

(2000) 09 PAT CK 0110
In the Patna High Court
Case No : L.P.A. No. 370 of 2000

The State of Bihar and Others

APPELLANT

Vs

Rajesh Kumar Gupta and Others

RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2000) 09 PAT CK 0110

Hon'ble Judges : Nagendra Rai, J;I.P. Singh, J

Bench : Division Bench

Advocate : Anup Kumar Chongdar, for the Appellant; Ram Shankar Das, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—In this appeal, the State and others are the Appellants. They have filed the present appeal against the order dated 1.2.2000 passed by a learned Single Judge in C.W.J.C. No. 5113 of 1998, by which the writ application filed by the writ Petitioners-Respondents to consider their cases for appointment against Class III and Class IV posts in Patna Medical College (for short "the College") has been allowed.

2. The facts necessary for disposal of the present appeal are like this. Certain Class III and Class IV posts were vacant in the College. On 28.1.1990, an advertisement was published from the office of the Principal of the College in a daily newspaper, namely, Nav-Bharat Times, inviting applications for appointment on the said posts. The last date for filing applications was 25.2.1990. The Petitioners-Respondents applied in pursuance of the said advertisement.

3. According to the assertion made by the Appellants, the interview was held on different dates but no decision with regard to appointment was taken. It appears that some of the aggrieved Applicants came to this Court in C.W.J.C. No. 8347 of 1994 Durga Kumari and Ors. v. State of Bihar and Ors. which was disposed of by

this Court on 24.7.1995. In the said writ application, which was similar to the instant one, the learned Single Judge held that as no panel was prepared, the writ Petitioners would have no right to maintain the writ application. However, if no appointment was made from the advertisement, the authorities should take steps for fresh advertisement in accordance with law.

4. Thereafter, it appears that another writ application was filed being C.W.J.C. No. 9701 of 1996, which was disposed of by a learned Single Judge of this Court on 28.9.1997 with a direction to the writ Petitioners to approach the Director-in-chief, Health Services, with their grievance by filing a representation within two weeks and the Director-in-chief was directed to consider the same within a period of two months. The said representation was considered and the director-in-chief by order dated 24th of December, 1997, rejected the same after having found that though the interview letters were issued to the candidates, but the interview could not be held due to chaos and confusion created on the date of holding of the interview and as such no further action was to be taken in the matter. In other words, by reason of there being no interview, there was no question of appointment and as a matter of fact no appointment letter was issued to any of the Applicants.

5. The said order was challenged in C.W.J.C. No. 5113 of 1998 with a prayer to issue direction to the Respondents-authorities to fill up the post of Class III and Class IV employees on the basis of advertisement of 1990. The learned Single Judge by the order under appeal disposed of the writ application with following directions:

In the circumstances, I direct the Respondent, Principal, Patna Medical College, Patna to complete the process of selection in pursuance of advertisement dated 28th January, 1990. If so required, he may come out with a fresh notice asking the individual to produce evidence like interview letter etc. to show that one or other candidates applied for appointment in pursuance of advertisement aforesaid.

On receipt of such applications with evidences, the Principal may issue fresh interview letters to such candidates.

The total process of selection be completed, on an early date, as that it must reach its finality not later than a period of nine months from the date of receipt/production of a copy of this order.

The Director-in-Chief, Health Services, Govt. of Bihar, is directed to ensure compliance of this order.

The writ petition stands disposed of with the aforesaid observations and directions.

6. Learned Counsel for the Appellants submitted that this Court on earlier occasion in C.W.J.C. No. 8347 of 1994 had directed to fill up the posts by fresh advertisement. In that view of the matter, direction given by the learned Single

Judge in this case to fill up the said posts on the basis of the earlier advertisement is contrary to the same and in a case of disagreement with the earlier direction, he should have referred the matter to a larger Bench and he should not have himself decided the matter. He further submitted that in this case, an advertisement was issued in the year 1990 and as the interview was not held due to disturbance created by the candidates, the State Government decided not to fill up the posts on the basis of the said advertisement and now the posts have to be filled up according to the new Rules by making a fresh advertisement.

7. Learned Counsel appearing for the writ Petitioners-Respondents submitted that once the process of selection started after making advertisement and issuing interview letters, the same has to be completed in terms of the said advertisement and the State cannot be allowed to fill up the posts in accordance with the new Rules governing the appointment of Class III and Class IV employees by issuing a fresh advertisement.

8. Thus, the only question that crops up for consideration in this appeal is as to whether the posts of Class III and Class IV employees in the College are to be filled up on the basis of the advertisement of 1990 or a fresh advertisement is to be made to fill up the said vacancies.

9. The law is well-settled that the authorities while filling up the public post should comply with the requirement or mandate of Articles 14 and 16 of the Constitution. There shall be equality of opportunity in the matter of employment and all eligible persons should be treated alike and they should not be discriminated only on the ground of religion, caste, sex etc. Every eligible candidate has right to consideration of his case according to law dealing with particular appointment. However, it is well-settled that inviting the applications for a post does not by itself create any vested right to the post in the candidate and the Government has right to withdraw the advertisement.

10. In the case of I.J. Divakar and Others Vs. Government of Andhra Pradesh and Another, , applications were invited for filling up the posts of Junior Engineer in Andhra Pradesh Engineering Service and other Spied services through the Andhra Pradesh Public Service Commission. The Commission received applications, held viva voce and on conclusion of the same took step to finalise the select list. In the meantime, the State Government issued notification excluding the said posts from the purview of the Commission and decided to fill up the same from different categories of employees. The said matter was challenged before the Apex Court. Dealing with the said matter, the Apex Court held as follows:

Inviting the applications for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application, as such at least the Applicants had no right to challenge the Govt. order withdrawing the advertised post from the purview of the Commission.

11. A Constitution Bench of the Apex Court in the case of Shankarsan Dash Vs. Union of India, held as follows:

Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons, and if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.

12. A three Judge Bench of the Supreme Court in the case of Jai Singh Dalal and Others Vs. State of Haryana and Another, held that the recruitment process can be stopped by the Government at any time before a candidate is appointed. A candidate has no vested right to compel the Government to complete the process. However, the Government has to act fairly and in just manner and not in breach of Article 14 of the Constitution.

13. In the case of Rajasthan Public Service Commission Vs. Chanan Ram and Another, , an advertisement was issued for filling up certain posts of Assistant Director (Junior). In the meantime, the Rule was amended and the said posts were abolished and posts of Marketing Officer were created and a fresh advertisement was issued to fill up the said posts. The said decision was challenged on the ground that the process of selection was initiated and as such the same was to be completed in terms of the earlier advertisement. The Apex Court negatived the aforesaid claim holding that except inviting applications no further step in connection with the recruitment was ever taken by the Commission and hence no right accrued to the candidates save and except to be considered for such selection if the earlier advertisement survived.

14. Thus, the settled law on the point is that only by issuance of advertisement and interview letters, no vested right is created in favour of a candidate and the Government/employer is free to withdraw the same provided when challenged it has to justify its action on the touch-stone of Article 14 of the Constitution. It is also well-settled that the State is not bound to fill up all or any of the vacancies and it may postpone the process of selection in the midway if the just and reasonable ground exists for the same.

15. In this case, no doubt, the advertisement was issued in the year 1990 and interviews letters were issued, but as the confusion and disturbance was created at the time of the interview, no further step was taken, which impliedly means that the decision to fill up the posts on the basis of the aforesaid advertisement issued as far back as in 1990 was abandoned. The writ Petitioners-Respondents can claim consideration of their cases only when the steps would have, been taken on the basis of the said advertisement. The decision of the Appellants to

postpone the same cannot be termed to be arbitrary or unjust. This apart, there is another cogent reason not to issue any direction to fill up the posts on the basis of the earlier advertisement as a period of more than ten years has elapsed from the date of the advertisement. In the meantime, many other candidates have become eligible to apply for the said posts. In such a situation, asking the authorities to fill up the posts on the basis of 1990 advertisement will be violative of equality clause as many other eligible persons will be deprived of their opportunity to participate in the process of fresh selection, which is to be made to fill up the said post.

16. As stated above, the matter had earlier come to this Court and the same was heard by a learned Single Judge, who did not find any merit in the claim of the writ Petitioners of the said case for a direction to the authorities to make appointment on the basis of 1990 advertisement, rather he directed that the appointment is to be done by a fresh advertisement. The said case is similar to that of the Respondents of the present case.

17. In such a situation, the learned Single Judge was not justified in passing a contrary direction as the same is against the judicial decency and decorum. It will be a sad and bad day in the judicial system if the Judges having co-ordinate jurisdiction start over-ruling each other. The judicial discipline, which is a paramount consideration than any other considerations in dealing with the judicial matters requires that the Judge of co-ordinate jurisdiction having noticed that there is contrary direction of another Single Judge and finds himself in disagreement therewith he should refer the matter to a Division Bench otherwise it will be very difficult for the administration to follow one judgment and to discredit another, thus, making themselves vulnerable of the contempt of the court proceeding.

18. Thus, it is held that no direction can be issued to the Appellants to initiate the process of selection on the basis of 1990 advertisement, which was abandoned in view of the circumstances mentioned above. Earlier direction given by this Court in C.W.J.C. No. 8347 of 1994 should be carried out. In other words, if the decision is taken to fill up the vacant posts, then the same are to be filled up by issuing a fresh advertisement in terms of the Rule applicable at the time of the advertisement.

19. With the aforesaid observation, this appeal is allowed. There shall be no order as to costs.

I.P. Singh, J

20. I agree.