

(2011) 08 PAT CK 0042
In the Patna High Court
Case No : CWJC No. 16567 of 2004

Sushil Chand Srivastava

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 — Rule 15, 17, 19, 20

Citation : (2011) 3 PLJR 909

Hon'ble Judges : Shivaji Pandey, J; Shiva Kirti Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—The writ Petitioners of all the three writ petitions had taken the 24th Judicial Service Examination conducted by the Bihar Public Service Commission (hereinafter referred to as "the Commission") pursuant to an advertisement in the year 1990. They have prayed for quashing the notification No. 4691 dated 18.8.2001 issued by the Personnel and Administrative Reforms Department of State of Bihar contained in Annexure-5, whereby 70 candidates were appointed to the post of Munsif in the general/open category on the basis of their position in the merit list. The challenge is confined to the appointment of private Respondents 6 to 11, who are at serial nos. 16, 20, 48, 65, 66 and 67 of Annexure-5 to C.W.J.C. No. 16634 of 2004. Since the cases of all the Petitioners in these three writ petitions are said to be similar, for the sake of convenience, the facts have been taken, wherever necessary from the records of aforesaid writ petition which was argued as the main case. The Petitioners have made a further prayer for direction to the Respondents to appoint them on the post of Munsif from out of merit list of general category candidates.

2. Fortunately, the facts are not in dispute. The initial vacancies advertised by the Commission were seven but with a stipulation that numbers might be increased. Subsequently, the number of vacancies was increased to 245 through another advertisement dated 7.10.1991. The State of Bihar sought to introduce

reservation for some backward categories, beyond the reservation provided under the Bihar Civil Services (Judicial Branch) (Recruitment) Rules, 1955 (hereinafter referred to as the "Rules") which provide reservation only for S.C. and ST. category candidates, through an Ordinance of 1991, which was later on converted into Act 3 of 1992. By a letter bearing No. 13069 dated 1st October, 1991 the State Government took the stand that the provisions in the said Act for reservation to various categories such as Most Backward class, Extremely Backward class and women is to be applied to the recruitment through 24th Judicial Competitive Examination. Accordingly, in the advertisement dated 7.10.1991 the vacancies were increased to 245, and were categorized as;- General-123, S.C.-34, S.T.-25, M.B.C-29, B.C.-20, E.B.C-7 and Women-7.

3. The provisions in the Ordinance were subsequently incorporated in the Act providing for reservation in the Judicial Service also and these were challenged through C.W.J.C. No. 7619 of 1991. That writ petition was allowed on 6.8.1993 vide Judgment reported in 1993 (2) PLJR (Deepak Kumar Singh v. State of Bihar) which was challenged by the State of Bihar through SLP (Civil) No. 16476 of 1993 before the Supreme Court. The Court allowed the selection process to go on but stayed appointments vide interim order dated 13.5.94 which was partly modified on 16.5.95. The matter remained pending there for sometime but ultimately the said SLP leading to Civil Appeal No. 9072/1996 (State of Bihar v. Bal Mukund Sah) was dismissed by the Supreme Court on 14.3.2000.

4. It is not in dispute that on its administrative side the High Court by letter dated 18.3.94 advised the Commission to fix the cut-off marks at 45% for the general candidates and at 35% for S.C./S.T. candidates, with further stipulation that candidates not more than three times the number of vacancies be called for interview and for that purpose the qualifying marks may be raised. Such advice was in accordance with Rule 15 of the Rules.

4A. The result of written examination was published on 18.4.1994 in which 539 candidates of different categories were declared qualified for the viva-voce test. In this list the number of general category candidates was 377 at cut-off marks of 473, whereas 162 candidates were shown qualified for different reserved categories viz. S.C.-66, ST.-2, M.B.C-20, B.C.-71 and Women-3. On 9th May, 1994 the Commission published a list of 195 successful candidates which included 123 candidates of general category and 72 of reserve category which included 38 O.B.C. and 34 S.C. The final result dated 16.5.94 is Annexure-1 to the writ petition.

5. On account of interim order passed by the Hon"ble Supreme Court in the connected SLP on 13.5.1994, no appointment could be made till that order was modified on 16.5.95 permitting appointment of the selected candidates only for filling up the general category posts but subject to predetermination of their seniority and subject to result of the Special Leave Petition. Appointment to reserved posts was kept stayed with certain conditions relating to determination of seniority, if reservation was ultimately upheld. The appointment of 123

candidates of General Category was made by notification dated 30.11.1995.

6. After dismissal of the appeal by the Supreme Court on 14.3.2000, the Personnel Department of the State Government by letter No. 6749 dated 18.8.2000 (Annexure-2) conveyed the decision of the State Government in the matter to the Commission. The decision was that in the light of the Judgment of the Supreme Court no appointment was to be made in the Bihar Judicial Service from backward categories, 34 vacancies for the Scheduled caste may be filled up from the candidates of that category recommended vide letter No. 158 dated 16.5.94 (Annexure-1); the sole S.T. candidate recommended may be appointed against one of the 24 vacancies for the Scheduled Tribes but the rest 23 vacancies were to be carried over as per the provisions in the Act 3 of 1992 for three recruitment years; and against the 64 other reserved vacancies, appointment may be made on the basis of merit from general category. It was pointed out that two persons namely Ranjit Kumar and Ashok Kumar Gupta who were candidates belonging to the Backward category, had already been appointed earlier because of recommendation made by the Commission of 9 candidates (on merit) through letter No. 606 dated 28.6.97 and their applications were not being returned with applications and papers of other backward category candidates. It was emphasized that for the remaining vacancies which were to be treated as vacancy in general category, the recommendation should be on the basis of merit lists prepared in respect of 24th Judicial Service Examination.

6A. It is further not in dispute that the direction to carry over vacancies reserved for Scheduled Tribes was challenged through C.W.J.C. No. 8655 of 2000 and the writ petition was allowed on 24.1.2001. The particular direction for carrying over the 23 S.T. vacancies was quashed with the direction to act in accordance with Rule 20 which provides for filling up the unfilled reserved vacancies of S.T. and S.C. categories with qualified candidates from the general merit list.

7. The Commission made further recommendation to fill up the available vacancies treating them to be general category and accordingly appointments were made on the basis of further results prepared on the basis of merit in accordance with Rule 19 and published on 1.1.2001 (Annexure-3) for 64 candidates and on 17.5.2001 (Annexure-4) for 23 candidates. This included the appointments of private Respondents on the basis of aggregate marks obtained by them in the viva voce test and in the written examination as per provisions in Rule 19 of the Rules.

8. It is useful to notice at this stage that a batch of writ petitions were preferred by general category candidates who were not in the list of 377 general category candidates qualified for viva voce test on account of cut-off marks at 473 for the general category. They challenged the result of (sic)4 further general category candidates published on 1.1.2001. Those writ petitions were finally dismissed by judgment dated 25.9.2001 reported in Rameshwar Pati Tripathi and Others Vs. The State of Bihar and Others . In that case the basis of challenge was that even if the aggregate marks of some candidates, who had faced viva voce test as

reserved category candidates justified their inclusion in the final merit list, there were at least three such candidates who had less marks in the written examination than the cut-off mark for the general category candidates qualified for viva voce test. The judgment shows that all aspects of the controversy were considered in detail and it was finally held that though three of the Petitioners might have a hypothetical chance to appear at the viva voce test but it would not be just and proper to reopen the viva-voce tests and interfere with the impugned recommendations merely because some of the Petitioners had a possible chance of facing viva-voce test for selection, particularly when the recruitment process was completed pursuant to the interim orders of the Supreme Court. The Court further held that the persons from the reserved category were called for viva voce test bona fide and as per the terms of the advertisement and although this Court had held that the reservation for other backward category was not permissible, the SLP preferred by the State was admitted and the Supreme Court passed an interim order permitting selection process to be completed.

9. Respondent nos. 6 to 11 were recommended by the Commission on 17.5.2001 and subsequently vide notification dated 18.8.2001 (Annexure-5) they have also been appointed alongwith others on the basis of aggregate marks obtained by them. They were posted as Munsif to different Civil Courts by notification dated 18.8.2001 and are working since last ten years.

10. On hearing the parties, it is found that the main challenge to the selection and appointment of Respondents 6 to 11 is on the same ground as was raised by the Petitioners in the case of Rameshwar Pati Tripathi v. State of Bihar (supra) which was rejected by the judgment reported in Rameshwar Pati Tripathi and Others Vs. The State of Bihar and Others . It was highlighted that in the written test they had secured less than 473 marks which was the cut-off mark for general category candidates and hence they should not have been permitted to take the viva voce test as candidates from the general category. It is not in dispute that they faced the selection process including viva voce test on account of terms of advertisement and interim order of the Apex Court to continue with the selection process. It is also not in dispute that their aggregate marks are between 571 to 540 and are more than aggregate marks obtained by the Petitioners. On facts it is clear that the case of the writ Petitioners in the case of Rameshwar Pati Tripathi (supra) was superior because they had not been given the chance to appear in the viva voce test but the Petitioners in the present cases have actually faced the viva voce test and in aggregate they have secured lesser marks.

11 The main argument advanced on behalf of Petitioners is that Rule 17 has been violated because the Commission was required to arrange for viva voce test of the candidates on the basis of marks obtained at the written examination. According to them if that had been done, then there was a chance that the Respondents may not have qualified for the viva voce test and hence their result and selection deserves to be quashed.

12. The main features of the case have already been noticed above and it is evident that the Commission arranged for viva voce test on the basis of marks obtained at the written examination, while keeping in view the provisions for reservation in Act 3 of 1992. The action of the Commission was bona fide and while the matter was pending before the Supreme Court, there was a direction to complete the recruitment process. On that basis the viva voce test was conducted and after the final judgment of the Supreme Court, the State Government conveyed its decision to the Commission for recommending required number of candidates on the basis of merit list so that the reserved seats could be filled up with general category on the basis of merit (aggregate marks). In the circumstances, no fault can be found with the action of the State Government or the Commission or on the part of private Respondents. It has rightly been submitted by the State that the basic issue remains the same as already finally decided in the case of Rameshwar Pati Tripathi (supra) and there is no good reason for interfering with the recommendations and appointments of the Respondents when no interference was made on similar ground long back in the year 2001.

13. On consideration of the rival submissions and the relevant facts, we are of the considered view that there is no justification to interfere with the appointment of the private Respondents on the post of Munsif pursuant to orders of appointment contained in Annexure-5 dated 18th August, 2001. All the writ petitions were argued on the basis that similar issues are involved in these cases, hence they all shall stand dismissed by this common judgment. There shall be no order as to costs.

Shivaji Pandey, J.

14. I agree.