
(2016) 04 PAT CK 0150

In the Patna High Court

Case No : Letters Patent Appeal No. 1361 of 2001 in CWJC No. 1690 of 2001

State of Bihar

APPELLANT

Vs

Smt. Rina Roy

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Citation : (2016) 3 PLJR 915

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Sunil Kr. Mandal, SC-24 Mr. Bipin Kumar, Advocate, AC to SC-24, for the Appellants; Mr. Sandeep Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Navaniti Prasad Singh, J.(Oral)—Heard Sri Sunil Kumar Mandal, SC-24 on behalf of the State and Sri Sandeep Kumar for the contesting respondents, who were the writ petitioners.

2. This intra-court appeal has been filed against the judgment and order dated 04.09.2001, passed by the learned Single Judge of this Court in C.W.J.C. No. 1690 of 2001, whereby while allowing the writ petition directions were issued to the Government to fill up the vacancies on the post of teachers in respect of Home Science subject to be appoint in the Nationalized Government Secondary Schools.

3. In support of this intra-court appeal Sri Mandal, learned counsel for the State submits that the learned Single Judge erred in issuing a mandamus in this regard in view of the clear averment made in the counter affidavit that Government had already taken a decision to cancel the panel for various reasons. He submits that before the learned Single Judge could issue such a mandamus the learned Single Judge was obliged to set aside the Government decision, but regrettably the learned Single Judge does not even refer to such a decision, much less set aside the decision and in absence whereof the mandamus to appoint could not have

been issued.

4. On the other hand, Sri Sandeep Kumar, learned counsel for the writ petitioners and contesting respondents herein submits that before the learned Single Judge original records were produced and no decision of the Government was annexed to the counter affidavit.

5. Sri Mandal, in reply, points out that the counter affidavit in the writ proceedings was filed on 08.05.2001, the case was heard and the order was reserved on 16.05.2001. In the appeal, a supplementary affidavit has been filed annexing the formal communication of the decision of the Government as contained in letter dated 17.05.2001 by which the panel as prepared by the Vidyalaya Sewa Board had been cancelled.

6. We have heard the parties and perused the records. In our view, learned counsel for the State is correct. In the counter affidavit what was stated was that the Government had already taken a decision to cancel the panel. The reason was also given that there was wrong calculation of the number of vacancies as against 162 vacancies shown, upon proper calculation the Government had received the record that in fact only seven vacancies for direct recruitment was available. The rest were basically carry over vacancies of reserved candidates and other sources of recruitment. It is for this reason Government had taken a decision to cancel the panel and direct enquiry by the Vigilance into the conduct of the Vidyalaya Sewa Board. This is a decision taken by the Government in the files and it is on basis of that the counter affidavit was filed in the writ application. In paragraphs 13 and 14 of the counter affidavit, these facts are clearly averred. The learned Single Judge while referring to the reasons for cancellation does not note the fact of cancellation. Be that as it may, it is not something that was created subsequently to the writ proceedings but the foundation is found in the counter affidavit itself.

7. It cannot be denied that once the Government takes a conscious decision to make appointments declaring vacancies, then only for legitimate reasons, it can stop short of filling up the vacancies. Court can examine the same and pass necessary orders but where the Government has taken a decision to cancel the panel prepared, unless this decision is held to be vitiated on grounds of malafide or any other legal and lawful ground, the decision of the Government would continue to bind and that being so the recruitment process would have to come to an end. In such a situation, no mandamus can be issued. We, therefore, have no option but to allow this appeal, set aside the judgment and order of the learned Single Judge and dismiss the writ petition.

8. This appeal is, accordingly, allowed.