

(2016) 03 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 18309, 20543 of 2013 and 14011 of 2014

Sudesh Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Citation : (2016) 03 PAT CK 0043

Hon'ble Judges : Shivaji Pandey, J.

Bench : Single Bench

Advocate : Y.V. Giri, Sr. Adv. and Nikhil Kumar Agrawal, Advocate, for the Appellant; Swapnil Kr. Singh, AC to GP-1 and Brisketu Sharan Pandey, for the Respondent

Final Decision : Allowed

Judgement

Shivaji Pandey, J.—1. As in all the three cases common issues are involved, they are being disposed of by this common order.

2. For convenience, the fact that has been mentioned in C.W.J.C. No. 18309 of 2013 is taken into consideration.

3. In the second phase appointment, an Advertisement vide Notification dated 25/08/2008 was published, inviting the application for 128 posts of Block Teachers under the provisions of Bihar Nagar Nikaya Prarambhik Shikshak (Niyojan Aewm Seva Sart) Niayamawali, 2006 (herein after mentioned as "Niayamawali"), in terms of guideline and programme mentioned in the Notification..

4. Against the advertisement, altogether 24739 applications were received. The Appointing Unit fixed cut-off marks for each category such as trained/untrained/reserved/unreserved categories in terms of the said guidelines. The guideline issued by the State Government, does not provide for the selection on the basis of written test, but the selection was to be made on the basis of academic

qualification. Five times, candidates were to be called for counselling. As per the pleading of the writ petition, the programme could not be adhered to because of flood and other reasons in the area. Accordingly, the date was postponed for the subsequent date which was later circulated.

5. A provisional merit list of 3767 candidates, was published on 01.12.2008. Objections were invited to be filed in between 12.12.2008 to 17.12.2008. In pursuance thereof, 406 objections were received by the Appointing Unit. The objections were disposed of on 18.12.2008 and a final merit list of 1149 candidates, was published in the notice board on 30.12.2008.

6. The Appointing Unit had issued the call letters under certificate of posting to all the candidates whose names were appearing in the merit list and the date of counselling was fixed for 24th January 2009. The Appointing Unit had again issued a public notice on 22nd January 2009 in Daily Newspaper of the State of Bihar, informing the cut-off marks and requested all the candidates, whosoever come within the cut-off marks to appear in the counseling on 24th January 2009 at B.R.C. Karyalaya, Mahua.

7. As per the writ petition, the counselling was conducted on 24th January 2009 and the process of counselling was adopted in the following manner that altogether four tables were arranged. At three tables, the testimonials/certificates were examined and entries were made. At the fourth tables, signatures of 217 candidates who reported for counselling, were taken on a printed register supplied by the Government, but this fact has been disputed as some of the persons have made claim that those who were selected, their names were standing in the printed register supplied by the Government and those who were not selected, were kept in the different register, but the fact remains that those whose names were appearing in the printed register, were appointed and asked to give their consent letter. Accordingly out of 217, 110 candidates were selected and 102 candidates had given their consent. While the matter in process of giving appointment letter, Mr. Ratnesh Kumar (respondent No. 8) and Mr. Rajiv Kumar (respondent No. 9) approached the Appellate Tribunal raising their grievance that wrong process of selection has been followed whereupon the Appellate Tribunal directed the Sub-divisional Education Officer, Vaishali to enquire into the matter and submit a report about the manner the process of selection has been followed whereupon the enquiry was conducted. The Sub-divisional Education Officer, vide his report dated 27th June 2009, informed the Appellate Tribunal that the process of selection has not been made after following the due process of law. It has been pointed out that certain irregularities were committed and had shown his suspicion of irregularity committed while making selection.

8. The Appellate Tribunal on the basis of the report submitted by the Sub-divisional Education Officer, arrived to a finding that the selection process that was adopted by the Appointing Unit, suffers from illegalities and directed for a fresh counselling.

9. Being aggrieved by the order of the Appellate Tribunal, the present writ petitioners approached this Court in C.W.J.C. No. 11162 of 2009 and the Court considered the every aspect of the matter and held that if the process of selection was done in a sham manner and every thing was fixed that cannot be sanctified. This Court also held that the Appellate Tribunal had rightly discarded the whole process, but at the same time, the Court had taken note of the fact that no adverse order can be passed without giving opportunity of proper hearing to the parties as some right has been accrued to them those who gave their consent letter, ultimately, this Court remanded back the matter. It will be relevant to quote following paragraphs of the order:--

"Before concluding the matter for the sake of record, I may notice that immediately on coming to know of the mala fide selection process some of the candidates had filed writ petition before this Court challenging the selection process. This Court had also stayed the process but as subsequently the Tribunal had set aside the selection process, the grievance of the petitioners having been met, the writ petition was disposed of as infructuous, giving liberty to the writ petitioners to intervene in the present writ application, which challenged the order of the Tribunal.

In view of the aforesaid facts, this Court does not find it to be a fit case in which writ of certiorari is to be issued setting aside the order of the Tribunal. The writ application is, accordingly, dismissed. It is, however, to be noted that as the selection process has been set at naught the concerned respondents are directed to take up the matter once again from the stage of merit list publication of 1149 candidates in a manner in which the people are duly and properly noticed and the selection process is transparent and inspires confidence, as it is a matter of public employment. Endeavour must be made to reinitiate and complete the same within a period not later than eight weeks."

10. The petitioners were not satisfied with the order passed by the Writ Court/ Senior Judge and they approached Division Bench of this Court in L.P.A. No. 1498 of 2010 and the L.P.A. Court remanded the matter to the Tribunal for fresh consideration.

11. The Appellate Tribunal, instead of deciding the case on merit, had taken into consideration the letter No. 465 dated 09.07.2012 (Annexure-18) issued by the Principal Secretary, Education Department, Government of Bihar and arrived to a finding that the vacancies which are meant for the second phase appointment of 2008, have now been merged with the third phase of selection process of 2012 and as such, no vacancies are available, the question for consideration of their cases, does not arise and accordingly, the appeal was rejected.

12. The grievance of the petitioners is that when the Court had relegated the matter with specific direction, the Tribunal had no jurisdiction to reject the application on the third ground that the vacancies were not available, as the vacancies of 2008 have already been merged with the vacancies of 2012 and by

that time, new Rule had come to enforce all the appointments have to be made in terms of the new Rule.

13. The counsel for the petitioners has submitted that the Appellate Tribunal had committed an error in arriving to the finding that all the vacancies have now been merged with the vacancies of 2012, but the fact is that the vacancies which were subject matter of the present case remained protected. As per letter dated 29/12/2014 (Annexure-22), 54 vacancies are meant for the general candidates, 24 vacancies for the Urdu and 24 vacancies for the physically handicapped persons.

14. Altogether 102 vacancies were there and 102 candidates gave their consent, these vacancies cannot be transferred for the third phase of appointment as those vacancies are apparently clear, they were remained protected and were excluded for the purposes of selection in third phase. It is apparent from the letter dated 9th July 2012 issued by the Principal Secretary, Education Department, Govt. of Bihar whereby it shows that 102 vacancies were not subject matter of the selection of the third phase. This fact is emerging from the Annexure-19. Clause-9 of the instruction shows that the earlier disputed vacancies would not be added for the third phase of the appointment.

15. The letter dated 24.05.2013 (Annexure-20) also shows that only 82 vacancies were left for the third phase of the appointment. This letter also suggests that the vacancies which are the subject matter before the Appellate Tribunal as well as before this Court, was not transferred and have been merged with the third phase of the appointment, it remained intact and the court below had misdirected himself and refused to decide the case on merit merely on the ground that these vacancies are not available.

16. The counsel for the State has specifically asserted that the vacancies are not available for consideration before the Appellate Tribunal as all the vacancies have merged with the third phase which cannot be accepted in view of the letter dated 9th July 2012 and the Resolution of 2012 (Annexure-19) where it has been specifically mentioned that the disputed vacancies will not be added to the third phase and further it is substantiated from Annexure-20 where it has been specifically mentioned that 82 vacancies have gone to the third phase.

17. In such view of the matter, there is irresistible conclusion that still the vacancies are available. The vacancies which are under dispute in 2008, have not been transferred to the third phase. The Tribunal had not gone into the merit of the case, rather he had gone to tangent and as such, the order of the Tribunal is set aside and the matter is remanded back to the Tribunal to adjudicate as to whether the Appointing Unit had followed the due process of law in making a proper selection and pass the order in accordance with law. While adjudicating the dispute, the Tribunal will decide its case on the basis of material available on record without being influenced by the earlier order and judgement. The Tribunal will also examine the manner the selection was done. The whole process should

be completed within a period of six months from the date of receipt/production of a copy of this order. The Tribunal will decide the issue after giving full opportunity of hearing to all the party concerned.

18. Accordingly, this petition is allowed and impugned order dated 13/07/2013 passed in HC-23/2012 is set aside with aforesaid observation and direction.