

(2016) 04 PAT CK 0182

In the Patna High Court

Case No : Letters Patent Appeal No.96 of 2016 in Civil Writ Jurisdiction Case No. 5828 of 2015

State of Bihar

APPELLANT

Vs

Chhathu Lal Prakash

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Citation : (2016) 4 PLJR 441

Hon'ble Judges : I.A. Ansari, ACJ. and Mr. Samarendra Pratap Singh, J.

Bench : Division Bench

Advocate : Mr. Nagendra Kr. Singh, Advocate, for the Respondents; Mr. Lalit Kishore, PAAG, Mr. Mrigendra Kumar and Mr. Utsav Kumar, Advocates, for the Appellants

Final Decision : Disposed Off

Judgement

Mr. Samarendra Pratap Singh, J. - All these batch of appeals arise out of common order, dated 8.12.2015, passed in C.W.J.C. No.5825 of 2015, whereby a learned single Judge quashed the notification, dated 28.2.2014, as contained in memo No.879, so far as it relates to selection of respondent No.8, Md. Gheyasuddin, as Director (Operation), South Bihar Power Distribution Company Limited, and respondent No.9, Sachindra Kishore Prasad Singh, as Director (Project), North Bihar Power Distribution Company Limited.

2. L.P.A. No. 96 of 2016 has been filed by the State of Bihar through the Department of Energy, Government of Bihar, seeking quashing of the order, dated 8.12.2015, passed in C.W.J.C. No.5828 of 2015, whereby selection of respondent No.8 on the post of Director (Operation), South Bihar Power Distribution Company Limited, and that of respondent No.9, on the post of Director (Project), North Bihar Power Distribution Company Limited, respectively, have been set aside by the learned single Judge. L.P.A. No.116 of 2016 has been filed by the North Bihar Power Distribution Company Limited challenging the impugned order so far as it relates to setting aside the selection of Md.

Gheyasuddin, respondent No.8 of writ petition, who, too, in individual capacity, has challenged the impugned order so far as it relates to him. L.P.A. No. 117 of 2016 has been filed by the South Bihar Power Distribution Company Limited so far as it relates to Sachindra Kishore Prasad Singh, respondent No.9 of writ petition, who has also challenged the impugned order in his individual capacity by filing L.P.A. No. 121 of 2016.

3. Before we consider the rival submissions of the parties, it would be necessary to notice the brief facts of the case. The Department of Energy, Government of Bihar, vide advertisement No.1626(Energy).13-14 (Annexure-2), invited applications for the post of Directors, in its various power utilities notified, under the BSEB Reforms Transfer Scheme, 2012, for different companies with terms and conditions in terms of qualifications, experience, etc. The minimum qualification and experience for the Director (Operations), Director (Projects), Director (Finance) of both North Bihar Power Distribution Company Limited and South Bihar Power Distribution Company Limited are as under:

For North Bihar Power Distribution Company Ltd.

Sl.No.

Name of Post

Minimum Qualification

1.

Director (Operations)

Engineering Graduate in Electrical/ Electronics and Communication from a recognised Institute/University

OR

IAS/Central Services Group "A" (Indian Revenue Services/Indian Custom & Excise Services)

2.

Director (Projects)

Engineering Graduate in Electrical/ Electronics and Communication from a recognised Institute/University

3.

Director (Finance)

CA/ICWA/MBA (Finance) from a recognised Institute/University

OR

IAS/Central Services Group "A" (Indian Audit & Accounts Service/ Indian Railway

Account Services/ Indian Defence Account Services/ Indian telecom Account Services)

For South Bihar Power Distribution Company Ltd.

Sl.No.

Name of Post

Minimum Qualification

1.

Director (Operations)

Engineering Graduate in Electrical/ Electronics and Communication from a recognised Institute/University

OR

IAS/Central Services Group "A" (Indian Revenue Services/Indian Custom & Excise Services)

2.

Director (Projects)

Engineering Graduate in Electrical/ Electronics and Communication from a recognised Institute/University

3.

Director (Finance)

CA/ICWA/MBA (Finance) from a recognised Institute/University

OR

IAS/Central Services Group "A" (Indian Audit & Accounts Service/ Indian Railway Account Services/ Indian Defence Account Services/ Indian telecom Account Services)

Minimum Experience:

1. For Director (Technical) :

Minimum experience of 15 years in projects and technical side out of which at least 10 years experience should be in the Power Sector.

In depth experience in Power Sector in relation to running, Operation & Maintenance, Construction & Commissioning of Thermal Power Plants.

2. For Director (Operations):

Minimum experience of 15 years, out of which should have served for 10 years in the Power Sector

In depth knowledge of operational and commercial activities related to Power sector and specially in the areas of Transmission/Distribution as per requirement

Candidates from IAS/Central Services Group "A" (Indian Revenue Services/ Indian Custom & Excise Services) with minimum 4 years" experience.

3. For Director (Projects):

Minimum experience of 15 years in projects and technical side out of which at least 10 years experience should be in the Power Sector.

In depth knowledge of project planning and management techniques and experience of managing large projects in a large organization

4. For Director (HR):

Minimum experience of 15 years, out of which should have served for 10 years in the Power Sector dealing in various aspects of Human Resource Management.

Candidates from IAS/Central Services Group "A" with minimum 4 years" experience.

5. For Director (Finance)

Minimum experience of 15 years, out of which should have served for 10 years in the Power Sector.

Experience in Power Sector in relation to Corporate Financial Management & Accounts including Cost & Budgetary Control, Institutional Finance & Working Capital Management.

Candidates from IAS/Central Services Group "A" (Indian Audit & Accounts Service/Indian Railway Account Services/Indian Defence Account Services/ Indian Telecom Account Services) with minimum 4 years" experience.

4. In pursuance of the advertisement, a number of candidates, including respondent Nos. 8 and 9, as well as writ petitioner, applied. The Government constituted a high powered committee comprising the Chief Secretary, Government of Bihar, the Principal Secretary, Department of Finance, the Principal Secretary, General Administration, the Principal Secretary, Energy and the Chairman-cum-Managing Director, Power Holding Company Limited. The interviews were held on 15.2.2014 and 16.2.2014. Out of 36 candidates, who had applied, 30 candidates appeared for interview and 5 candidates were found fit for the job. One post, each of Director (Operation) and Director (Project), for South Bihar Power Distribution Company Limited and North Bihar Power Distribution Company Limited and one post of Director (Project) for BSPTCL were recommended, which included the names of Respondent No.8 for the post of Director (Operations), South Bihar Power Distribution Company Limited, and respondent No.9 for the post of Director (Project), North Bihar Power Distribution Company Limited. The recommendations were approved by Government vide notification No.11-11, dated 28.2.2014 (Annexure-B to the counter affidavit of

respondent No.7), issued under the signature of the Joint Secretary of Energy Department. The notification No.11-11, dated 28.2.2014, so far it approved the appointment of Respondent Nos. 8 and 9, was impugned in the writ application.

5. Being aggrieved by the decision contained in notification, dated 28.2.2014 (Annexure-7), the petitioner filed a detailed representation before the Chairman-cum-Managing Director of Power Holding Company, Principal Secretary (Finance), Principal Secretary, General Administration and Chief Secretary, Government of Bihar, Patna. As there was no response to the representation, the writ petitioner moved this Court challenging the appointment of respondent Nos. 8 and 9 of the writ petition and, for consideration of his (petitioner's) case for appointment to the post of Director in terms of the said advertisement.

6. The challenge in the writ application was, primarily, on two grounds; firstly, respondent Nos. 8 and 9 were awarded punishment of withholding of two increments, which fact they had concealed in their application forms, though they were under obligation to disclose. The punishment orders were annexed as Annexure-6 and 6/A respectively to the writ petition. Secondly, his status, belonging to Scheduled Castes, as well as his seniority were ignored. Elaborating his submissions, the writ petitioner submitted that both respondent Nos. 8 and 9 were below him in seniority inasmuch as one of them was working as Executive Engineer, whereas he was in the rank of Chief Engineer. The selection was, thus, not fair and in accordance with law.

7. The official respondents as well as private respondents, before the writ court, justified the impugned selection and appointments. They submitted that the selection was made by a High Powered Committee, chaired by an officer as high as the Chief Secretary, with four officers of the rank of Senior Principal Secretaries as its members. The selection was made after considering the overall records of the candidates. It was further the case of the respondents that the punishment orders, passed on 19.8.2011, withholding of two increments with non-cumulative effect, were awarded not only to these two respondents, but was marked to all officers of the rank of General Manager-cum-Chief Engineer, posted in the field for failure to meet the revenue calculation target in the 1st three months of financial year 2011-12. According to the respondents, the punishment was, in fact, recalled by the management vide resolution, dated 27.8.2015.

8. The learned single Judge allowed the writ petition, but for different reasons. Setting aside the selection of respondent Nos.8 and 9 of the writ petition, the learned single Judge observed that the minutes of the high powered committee do not shed any light as to why only the recommended candidates were found to be the most suitable vis-a-vis other applicants and the basis for the said selection. The learned single Judge, relying upon Constitution Bench decision, rendered in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others, (AIR 1991 SC 101), observed that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable to ensure requirements of openness and fairness in decision

making process.

9. The learned single Judge held that the minutes and decision of the Committee do not reveal as to what prevailed upon the Committee to recommend some candidates and as to what modality was adopted in zeroing on their names and that there was total lack of objectivity in the decision-making process.

10. The order of learned single Judge is under challenge in this batch of appeals.

11. Mr. Lalit Kishore, learned Principal Advocate General submits that the Selection Committee, which comprised of Chief Secretary and Senior Principal Secretaries, acted within its wisdom and discretion in selecting the best candidates among the other applicants. The order of punishment was not personal and was awarded by the then Member (Revenue and Finance) of the erstwhile Bihar State Electricity Board in an extremely irregular manner, which was subsequently recalled by the present management vide resolution No.1050, dated 27.8.2015. Besides this, it is equally not correct, on the part of the writ petitioner, to contend that respondent No.9, too, did not mention his punishment in the application form. Contrary thereto, respondent No.9 had, indeed, made necessary disclosure about the punishment in his application. Further-more, the learned single Judge failed to appreciate that the High Powered Committee had the autonomy and discretion in judging the suitability of the candidates, by adopting its own modality. The absence of details, in the minutes of High Powered Committee alone, could not have led to conclusion of arbitrariness in the decision-making process in absence of the materials in support of such a conclusion. On the other hand, selection was made after taking into consideration the over all records and performance of the candidates.

12. It was lastly submitted that respondent Nos.8 and 9 were appointed on contractual basis for three years and they have already served for more than 2 years without any complaint and, as such, they should not be disturbed, when they have only 8-9 months to complete their turn.

13. While adopting the arguments of the learned Principal Advocate General, Mr. Y.V. Giri, learned Senior Counsel, appearing for respondent No.8 and 9, and Mr. Anand Kumar Ojha, learned Counsel, appearing Power Holding Companies, submit that the punishment awarded was of a minor nature and its non-disclosure, in the application forms, was not be of any consequence as the Selection Committee had all the relevant records of the applicants.

14. The writ petitioner, who, too, has filed an appeal against the impugned order, incidentally, is also aggrieved on two counts; firstly, the learned single Judge ought to have set aside the entire selection and directed for his appointment in place of either of the two private respondents.

15. We have heard learned Counsel for the parties and perused the materials on record as well as order under challenge.

16. It appears that the learned single Judge has set aside the impugned order, so

far as it relates to respondent Nos. 8 and 9 of the writ petition, as the minutes of the High Powered Committee did not shed any light as to why only the recommended candidates were found to be more suitable vis-a-vis other applicants and the basis for the said selection. The learned single Judge, relying upon the Constitution Bench decision of Supreme Court, rendered, in the case of Delhi Transport Corporation (supra), observed that "individuals are not and do not become wise, because they occupy high seats of power and good sense, circumspection and fairness does not go with the posts, however, high they may be".

17. In the case in hand, we find that the Selection Committee comprised of Senior Principal Secretaries rank officers, headed by the Chief Secretary. It is foremost to bear in the mind that the function of Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The selection has been made on assessment of relative merits of rival candidates in course of interview. The Supreme Court in case of National Institute of Mental Health & Neuro Sciences v. Dr. K.K. Raman & Ors., (AIR 1991 SC 1806), observed that it was not necessary for the Selection Committee to give reasons for preferring one candidate as against the other candidate and that the selection was made by the assessment of relative merits of private candidates and no rules or regulations was brought to their notice requiring Selection Committee to record the reasons. Thus, in absence of any such legal requirement, the selection made, without recording the reasons, cannot be faulted with.

18. In the aforesaid case, the High Court had quashed the proceeding of the Selection Committee and the consequent appointment of Dr. Gauri Devi to the post of Prof. Neurology, primarily, on the ground that the Committee had not given any reason, however brief, to establish any rational nexus between the facts said to have been considered by it. Allowing the appeal of National Institute of Mental Health & Neuro Sciences against the order of the High Court, the Supreme Court, in paragraph 7, observed as under:

"7. We will first consider the second point. In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative. The High Court seems to be in error in stating that the Selection Committee ought to have given some reasons for preferring Dr. Gauri Devi as against the other candidate. The selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility. There is no rule or regulation brought to our notice requiring the Selection Committee to record reasons. In the absence of any such legal requirement the selection made without recording reasons cannot be found fault with??"

19. We find that there is nothing on record, which could establish that the requirements of the procedural fairness have not been observed in the instant case. We are equally not impressed by the finding of the learned single Judge that merely because the minutes of the selection committee do not throw light as

to why the recommended candidates were found to be more suitable vis-a-vis other applicants, the selection is not sustainable and liable to be set aside.

20. We would have set aside the order of learned single Judge and would have directed for reinstatement of respondent Nos. 8 and 9. However, we refrain from doing so, in the case of respondent No.8, as he did not make disclosure about his punishment in his application form, though such a disclosure ought to have been made by him (respondent No. 8). We would agree with the submission of the writ petitioner that respondent No.8 was under obligation to have mentioned about punishment in the application form. The non-disclosure of the punishment, even if it was not personal, but general in nature inflicted on all officers up to the rank of General Manager, though subsequently withdrawn, tantamounts to concealing vital information, which a candidate was under obligation to disclose. It is also not that respondent No.8 was a new entrant to service and, in fear of losing his job, concealed the said information. Here, respondent No.8 was holding a responsible post and already in service for a number of years, and the least is expected of such officers is not to disclose such an information, when there was a column for it. In the case of *Daya Shankar Yadav v. Union of India & Ors*, reported in (2010)14 SCC 103, the Supreme Court held that verification of character and antecedents of a candidate are important criteria to test the suitability for the post, where a candidate is found to have suppressed material information, his service can be terminated. Reiterating the same principle, the Supreme Court, again, in the case of *Devendra Kumar v. State of Uttaranchal & Ors*, reported in (2013) 9 SCC 363, observed that suppression of information sought by the employer or furnishing false information, while seeking appointment would itself be a ground for rejecting candidature. In the aforesaid circumstances, the selection of respondent No.8 of writ petition was bad and we uphold the order of learned single Judge setting aside his appointment, but for different reasons.

21. For the reasons discussed above, the L.P.A. No. 117 of 2016 filed on behalf of South Bihar Power Distribution Company Ltd. as well as L.P.A. No. 100 of 2016 filed by Md. Gheyasuddin fails. L.P.A. No. 96 of 2016 filed by the State of Bihar challenging the order of learned single Judge, so far as it relates to setting aside the appointment of respondent No.8 is concerned fail.

22. Coming back to the appeal filed by the writ petitioner, we find that he is aggrieved by order of learned single Judge as the entire selection was not set aside. We find that the writ petitioner did not challenge the entire selection and his prayer was confined to the selection of respondent Nos.8 and 9. Thus, we do not find any infirmity in the order of learned single Judge in not setting aside the entire selection.

23. The other grievance of the writ petitioner is that the learned single Judge did not direct for his appointment, while setting aside the selection of respondent Nos. 8 and 9. The plea is totally bereft of merit, as he has nowhere asserted, either in the writ petition or in appeal that he was found suitable for selection to

any of the posts advertised by the Energy Department. Thus, there is no merit in the appeal and the appeal is accordingly dismissed.

24. In the result, L.P.A. No.100 of 2016 filed by Md. Gheyasuddin, L.P.A. No.117 of 2016 filed by South Bihar Power Distribution Company Limited and L.P.A. No.389 of 2016 filed by the writ petitioner, Chhathu Lal Prakash, are dismissed. L.P.A. No.121 of 2016 filed by the appellant, Sachindra Kishore Prasad Singh, and L.P.A. No.116 of 2016 filed by the North Bihar Power Distribution Company Ltd. are allowed. L.P.A. No. 96 of 2016 filed by the State of Bihar, challenging the order of learned single Judge, so far as it relates to appellant, Sachindra Kishore Prasad, is concerned, stands allowed and dismissed so far as it relates to appellant, Md. Gheyasuddin.

I.A. Ansari, ACJ. - I agree.