

(2003) 09 PAT CK 0096

In the Patna High Court

Case No : L.P.A. Nos. 1260 and 1381 of 2000

State of Bihar and Others

APPELLANT

Vs

Awadh Kishore and Others
 Vinay Kumar and Others
Vs The State of Bihar and Others

RESPONDENT

Date of Decision : 19-09-2003

Acts Referred:

Citation : (2003) 09 PAT CK 0096

Final Decision : Dismissed

Judgement

1. All these Letters Patent Appeals have been filed against the judgment and order dated 21.8.2000 passed in C.W.J.C. No. 2130 of 1999 and other analogous writ petitions whereby the selection/panel dated 16.1.1999 and the appointment orders dated 8.3.1999, 18.3.1999 and 26.3.1999 were quashed and the concerned Respondents were directed to take fresh steps for appointment to the post of Medical Laboratory Technician.

2. L.P.A. No. 1381 of 2000 was filed by the State of Bihar and rest of the L.P.As. were filed by the candidates who were selected and were appointed to the post of Medical Laboratory Technician.

3. The relevant facts of the case are that on 24.5.1997 an advertisement was published inviting applications for appointment to the post of Medical Laboratory Technician, hereinafter to be referred to "MLT" for brevity, from the candidates who had passed I.Sc. or 10 + 2 examination and received "MLT training from any institution recognised by the Government of Bihar. The persons, who received requisite training from the institution recognised by the other State Governments filed C.W.J.C. No. 5427 of 1997, C.W.J.C. No. 8034 of 1997 and C.W.J.C. No. 8051 of 1997 for issue of direction to permit them to apply for the post. The writ petitions were allowed by judgment and order dated 19.1.1998 and the State Government agreed to recognise the "MLT" training certificate granted by the institutions recognised by the Government of India/other State Governments provided they are equivalent to "MLT" certificate recognized by the State of

Bihar. The department was directed to issue a corrigendum permitting the candidates who had obtained such vocational certificate.

4. It appears, during the pendency of the writ petitions recruitment process was initiated and interview programme was published on 23.1.1998 fixing 3.2.1998 to 7.2.1998 as dates for interview. Thereafter, in the light of the judgment indicated above on 7.2.1998 a corrigendum was published allowing fresh opportunity to the candidate, who could not apply pursuant to the advertisement but were covered by the judgment, to apply for the post by 20.2.1998. A fresh interview programme for those candidates who were permitted to apply by advertisement dated 7.2.1998 was published on 12.5.1998 fixing 25.5.1998 to 6.6.1998 as dates for interview. A selection committee was constituted on 24.12.1997. After the process of interview was over on 16.1.1999 the selection committee decided to consider only those candidates for appointment who had secured 25% marks i.e. 10 out of 40 for which interview had been held. On the same day a panel of selected candidates numbering about 181 was finalised. On 8.3.1999 vide memo No. 68 appointment letters to 157 candidates were issued. On 18.3.1999 vide memo No. 81 appointment letters were issued to 24 candidates. On 26.3.1999 vide memo No. 95 appointment letter was issued in the name of Kamlesh Kumar.

5. The writ Petitioners have challenged the selections/appointments on the ground that they have been made on the basis of oral interview deviating from past practice i.e. appointments had been made on the basis of academic qualification besides interview. Neither the State Government had taken any decision to appoint only on oral interview nor it was the term of advertisement. Admittedly, the appointments have not been made on the basis of written examination and as such due weightage ought to have been given to the academic performance of the candidates in order to avoid or at least to minimise the chance of arbitrariness in the selection/recruitment process. The selection/recruitment, therefore, was not in accordance with law. The Personnel and Administrative Reforms Department directed the Health Department to make appointment to the post of "MLT" according to the procedure earlier followed by it and following the rules of roster and reservation. The select list was prepared only on the basis of marks given in the interview without allocating marks on the educational qualification. The committee arbitrarily gave more marks to their favourite as a result thereof the candidates who had better educational qualification were not selected. In sub para (VIII) of para 26 of C.W.J.C. No. 2641 of 1999 averments have been made that selection committee was constituted. In the selection committee member belonging to scheduled caste/scheduled tribe was to be nominated by the Personnel and Administrative Reforms Department but no such member was nominated by the Personnel and Administrative Reforms Department for participating in the selection procedure, consequently member belonging to scheduled caste/scheduled tribe category did not sign the proceeding of the meeting of selection committee as well as on the recommendation made by the selection committee for appointment to the post of

"MLT". In para 29 averments have been made that prior to Hon''ble court's order/judgment dated 19.1.1998 passed in C.W.J.C. No. 5427 of 1999 there was no specialist i.e. Pathologist as member of the selection committee. However, in the second interview services of two specialists i.e. pathologists had been requisitioned and they were included as members of the selection committee. The aforesaid fact would be evident from letter No. 554(22) dated 18.5.1998. In sub para (IX) of para 30 averment has been made that Dr. Gopi Chand Ram, the then Deputy Director, Health Services, who was nominated as member of the selection committee by Personnel and Administrative Reforms Department, was present in both the interviews as member of the selection committee had not signed the proceeding of selection committee/recommendation of selection committee. In sub para (X) averment has been made that the proceeding of the interview had been signed by one Sri Ray Prabhu Kumar Prasad, who was never the member of the interview board.

6. Counter affidavits have been filed by the department in four out of six writ petitions i.e. C.W.J.C. Nos. 2130/99, 2546/99, 2641/99 and 3232/99. The case of the Respondent-department was that there was no rule governing the mode of appointment and where recruitment is not governed by the rules the selection committee is competent to fix mode and criteria of selection for appointment. It is essential for the post of "MLT" that persons must have sound knowledge of the subject as the life of the people depends upon their knowledge and as such the selection committee fixed 25% marks as qualifying mark out of 40 marks for interview. In the advertisement issued on 24.5.1997 itself it had been mentioned that selection will be made on the basis of interview. The selection made by the selection committee was finally approved by the government and, therefore, it should be held that the government had approved the decision to select the candidates securing atleast 25% marks at the interview i.e. 10 marks out of 40 marks for interview. In para 15 of the counter affidavit filed in C.W.J.C. No. 2641 of 1999 averment made in para 26 (VIII) of the writ petition has been admitted. It has further been admitted that Personnel and Administrative Reforms Department nominated a member but the nominee had not participated in the meeting of the selection committee. In para 18 of the counter affidavit statement made in para 29 of the writ petition that there was no specialist i.e. Pathologist as member in the selection committee in the first interview, however in the second interview services of two specialists were requisitioned and they were included as members of the selection committee has not been denied rather averment has been made that those facts are not relevant for deciding the issue. In para 20 of the counter affidavit averment made in para 30 (IX) of the writ petition that Dr. Gopi Chand Ram, the then Deputy Director, Health Services, who was present in both the interviews as member of the selection committee has not signed the proceeding of the selection committee has been admitted. In para 21 of the counter affidavit statement made in para 30(X) of the writ petition that the proceeding of the interview has been signed by one Sri Ray Prabhu Kumar Prasad, the Deputy Secretary, who was not member of the interview board has

not been denied rather it has been stated that after transfer of Dr. B.P. Srivastava it was Sri Ray Prabhu Kumar Prasad who occupied the post of Deputy Director in the department.

7. During the pendency of the writ petitions some of the appointees had filed petitions for intervention. The petitions were allowed and they were added as Respondents. Interim relief was granted in C.W.J.C. No. 2130 of 1999 on 18.3.1999 that no further appointment should be made on the post until order of the court. Same order was passed in C.W.J.C. No. 2546 of 1999, 2641 of 1999 and 3232 of 1999. On 11.5.1999 further interim order was granted in C.W.J.C. No. 2130 of 1999 to the effect that if the appointees had joined the post and were functioning their continuance shall not confer any additional right to them and would be subject to the result of the writ petition. In the appointment letters appointments were described as temporary liable to be terminated without notice at any time.

8. Learned single Judge after hearing the parties and considering the case of the parties came to a conclusion that recruitment process seems to be vitiated on more than one ground; (a) There was no decision of the State Government to make selection on the basis of viva voce test alone, (b) Recruitment having been made earlier on the basis of both academic performance and viva voce test, if the department wanted to deviate from the practice, it should have obtained government's order. The government in that case should have taken a policy decision laying down methodology/criteria of selection, (c) The advertisement dated 24.5.1997 did not lay down that the recruitment shall be made on the basis of viva voce test alone. The object of "interview" within the meaning and scope of "note" to the advertisement was verification of certificates, marks sheet etc. and not evaluation of merit of the candidates, (d) Calling indeterminate number of candidates, between 20 and 167 was without any basis and arbitrary, (e) The interview of very large number of candidates upto 91 on 3.2.1998, 98 on 5.2.1998 or even 162 on 6.6.1998 was a completely farce.

9. The court also considered that only some of the appointees have been impleaded and the rest also acquired right to be heard individually but having regard to the fact that the appointments have been made on temporary basis with a condition that services can be terminated at any time without notice and as such rest of the appointees who are not before this Court can not make any grievance in law if their services are terminated along with the private Respondents treating them at par. The court had also made it clear by order dated 11.5.1999 that even if the appointees have joined the posts and are functioning their continuance will not confer any additional right to them. Accordingly allowed the writ petitions, quashed the impugned selection/panel dated 16.1.1999 and the impugned appointment order dated 8.3.1999, 18.3.1999 and 26.3.1999, and directed the concerned Respondents to take fresh steps for appointment to the post of "MLT" in accordance with law.

10. The learned Judge has taken into consideration in details all aspects with

regard to recruitment process and recorded reasons for coming to a conclusion but it appears that other grounds taken by the Petitioners specially in C.W.J.C. No. 2641 of 1999 were not taken into consideration though they were available on the record. Therefore on the direction of the court the records were produced by the learned Counsel for the State which were made available for verification to the learned Counsel for the Appellants.

11. Before advertizing to the questions raised/involved in the case it would not be out of place to mention herein that it is constitutional mandate that all the citizens are entitled to equal opportunity in the matter relating to employment or appointment to any office under the State. To achieve the aforesaid Constitutional mandate, advertisement is published inviting applications from the eligible candidates for appointment on the post and therefore process of selection is initiated to find out most suitable persons amongst the eligible candidates for appointment for smooth functioning of the office/official work. Any deviation from constitutional mandate, as indicated above, would nullify the appointment, if any, made. Keeping in mind the aforesaid mandate of the Constitution, now I proceed to examine the case of the parties.

12. Advertisement was published on 24.5.1997 inviting applications for appointment to the post of "MLT" from the candidates who had passed I.Sc. (10 + 2) examination and received "MLT" training from any institution recognised by the Government of Bihar. The persons, who had requisite training from the institution recognised by the other State Government filed writ petitions which were allowed by judgment and order dated 19.1.1998 and the State Government agreed to recognize "MLT" training certificate granted by the institution recognised by the Government of India/other State Government. During the pendency of the writ petition recruitment process was initiated and interview programme was published fixing 3.2.1998 to 7.2.1998 as dates of interview. The candidates were interviewed accordingly. It will be called hereinafter as "first interview". However, in the light of the judgment indicated above on 7.2.1998 a corrigendum was published allowing fresh opportunity to the candidates, who could not apply pursuant to the advertisement but were covered by the judgment to apply for the post by 20.2.1998. A fresh interview programme for those candidates who were permitted to apply by advertisement dated 7.2.1998 was published fixing 25.5.1998 to 6.6.1998 and the candidates were interviewed. It will be called as second interview hereinafter.

13. Admitted position is that in the past the appointment on the post of "MLT" had been made on the basis of academic qualification as well as viva voce test. It is also the stand of the State that "MLT" is a technical post and it is necessary that an appointee to such post should have sound knowledge of the subject as duty entrusted to the "MLT" concerned human body and lives of the people. There is nothing on the record to show that the said proceeding has been changed by the State Government rather it appears from the record that Additional Secretary had indicated in clear terms that recruitment should be

made on the basis of written test through Public Service Commission. The Health Commissioner mentioned that from the advertisement it appears that the recruitment was proposed to be made on the basis of interview but the advertisement did not specify inter se standard and marks with respect to experience, qualification and interview. He was of the opinion that where number of candidates is much, the recruitments are ordinarily made on the basis of written test and in the present case also instead of making recruitment on the basis of interview it would be more appropriate to do so on the basis of written test. However, if the recruitment was to be made on the basis of interview before making selection it was necessary to fix standards and marks for qualification, experience and interview. He stated that the decision on the issue may be taken later, for the present the candidates may be called for scrutiny of their applications for the purpose of shortlisting the numbers. The Minister Incharge also agreed with the suggestion of the Health Commissioner on 14.4.1997. No document was produced by the State/the Appellants to show that any decision was taken by the Government that the appointment should be made only on the basis of interview. It is true that where there is no recruitment rule/statutory rule the government may by administrative circular lay down the norms and guidelines, methodology of process of selection. In the instant case, no such decision was taken for deviating from the past procedure for appointment on the post of "MLT" or appointment on the basis of only interview.

14. Learned Counsel for the Appellants, however, contended that finding in the impugned judgment that advertisement dated 24.5.1997 did not lay down that recruitment shall be made on the basis of viva voce test alone is bad in law. He in support of his submission referred to a "note" appended to the advertisement to show that the candidates were asked to appear in the office of the Director-in-Chief, Health Services along with their original certificates, marks sheet and receipt showing submission of the application by registered post on 20.6.1997 for interview. Therefore, "note" clearly indicated that selection/recruitment was to be made on the basis of interview. It is evident from the "note" that appearance of the candidates on 20.6.1997 was for the purpose of verification of certificates, marks sheet etc. though it was described as interview. Moreover, the candidates were asked to appear before the Director-in-Chief on 20.6.1997 and not before the selection committee. It was pointed out by the learned Counsel for the Respondents that he candidates were required to disclose their academic qualification including marks, division, percentage etc. If at all the selection was to be made only on the basis of interview i.e. viva voce test there was no necessity of requiring them to disclose their marks sheet etc. also. In the past admittedly appointment had been made on he basis of academic qualification as well as viva voce test. Moreover, the Director-in-chief alone was not the appointing authority and as such calling the candidates on 20.6.1997 for interview before the Di-rector-in-Chief cannot be considered that they were called for viva voce test. The submission of the learned Counsel for the Appellants, in my opinion, is totally unfounded and misconceived.

15. Learned Counsel for the Appellant also challenged the finding of the learned judge that calling indeterminate number of candidates between 20 to 167 was arbitrary and interview of a very large number of candidates upto 91 on 3.2.1998, 98 on 5.2.1998 or even 162 on 6.6.1998 was farce. It was stated by the learned Counsel for the Appellants that there was no need for fixing time for interview of a candidate and on such ground selection/appointment cannot be set aside. In support of his submission learned Counsel relied upon a decision in the case of Sardara Singh and others, etc. Vs. State of Punjab and others, and pointed out that selection on the basis of three minutes" interview on an average was upheld by the Supreme Court. In this regard it would not be out of place to mention herein that in the aforesaid case interview test was for selection of Patwari, Class III service. The qualification for appointment was matriculation or Higher Secondary Examination; knowledge of Hindi and Punjabi upto middle standard and good knowledge of rural economy and culture. Taking into consideration nature and duties of the post, the Apex Court held that educational qualification are apparent from the record, there was no need for any interview as the candidates normally hailing from rural background had presumptively good knowledge of rural economy and culture and therefore there was no need for special emphasis to ascertain their knowledge of rural economy or culture. In the instant case, nature and duties of "MLT" are quite different. It was the stand of the government that the post was technical and it was necessary that a candidate for the post should have sound knowledge of the subject as the duties entrusted to "MLT" concerned human body and lives of the people. Obviously, in such a situation, there was need of complete test of knowledge as the duty of "MLT" concerned lives of the people. Moreover, in the past taking into consideration the importance of the post of "MLT" procedure for selection of appointment was made on the basis of academic performance and viva voce test which has not been adhered to in the case in hand. Therefore, in my opinion, the submission of the learned Counsel for the Appellants has got no substance. The learned Judge considered in details for coming to a conclusion that thus I find nothing wrong to interfere.

16. It has already been indicated that the Respondents had raised some more questions to assail the selection/appointment to the post of "MLT" but those questions were not touched by the learned Judge and as such records relating to appointment were directed to be produced by the learned Counsel for the State and on production they were made available to the learned Counsel for the Appellants for verification. Learned Counsel for the Appellants pointed out that since those questions were not taken into consideration by the learned Judge, therefore, in appeal those points cannot be considered. The submission, in my view, appears to be fallacious as the appeal is in continuation of the writ petition. The materials were available on the record but the learned Judge missed to take cognizance of the same. The appellate court is not debarred from taking into consideration the materials available on the record even though the original court did not take into consideration the questions raised by the learned Counsel for

the Respondents. Moreover, to ascertain the correct position the records were directed to be produced and opportunity was also given to the learned Counsel for the Appellants to verify but they after verification from the record could not dispute the questions raised by the learned Counsel for the Respondents in their writ petitions. Therefore, in my view, the submission of the learned Counsel for the Appellants has got no substance at all.

17. It has already been pointed out that in selection committee member belonging to scheduled caste and scheduled tribe was to be nominated by the Personnel and Administrative Reforms Department but such member neither participated in the selection procedure nor signed the proceedings of the meeting of the selection committee. The aforesaid fact has been admitted in the counter affidavit filed in C.W.J.C. No. 2641 of 1999. It has been stated that the Personnel and Administrative Reforms Department nominated a member but nominee did not participate in the meeting of selection committee.

18. Similarly, the writ Petitioners categorically stated in their petitions that there was no specialist (Pathologist) as member of the selection committee in the first interview which was held on 3.2.1998 to 7.2.1998. However, in the second interview which was held on 25.5.1998 to 6.6.1998 two specialists (Pathologist) were requisitioned and they were included as member of the selection committee. In the counter affidavit the Respondent-State and its authorities did not dispute the aforesaid fact rather it was stated that the question raised was not relevant for deciding the issue. The writ Petitioners categorically stated in the writ petition that Dr. Gopi Chand Ram, the then Deputy Director, Health Services, was present in both the interviews as member of the selection committee but he has not signed the proceedings of selection committee. In the counter affidavit the Respondents have admitted the said fact. Similarly, Respondents-writ Petitioners categorically stated in the writ petition that the proceeding of interview was signed by Sri Ray Prabhu Kumar Prasad, the Deputy Secretary, who was never member of the selection committee. In the counter affidavit said fact has not been denied rather it has been stated that after transfer of Dr. B.P. Srivastava it was Sri Ray Prabhu Kumar Prasad who occupied the post of Deputy Director in the department.

19. It is, thus, evident that some more grounds were available in support of the judgment under appeal i.e. the selection committee deviated from the past procedure for appointment without any decision of the State Government. In the first interview no specialist (Pathologist) was called to test the knowledge of the candidates whereas in the second interview services of two specialists were requisitioned and they were included in the selection committee to test the knowledge of the candidates, although it was the stand of the Respondents that the post of "MLT" was technical and it was necessary that the incumbent on such post should have sound knowledge of the subject as the duty entrusted to "MLT" concerned human body and lives of the people. Therefore, in such a matter, any deviation in the test of knowledge/selection cannot be easily ignored. Moreover,

in the selection committee member of scheduled caste/scheduled tribe did not participate or signed the proceeding; Dr. Gopi Chand Ram, who participated in the proceeding did not sign the proceeding. Thus, the selection/appointment vitiated for the reasons indicated above also.

20. Thus, on consideration as discussed above, I find nothing wrong in the findings recorded by the learned single Judge to interfere. Moreover, there are other reasons which have been discussed above to justify the conclusion recorded by the learned single Judge and as such I do not find any merit in these appeals. Accordingly, all the appeals are dismissed but without cost.

Ravi S. Dhavan, C.J.

21. I agree.