, of the State Government to take an appropriate decision with regard to their continuance in service, if they so desired.

16. With regard to process of selection is concerned, we are of the opinion that

as the charges are merely formal in nature and it is not the case of either of the parties or any of the appellants that in the selection process the Selection Committee has not completed its formalities or any aggrieved person could not appear in the selection process, in absence of such plea it can be said that because there was some fault on the part of the then Chairman select (sic) respondents as stated supra, in the entire process of selection cannot held to be bad in law.

17. it has been contended on behalf of the appellant that they have not been noticed about the enquiry report so that they can file their objection. There is no material placed before us or before the learned Single Judge by the State to meet such allegation that the appellants have been noticed about the enquiry report. It has been further contended that all the appointments of the appellants were made on the permanent post and those appointments cannot be cancelled by the State without following the due procedure of law as it is not the case of the State that such appointments have been obtained by any misrepresentation or by committing fraud except in the cases of five appellants, namely, appellant nos. 11, 12, 19, 3 and 40 who are relations of the members of the Selection Committee. The facts remain undisputed that there was no material placed by the State before this Court that rest of the appellants have obtained their appointment either by misrepresentation or playing fraud on the State. It is the internal process of the department which seems to be done irregularly and therefore it cannot be termed as of serious in nature for the reason that there was no evidence coming forth before the Home Commissioner to prove the said irregularities and further he did not chose to examine any persons available to support such irregularities and also as to genuineness of such irregularities which have to be proved before the Home Commissioner in accordance with law.

18. As the Home Commissioner has come to the conclusion that in the selection process some irregularities were committed without any supporting material and also without examining any of the personnel available there to support the irregularities, we are of the opinion that except five appellant, namely, appellant nos. 11, 12, 19, 3 and 40 who are said to be the relations of the members of the Selection Committee, rest of the appellants cannot be blamed for such irregularities and such irregularities cannot be made basis for cancellation of appointments of rest of the appellants as it is not a case of misrepresentation or fraud by the appellants and there was no material available to support such allegation that the appointments were made in violation of procedure of selection.

19. With regard to corruption and other observation of teamed Single Judge of para no. 10 of the judgment in question, there is no material placed before the learned Single Judge or before us in this regard and it is contended by Learned Counsel for the appellants that no charge for corruption was framed by the enquiry officer. In absence of such charge being framed, we are of the opinion that the findings of the learned Single Judge cannot be sustained and accordingly order of the learned Single Judge is set aside and consequently the order of

cancellation of services of the appellants as contained in Annexure-20 to the writ application is also set aside.

20. Our view is supported from the judgment rendered by the Apex Court in the case of Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, at para 6 as stated below:-

On a careful consideration of the contentions on either side in the light of the materials brought on record, including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed on our directions-which report itself seems to have been also produced for the perusal of the High Court-there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such In the process of the written examination-either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions on a loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of invigilators for every ten candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answer-sheets with reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by re-evaluating the answer-sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that- except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment there was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and a(sic)oltrary standard to cancel the entirety of the selections despite the firm and positive infOrma-that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in

going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

21. The above judgment is followed in *Girjesh Shrivastava and Others Vs. State of M.P. and Others*,

22. Basing on the paragraph nos. 24 & 26 of the judgment rendered in the case of *Girjesh Shrivastava and Others Vs. State of M.P. and Others*, we hold the same view. The relevant paragraph nos. 24 & 26 is quoted hereinbelow:-

24. The High Court while dismissing the review petitions stated that in view of the grave irregularity of allowing near relations to appear in the selection process, the entire selection had been rightly set aside. This finding is a rather sweeping one as factually it appears that in WP(C) No. 63 of 2002 none of the members of the Selection Committee allowed their near relatives to appear as candidates. It is, therefore, important to note that the selection process had been struck down on the ground of presence of near relatives in WP (C) No. 1529 of 2001 alone and not in WP(C) No. 63 of 2002.

26. From these facts it can be concluded that the alleged participation of near relatives in the selection process was not such a factor as to vitiate the entire selection process. Even if there were some illegal beneficiaries from the selection process, they should have been weeded out instead of striking down the entire selection process.

23. Following the case law as stated supra, we are of the opinion that the action of the State Government in cancelling the appointment orders of the appellants is misconceived, unwarranted and unreasonable. The State Government could have weeded out the beneficiaries instead of cancelling the entire process of selection. Accordingly the order of the learned Single Judge is set aside and also Annexure-20 is quashed.

24. In view of the above, we are inclined to direct the respondents to reinstate the appellants except appellant nos. 11, 12, 19, 3 and 40 who are said to be relatives of members of the Selection Committee. However, as it has been brought to the notice of this Court that in view of interim stay granted by this Court all the appellants are already continuing in service therefore there is no need to pass specific order with regard to continuance of services of the appellants. It is further clarified that in view of order passed in this appeal the interim order passed by this Court has also made final.

25. The L.P.A. is allowed in favour of appellants other than the appellants no. 11, 12, 19, 3, 40 who are beneficiaries of selection through their relations against whom the L.P.A. stands dismissed. Their cases are dealt separately below.

26. However, with regard to five appellants, namely, appellant nos. 11, 12, 19, 3 and 40 are concerned, we would like to express that as the appointments of the aforesaid persons have been made by the members of the Selection Committee who are close relatives of them as such their appointments have to be termed as bad in law. But, however it has not been contended by the Learned Counsel for the State that continuation of the aforesaid five appellants would be prejudicial to the State Government. In absence of such plea and taking note of the subsequent event that the Chairman of the Selection Committee has already expired, we are of the opinion that it is for the Government to take a decision to continue them. We leave it upon the State Government to take a decision to ratify their appointments within a period of three months from the date of receipt/production of a copy of this order. We further clarify that till such decision is taken by the Government the aforesaid five appellants will be continued in service.

27. We also make it clear that if the Government takes a decision to ratify the appointments of above appellants in such case, the said appellants are entitled for the benefit of this order and the L.P.A. stands allowed in their favour also. With the above observation the orders of the learned Single Judge as well as the order for cancellation of services of the appellants as contained in Annexure-20 to the writ application are set aside and the appeal is allowed.