
(1996) 10 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 9451 of 1996

Uday Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-10-1996

Acts Referred:

Citation : (1996) 2 PLJR 792

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : M.S. Madhup, for the Appellant; S.A. Narain Jha and Mukesh Kumar, for the Respondent

Judgement

A.K. Ganguly, J.—Since there is some urgency in the matter, this writ petition is being disposed of at the stage of admission itself by passing the following order:

2. This writ petition has been filed by six persons challenging, inter alia, the decision taken on the administrative side of this High Court of rejecting their application which were filed pursuant to an advertisement dated 16th July, 1994 issued by the State Government. The said advertisement was issued by the Government of Bihar for appointment to the post of Additional District and Sessions Judge from the Members of the Bar.

3. The main contention of the learned Counsel for the Petitioners in this writ petition is that in the said advertisement there is no requirement of sending a self addressed envelope along with the application. All the Petitioners submit that they had enclosed postal orders of Rs. 25/- along with the application form in terms of the said advertisement. It has also been stated in the writ petition that they have come to know that notices have been sent by the High Court officials to some of the candidates for removing the defects in respect of those applications which are defective. The Petitioners were under the impression that if their applications are found defective, they will also receive the same intimation from the High Court for removal of the defect. They have stated in

paragraph 6 of the writ petition that they did not receive any information from the High Court for removal of defect from their applications.

4. When the Petitioners came to know in the 2nd week of August, 1996 that admit cards were being issued and the written test was to be held on 1st September, 1996, the Petitioners, not having received any admit card, contacted the Joint Registrar of Patna High Court. This has been stated in the said paragraph that the Joint Registrar, Patna High Court asked the Petitioners to come on 29th August, 1996. In paragraph 8 of the writ petition it has been stated that the Petitioners had made a representation before the Hon''ble the Chief Justice on 22nd August, 1996 stating therein that they have not received the admit cards and as such cannot participate in the written test. The Petitioners'' case is that the same fate has befallen many other candidates.

5. The substance of the case of the Petitioners is that they have complied with all the requirements of the advertisement but still they have not received the admit cards and thus they have been debarred from appearing in the examination. Thus the action on the part of the administrative side of the Patna High Court, according to them, is unreasonable and arbitrary.

6. In the counter affidavit which has been used by the High Court administration, it appears that a sub-committee was formed consisting of some of the Hon''ble Judges of the High Court to monitor the entire affair relating to holding of examination and also for giving the guidelines for recruitment starting from the scrutiny of applications. In paragraph 5 of the said counter affidavit it has been stated that out of 4989 applications, which were submitted by the different candidates, 4856 applications were found to be defective and in the opinion of the said sub-committee those 4856 applications contained minor defects which are not vitral and which can be removed. In paragraph 7 of the said counter affidavit the nature of the defects have been mentioned. They are set out below:

- (a) Two photographs duly attested by the prescribed authority wanting.
- (b) Application not in prescribed format.
- (c) Copy of certificate in support of date of birth wanting.
- (d) Signature of the candidate on application wanting.
- (e) Attestation of all the copies of certificates by prescribed authorities wanting.
- (f) Seven years'' experience of the Bar certificate duly issued by the competent authority is wanting.
- (g) Self addressed envelope with postage of Re. 1/- wanting.
- (h) Copy of caste certificate wanting.
- (i) Caste certificate not issued by competent authority.
- (j) Defects in filling up the application form.

(k) Copy of provisional/original certificate of required qualification for the post wanting.

(l) Application received after the fixed date i.e. 05.12.94.

(m) The requisite fee has not been remitted through I.P.O.

(n) You have crossed the upper age limit i.e. 50 years as on 05.12.94.

(o) Medical fitness certificate by Civil Surgeon or equivalent officer or officer of Higher rank has not been attached.

7. This Court is of the view that many of the defects mentioned in the said paragraphs cannot be said to be minor, namely, the defect relating to lack of certificate in support of the date of birth, defect relating to lack of certificate about 7 years' experience in the Bar, absence of caste certificate and so on. The High Court has however treated along with those defects, the defect of non-submission of a self addressed envelope with postage of Re. 10 on the same footing.

8. However, in the subsequent paragraphs of the said counter affidavit it has been stated that for removal of the defects individual letters were issued to all the 4856 candidates under certificate of posting and such letters were issued in the last week of April, 1996 and the candidates were directed to remove the defects positively between 22nd and 27th May, 1996. Apart from sending such letters under certificate of posting, the authorities of the High Court also decided to publish notices in the two daily newspapers, one in English and one in Hindi asking the candidates to remove the defects. Insertions were given in Patna and Varanasi editions of those newspapers. It was mentioned that those who have not received the letters sent by post, may contact the Joint Registrar (Establishment) to find out the defects in their applications within 28th and 29th May, 1996. A copy of the said advertisement which was published in the Times of India on 24th May, 1996 is set out below:

The candidates who have applied pursuant to resolution No. 5958 dated 16.6.94, of the Department of Personnel and Administrative Reforms, Patna, Bihar, for the post of Additional District and Sessions Judge direct from Bar are hereby informed that individual letters have been issued to remove defects in their applications from 22nd to 25th and 27th May, 1996. Information has been sent by post to such applicants also whose applications have been rejected totally as disqualified. Applicants, other than those whose applications have been rejected, and who have not received letters as yet requiring them to remove the defects in their applications are given a last opportunity to get the defects rectified on the 28th and 29th May, 1996 before, the Joint Registrar (Estt.) of the Court personally. For this, they must come with attested copies of all certificates and two attested photographs in terms of the aforesaid resolution. If they fail to do so, their application would automatically stand rejected.

By Order of the Court Sd/- Registrar General

9. Learned Counsel for the High Court authorities submitted that no candidate has a right to get an opportunity for removal of the defects in his application and a defective application could have been rejected. But this opportunity was given by the High Court to the candidates only to give them an opportunity to remove the defects. The reason why notice was not given under registered post to the candidates has been indicated in the following words:

To print the letters by calling a person to rectify the defects and to send the same by post, costs about Rs. 4/- (four) per individual candidate, which includes the cost towards manpower. This second time exercise to issue such letters Under certificate of Posting comes to about Rs. 14,000/-. which was an extra financial burden taken by the Hon'ble High Court. In this situation, there was no feasibility to communicate such letters by Registered Post.

10. In this connection, learned Counsel for the Petitioners relied on a decision of this Court in the case of Ashok Kumar Singh and Ors. v. The State of Bihar and Ors. reported in 1996 (2) PLJR 42 and in particular reliance was placed on paragraph 15 of the said judgment. In the said judgment it was held that before holding disciplinary enquiry, the person concerned, who is proceeded against must be given proper notice of holding of such enquiry and in such a case the sending of notice under Certificate of Posting is not enough. Relying on the said judgment, learned Counsel for the Petitioners says that the said ratio should be followed here also inasmuch as in this case also the candidates were asked to remove the defects through letters sent under Certificate of Posting.

11. This Court is of the opinion that the ratio of the said judgment in the case of Ashok Kumar Singh (supra) is not at all attracted here. In that case it was a disciplinary proceeding and it is well settled that in a disciplinary enquiry the delinquent is entitled to get sufficient notice and adequate opportunity of defence. In that context it was held that notice sent under Certificate of Posting was not considered adequate. But in the instant case, the Petitioners cannot ask for any notice to cure defects made by them in the application. They were supposed to file defect free applications pursuant to the advertisement. Having failed to file defect free application, the Petitioners cannot insist that the Respondents authorities will have to inform them by letters through registered post. In the facts of this case, the way the High Court has informed the candidates concerned by sending letters under Certificate of Posting and followed it up by an advertisement in the newspaper is sufficiently fair and reasonable.

12. Learned Counsel for the Petitioners submits that such news items were published only from Patna and Varanasi edition of the dailies and the candidates from other places will not have access to those newspapers and, therefore, they were not properly informed.

13. It appears from the writ petition that all the Petitioners who have filed this writ petition are from Patna. Therefore, they cannot make this grievance. Learned Counsel for the Petitioners wanted to treat this writ petition as an

application in a representative capacity for all the candidates who have submitted their applications pursuant to the advertisement in question. This Court is unable to treat this writ petition in a representative capacity. This writ petition has not been moved in a representative capacity and the procedure followed for moving a writ petition in a representative capacity has also not been observed in this case.

14. Learned Counsel for the Petitioners submitted that submission of self addressed envelope was not a requirement under the advertisement which is at Annexure-1 to this writ petition. To that learned Counsel for the Respondents authorities very fairly submitted that there is no such requirement under the advertisement for filing a self addressed envelope along with the application. The same is not a requirement under the advertisement at all. Learned Counsel for the Petitioners states that in view of fair stand taken by the learned Counsel for the Respondents, the application of the Petitioners having been rejected only for not filing such self addressed envelope amounts to improper rejection of the applications. When such submission was made, this Court asked the learned Counsel for the Respondents to examine the reasons why the applications of these six Petitioners have been rejected. Learned Counsel for the Respondents on examination of the record himself very fairly submitted that except Petitioner No. 1, in the case of other Petitioners the applications were not rejected solely on the ground of absence of self addressed envelope. But in so far as Petitioner No. 1 is concerned, his application was rejected solely on the ground of absence of self addressed envelope. Learned Counsel for the Respondents has very fairly conceded that in view of the fact that filing of self addressed envelope is not a requirement under the advertisement, the rejection of the application of Petitioner No. 1 Uday Kumar was improper and he cannot justify that action of the authorities.

15. This Court also holds that the rejection of the application of Petitioner No. 1 Uday Kumar for mere non-submission of self addressed envelope with the postage stamp of Re. 1 /- is improper and cannot be sustained. When a person has fulfilled all the conditions stipulated in the advertisement, his application must be treated as a defect free application and cannot be rejected on a ground which is not indicated in the advertisement. Such rejection of application of Petitioner No. 1 on the ground of absence of self addressed envelope is de hors the advertisement and is, therefore, improper on the part of the Respondents concerned. As the application of Petitioner No. 1 was a defect free application he cannot be blamed if he does not respond to the letter sent under Certificate of Posting, even if he received it, or to the advertisement in the newspaper. The Respondents cannot take advantage of their improper action to defeat the right of candidate who has filed a defect free application.

16. In that view of the matter, this writ petition is allowed in so far as the case of Petitioner No. 1 Uday Kumar is concerned. Petitioner No. 1, therefore, must be given an opportunity to appear in a supplementary test to be conducted by the

appropriate authority of the High Court and he must be informed through his Counsel within seven days from today the date of such test which must be held by the 1st week of November, 1996 on the same marks on the basis of which the test of other candidates was held and, on the basis of the same standard of questions on which the examination of other candidates was held. If Petitioner No. 1 Uday Kumar succeeds in the said written test, he must be given an interview to complete the selection process. The ongoing selection process may go on but one post must not be fulfilled till Petitioner No. 1 is allowed to appear in the supplementary test and if he is successful, to appear in the interview as stated above.

17. With the above direction, this writ petition is allowed in so far as it relates to Petitioner No. 1. So far as the rest of the Petitioners are concerned, the writ petition is dismissed. There will be no order as to cost.