

(2001) 08 PAT CK 0070
In the Patna High Court
Case No : L.P.A. No. 205 of 2001

The State of Bihar and Others	Vs	APPELLANT
Hridya Nand Mishra		RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 4 PLJR 133

Hon'ble Judges : P.N. Yadav, J; Nagendra Rai, J

Bench : Division Bench

Advocate : Jawahar Dhari Singh and Nityanand Jha, for the Appellant; P.K. Shahi, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties on the question of limitation.
2. After having heard learned Counsel for the parties and taking into consideration the averments made in the limitation, the delay in filing this appeal is condoned.
3. The State of Bihar and the Director, Primary Education, Human Resources Development Department, Govt. of Bihar, Patna, Appellant Mo. 2 are the Appellants against the order dated 25.1.2000 passed in CWJC No. 11431 of 1998 by a learned Single Judge of this Court setting aside the order dated 2.9.1998 passed by Appellant No. 2, Annexure-1 to the writ application, and directing the Appellants to place the case of the writ Petitioner-Respondent before the Establishment Committee for his appointment as Assistant Teacher in Primary school.
4. The case has a chequered history and as such it is necessary to state the facts in brief. According to Government policy decision the appointment to the post of Assistant Teacher in Primary School used to be made on the basis of residence of an eligible candidate in particular district and the panel used to be made on that

basis. The said policy decision was challenged on the ground of violation of Articles 14 and 16 of the Constitution of India before this Court in CWJC No. 5490 of 1986 *Anil Kumar v. Chief Secretary to the State Government of Bihar Patna and Ors.* The Court allowed the writ application and quashed the appointment of Assistant Teacher on district wise basis holding that the same is unconstitutional. However, this Court did not interfere with the appointments already made from the said panel. The said judgment is reported in 1987 PLJR 846. The State Government thereafter issued directions and circulars staying the appointment on the basis of panel prepared on district wise basis and further directed that fresh appointment will be made ignoring the district wise criteria. Large number of writ applications were filed before this Court by the persons whose names were in the panel prepared on district wise basis but not appointed. The said writ applications were dismissed by this Court. The matter went before the Supreme Court and the Supreme Court in the case of *Sabita Prasad and others v. State of Bihar and Ors.* reported in 1994 (1) PLJR 62 (SC) decided the controversy. The Apex Court held that the preparation of district wise panel is not permissible in law and thereafter orders were passed with regard to different appeals taking into consideration the facts and circumstances of each appeal. With regard to appointment in the district of Siwan, which is relevant in this case as the Respondent claims appointment on the basis of panel of Siwan District, four Civil Appeals, being Civil Appeal Nos. 3218, 3219, 3220 and 3217 all of 1991 were filed before the Supreme Court. The first three appeals, namely, 3218, 3219 and 3220 of 1991 were disposed of on the basis of concession made by the State of Bihar that as the Appellants of those appeals were appointed upto 2.7.1989 and were continuing in service, they would be retained in service. Civil Appeal No. 3217 of 1991 was remanded by the Apex Court to the High Court to consider that if any of the Appellants before the Apex Court are senior to those who have been appointed and are continuing in service and otherwise qualified in all respects prior to 1991 rules, then the Court will direct the State Government to appoint such persons in relaxation of the age bar.

5. After disposal of the matters by the Apex Court large number of writ applications were filed by persons from the old panel claiming appointments on the one or the other grounds. A learned Single Judge of this Court in the case of *Ramji Tiwari and others* considered the matter and held that the decision rendered by the Supreme Court in the case of *Sabita Prasad (supra)* was inter parte decision and after a long delay, no direction can be given for appointment on the basis of 1985 panel which was declared to be unconstitutional by this Court. The learned Single Judge however clarified that the judgment rendered by him will not apply in a case where necessary direction has been issued by the Courts. The said judgment was challenged by *Ramji Tiwari and others* in LPA No. 173 of 1995 and the said LPA and other appeals were heard and finally dismissed on 1.2.1996. The same is reported in 1996 (1) ALL PLJR page 273. Thus the controversy with regard to appointment of Assistant Teacher on the basis of 1985 panel was settled by a Division Bench of this Court and the Division bench of this

Court held that only in cases where direction has been issued by the High Court or the Supreme Court, then Appellant No. 2 will decide the matter in the light of the said direction. The decision rendered in Sabita Prasad's case was inter parte decision and on that basis relief cannot be claimed by others especially after a long delay.

6. The writ Petitioner-Respondent along with Chunchun Kumari and others filed CWJC No. 6742 of 1993 before this Court for a direction to appoint them on the basis of their placement in 1985 panel of the district of Siwan. The said writ application was disposed of on 28.8.1993 by a Division Bench of this Court and this Court directed the writ Petitioner-Respondent to represent the matter before Appellant No. 2. Appellant No. 2 considered the matter of the writ Petitioner-Respondent along with the case of Chunchun Kumari and others and rejected their claims. Writ Petitioner-Respondent again filed CWJC No. 155 of 1995 which was dismissed by a learned Single Judge of this Court. Thereafter, writ Petitioner-Respondent preferred LPA No. 1208 of 1995. The said LPA along with the LPA No. 172 of 1996 filed by Chunchun Kumari was heard and disposed of on 16.7.1997 in the light of order passed by this Court in LPA No. 772 of 1995 Vijay Shankar Tiwari and Ors. v. The State of Bihar and Ors. disposed of on 10th May, 1996. At this stage, it is be stated here that writ application being CWJC No. 155 of 1995 filed by Vijay Shankar Tiwari in similar case, was dismissed by a learned Single Judge of this Court and they preferred LPA No. 772 of 1995 which was disposed of on 10th May, 1996. A Division Bench of this Court considered the case of Ramji Tiwari (*supra*) and held that in his case it was especially provided that the writ application cannot be dismissed on the ground of delay where there has been direction of the Court to consider the matter and as in the case of Vijay Shankar Tiwari there was earlier direction to consider their, cases, the same cannot be rejected on the ground of delay. The Court also noticed the fact that one Jai Mangal Singh, similarly situated person, has been appointed and accordingly, directed the authorities to consider the case of the Appellant Vijay Shankar Tiwari of that case on merit taking into account that Jai Mangal Singh is continuing in service. The appeal filed by the writ Petitioner-Respondent as well as two others including Chunchun Kumari, as stated above, was disposed of by a Division Bench of this Court in the light of the directions issued in the case of Vijay Shankar Tiwari (L.P.A. No. 772 of 1995) and the Appellant No. 2 was directed to decide the matter afresh. Thereafter, Appellant No. 2 considered the matter and by the impugned order rejected the claim of writ Petitioner-Respondent. The impugned order so far it related to Chunchun Kumari was set aside by the learned Single Judge and the matter was directed to be placed before the Establishment Committee for her appointment as Assistant Teacher. The State of Bihar filed appeal being LPA No. 804 of 2000 and the same has been allowed and the claim of Chunchun Kumari has been rejected on 27.2.2001 by this Court to which one of us (Nagendra Rai, J.) is a party.

7. From perusal of the order of the Director, Primary Education, which has been set aside by the learned Single Judge, it appears that he has rejected the claim

of the writ Petitioner-Respondent on the ground that no person junior to him in general category candidate has been appointed on the basis of 1985 panel which was declared to be invalid. Some persons were appointed in pursuance of the order passed by this Court and the Supreme Court. The case of writ Petitioner-Respondent cannot be equated with the case of Jai Mangal Singh as he was appointed from 1983 panel whereas the writ Petitioner is of the 1985 panel.

8. Learned Counsel for the Appellant-State submitted that the Respondent claims appointment on the post of primary teacher in Siwan district on the basis of 1985 panel which has been held to be invalid by this Court and the Apex Court in the case of Sabita Prasad (supra). The case of the Respondent was remanded twice by this Court and the Director, Primary Education considered, the matter and found that no person junior to the Respondent had been appointed except on the basis of specific order of the Courts. The learned Single Judge did not find any fault with the aforesaid reasoning and in that view of the matter, the order passed by the learned Single Judge is not according to law.

9. Learned Counsel appearing for the writ Petitioner-Respondent on the other hand submitted that a Division Bench of this Court in LPA No. 967 of 2000 State of Bihar and Ors. v. Surendra Prasad and Ors. disposed of on 23.1.2001 has upheld the order of the learned Single Judge in a similar case. He also submitted that the case of the Respondent is similar to that of Jai Mangal Singh and Ajit Kumar Singh who were below in the panel and as such the learned Single Judge rightly directed the Director, Primary Education for reconsideration of the matter of Respondent.

10. Admitted fact is that the appointment related to 1985 panel. The panel has been held to be invalid by this Court had the same has been upheld by the Supreme Court. With regard to appointment in the district of Siwan in the case of Sabita Prasad (supra) the Apex Court directed the concerned authority to consider the case of the Appellants before it only if any person junior to them has been appointed. There was no general direction. This Court has already held that the judgment rendered by this Court in Sabita Prasad (supra) was inter parte decision and on that basis, no general direction can be issued for indefinite period to consider the cases when the matter was brought to this Court on the basis of invalid panel of 1985. The case of the Respondent was twice remanded by this Court and has been considered by the Director, Primary Education Appellant No. 2. The impugned order shows that his case cannot be equated with the case of Jai Mangal Singh and no person junior to him has been appointed except where there is specific order of the courts. The learned Single Judge did not find any fault with any of the reasoning?s given by the Director. It is clear that the assertion of the writ Petitioner that his case is similar to Jai Mangal Singh has been found to be incorrect. In our view, the learned Single Judge should not have interfered with the order passed by the Director, Primary Education when the order was not found to be suffering from any legal infirmity. If every time the matter is remanded on a new ground made by the writ

Petitioner, then there will be endless litigation. From the judgment relied upon by the Respondent, it is not clear as to what was the facts of that case, where as the impugned order has already been upheld by this Court in the case of Chunchun Kumari as stated above. In that view of the matter, we are of the view that the order passed by the learned Single Judge is not according to law and accordingly, the same is set aside and the order of the Director, Primary Education, Appellant No. 2, dated 2.9.1998 is upheld.

11. In the result, the appeal is allowed.