
(2002) 05 JH CK 0069
In the Jharkhand High Court
Case No : LPA No. 319 of 1997

State of Bihar and Others

APPELLANT

Vs

Prabha Kumari and Others

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 05 JH CK 0069

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : Pradeep Modi, for the Appellant; A.K. Sinha, Saurav Arun, M.K. Mishra and Anil Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment dated 7.2.1997 whereby the writ application being CWJC No. 1452/96(R) filed by the respondents was disposed of with direction to the respondents in the writ petition to consider the cases of the writ petitioners by relaxing their ages for appointment against the vacancies which were existing or would come up in near future.

2. This appeal filed by the State of Bihar and others was initially dismissed on the ground of limitation. The appellant, State of Bihar, went to the Supreme Court in Civil Appeal No. 5599 of 1999 arising out of SLP (C) No. 3414 of 1998. The Supreme Court, after condoning the delay, remanded the matter to this court for deciding the appeal.

3. The respondents who were 17 in number, filed the aforementioned writ application seeking mandamus directing the respondents to give appointment to them on the basis of the panel prepared in 1985 pursuant to the advertisement issued by the Government on 11.9.1985.

4. The learned Single Judge, considering a judgment passed by the Division Bench of the Patna High Court, held that the cases of the petitioners are squarely

covered by the said judgment. Accordingly, a direction was issued to the respondents to consider the cases of the writ petitioners.

5. In 1985 the Government advertised about 514 posts of teachers in different primary and middle schools in the district of Dhanbad. After interview a panel was prepared. The same was challenged before the Patna High Court. A Division Bench of the Patna High Court, in Anil Kumar's case reported in 1987 PLJR 846, declared the panel to be unconstitutional and illegal and held that no panel can be prepared district wise. In the meantime different empanelled candidates were already appointed. The State of Bihar, accordingly, issued notification dated 2.7.1989 prohibiting the appointment of any teacher from the panel and directed for fresh selection after due advertisement.

6. The matter again went to the Supreme Court in Babita Prasads case reported in 1994 (1) PLJR 62 (SC). The Apex Court held that since a number of persons out of the said panel were appointed, they shall not be disturbed but at the same time it was also held that persons who were included in the panel did not have any vested right to be appointed.

7. The matter was again considered by the Division Bench of the Patna High Court in the case of Ramjee Tiwari and Ors. v. State of Bihar and Ors. 1996 (2) PLJR 181 and it was held that after the panel was declared as unconstitutional and illegal, no appointment can be made out of the said panel. Again in 1998 a Division Bench considered similar writ application filed by some of the persons in 1996 whose names appeared in the panel prepared in 19985. In that case also the Division Bench held that no relief can be granted to the petitioners of the said case for the reason that the panel was declared unconstitutional and also for the reason that there was laches and negligence on the part of the writ petitioners who came after 9 years of the preparation of the panel. Reference may be made to the decision of the Division Bench in the case of Nutan Jha Vs. The State of Bihar and Others, .

8. In the instant case, admittedly the panel was prepared in 1985. The writ petitioners approached this Court in 1996 i.e. after 11 years seeking appointment on the basis that their names were included in the panel. We are of the view that the learned Single Judge did not take into consideration the ratio decided by the Supreme Court and also several judgments of the Division Bench of the Patna High Court and wrongly entertained the writ application. We are of the definite view that no case had been made out by the writ petitioners warranting the court to issue a writ of mandamus directing the respondents to consider their cases for appointment. The judgment passed by the learned Single Judge is not in accordance with law.

9. We, therefore, allow this appeal and set aside the judgment passed by the learned Single Judge in CWJC No. 1452/96 (R).