

(1993) 06 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6029 of 1991

Umeshwar Prasad Rai and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 22-06-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1993) 2 PLJR 304

Hon'ble Judges : R.N. Prasad, J;B.K. Roy, J

Bench : Division Bench

Advocate : Rajendra Prasad Singh, Ravindra Kumar, Ram Chandra Bharti, Bishun Kant Dubey, Narendra Nath Jha and M.P. Shukla in C.W.J.C. No. 6029/91, M/s Dr. Awadhesh Sharma and Nawal Kishore Sharma in C.W.J.C. Nos. 6184/91, 6374/91 and 6233/91, Mr. Pancha Nand Pandit in C.W.J.C. No. 6248/91, M/s Dr. Awadhesh Sharma, Nawal Kishore Sharma and Awadheshwar Prasad in C.W.J.C. No. 6232/91, M/s Vinod Kumar Sinha and Arun Kumar Arun in C.W.J.C. No. 6254/91, Mr. Murari Narain Choudhary in C.W.J.C. No. 4391/92 and M/s Anisur Rahman, Bishun Kant Dubey and Mithilesh Kumar Rai in C.W.J.C. No. 8710/92, for the Appellant; S.A. Khan, Binod Kumar Ambastha and Subodh Kumar for the State in C.W.J.C. No. 6029/91, Mr. B.N. Singh for the State in C.W.J.C. Nos. 6184/91, 6232/91 and 6374/91, Mr. D.N. Yadav for the State in C.W.J.C. Nos. 6248/91 and 8710/92, Mr. S.R. Alam for the State in C.W.J.C. Nos. 6254/91 and 6344/91 and M/s D.N. Yadav and I.P. Mandal for the State in C.W.J.C. No. 4391/92, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—As the common question of facts and law are involved in these cases they have been heard together and are being disposed of by this judgement. In all the cases, except C. W. J. C. Nos. 4391/92 and 8710 of 1992, prayer has been made for quashing the order contained in memo no. 709 dated 30th of August, 1991 issued under the signature of Director, Primary Education cancelling the panel prepared on the basis of interview held in the month of November 1989 for appointment, and staying the appointments made on the

basis of the aforesaid panel after approval of the government and also for quashing the consequential advertisement published in the different daily newspaper including daily newspaper, namely, "Hindustan" dated 5.9.1991 calling upon the candidates, who appeared at the interview held in the month of November, 1989 to appear afresh at the interview scheduled to be held from 16.9.1991 to 20.9.1991. Initially in C.W.J.C. No. 6029 of 1991 prayer was made for issuance of a direction to the respondents to regularise their services but subsequently prayer was made for quashing the aforesaid order and the advertisement as stated above. In C.W.J.C. No. 4391 of 1992 prayer has been made for issuance of a direction to the respondents to publish the result of the interview held in the month of September, 1991 and to appoint the petitioner on the post of Assistant Teacher in the government basic schools and during the pendency of the writ application the appointment on the basis of previous panel be kept in abeyance. In C.W.J.C. No. 8710/92 prayer has been made for issuance of a direction to the respondents to pay arrears of salary for the period they have worked as well as the current salary as has been paid to other similarly situated persons.

2. The case of the petitioners is that the advertisement was published in the different daily news papers" including the daily news paper "Aaj" dated 7.8.1989 inviting applications for appointment on the post of Assistant Teacher in the government basic schools from the persons holding minimum qualification of matric trained. The petitioners filed their applications in the prescribed form. They were called for interview and they appeared at the interview held on different dates in the month of November, 1989, After the interview was over a panel was prepared which was approved by the Special Director, Primary Education by letter dated 30.1.1990. The appointment letters were issued to the petitioners in the month of February, 1990 and in pursuance thereof they joined their posts in different government basic schools and were paid salary for some time. The payment of their salary was stopped vide letter no. 230 dated 13.5.1990 by the Special Director, Primary Education till the completion of the enquiry. Against the aforesaid order of stopping the payment of salary, some of the petitioners filed writ applications including C.W.J.C. No. 855 of 1991 before this Court which was disposed of on 9.5.1991 with an observation that the petitioners should file representation before the Director, Primary Education and if such a representation is filed the same shall be disposed of by a reasoned order within a period of three months. In pursuance of the aforesaid order representations were filed and while the matter was pending, the order contained in memo no. 709 dated 30.8.1991 was passed cancelling the panel and staying the appointments made on the basis of the aforesaid panel. Consequent to the aforesaid order the advertisement was published in the different daily newspapers including daily newspaper, namely, "Hindustan" on 5.9.1991 calling upon the candidates who appeared at the interview held in the month of November, 1989 to appear afresh at the interview. The aforesaid orders and the advertisement are under challenge here.

3. The case of the respondents as disclosed in the counter affidavit is that a large number of complaints of serious irregularities committed in the appointment of Assistant Teachers in the government basic schools were received by the respondents. On receipt of the complaints, as stated above, the Special Director, Primary Education issued a direction to stay payment of salary to the newly appointed teachers till the completion of the enquiry by the Special Secretary, Department of Human Resources and Development under the orders of the government and on enquiry it was found that (i) there were persons having more marks were deprived from being appointed and the persons having lesser marks were appointed (ii) there were persons who had original certificates were not appointed on the pretext that they did not produce the original certificates (iii) the persons who had no requisite qualification even for applying for the post have been appointed and (iv) in the panel there was over writing and manipulation.

4. After enquiry, notices were served to the petitioners and other similarly situated persons vide letter no. 668 dated 6.8.1991 and enquiry report was also given at the time of hearing but only one person, namely, Kabita Kumari filed her show cause stating therein that there is no irregularity in the matter of appointment. On consideration of the entire matters including the show cause and the report of the Regional Deputy Director, Darbhanga, it has been found that irregularity has been committed in a large scale in the matter of appointment which could be identified only after holding re-interview and on approval of the government the panel prepared on the basis of the interview held in the month of November, 1989 was cancelled and the appointments made on the basis of the aforesaid panel were stayed vide letter no. 709 dated 30th of August, 1991.

5. To scrutinise and to identify the irregularity in preparation of the panel and appointment, a committee was constituted with the approval of the government and consequent upon the aforesaid order, advertisement was published in the different daily news papers including the daily newspaper. "The Hindustan" dated 5.9.1991 calling upon the candidates who appeared at the interview held in the month of November, 1989 to appear afresh at the interview which was to be held from 16.9.1991 to 20.9.1991. The petitioners in C.W.J.C. No. 6029 of 1991 moved this Court for stay of the interview as has been published in the daily newspaper dated 5.9.1991. The Court after hearing the parties refused to stay the re-interview scheduled to be held from 16.9.1991 to 20.9.1991 by order dated 13.9.91 and directed that the committee shall examine only those irregularities which have been mentioned in the order contained in memo no. 709 dated 30th of August, 1991 and shall not evaluate marks afresh and after scrutiny the results shall be kept in abeyance and if fresh panel is prepared no person shall be appointed out of such a panel until further order by this Court. The respondents in compliance with the aforesaid order had completed the scrutiny after holding re-interview, as stated above, and panel has also been prepared in order of merit and in accordance with law but the same has not been

published as per direction of this Court. It has also been pointed out that out of 259 candidates, already appointed, only 155 candidates had come up in order of merit and shall receive payment of salary from the date of their joining. Out of 259 candidates appointed many candidates who were found inferior in merit were appointed and candidates of superior merit were left out. The candidates who did not possess minimum qualification for the post of Assistant Teacher in the government basic schools on the last date of (sic) of the application form were appointed and 30 candidates did not turn up at the re-interview. In the counter affidavit it has also been stated that there is no illegality in cancelling the panel and staying the appointment made vide letter no. 709 dated 30th of August, 1991 and the consequential advertisement published for re-interview.

6. Learned Counsel for the petitioners submitted that the order contained in memo no. 709 dated 30th of August, 1991 cancelling the panel prepared on the basis of the interview held in the month of November, 1989 and staying the appointment made on the basis of the aforesaid panel is illegal and violative of principle of natural justice as they have not been given opportunity of hearing at the time of enquiry made by the Special Secretary. Human Resources Development Department, Government of Bihar and also before passing the order under challenge, on the other hand Learned Counsel appearing for the respondent submitted that the submission of the counsel for the petitioners is without any substance. According to the Learned Counsel there was no need of giving opportunity to the petitioners on receipt of several complaints, and the petitioners were given notice to show cause before passing the order under memo no. 709 dated 30.8.1991 but they did not choose to file their show cause.

7. The case of the petitioners is that they were given notice to show cause but they could not file their show cause in absence of some papers. The respondents have also asserted that show cause notice was given to the petitioners and other similarly situated persons vide memo no. 668 dated 6.8.1991 but they did not file any show cause. Only one candidate filed the show cause and after considering the entire matters the order contained in memo no. 709 dated 30.8.1991 was passed. It is another thing that the petitioners did not file show cause but in fact notices were given to them and oilier similarly situated persons. Their non-filing of show cause cannot be said that no notice to show cause was given. It is true that the enquiry by Special Secretary was made in absence of the petitioners on receipt of serious type of complaints in the matter of appointment but the final order was passed after giving notice to show cause to the petitioners and others. However, Learned Counsel for the petitioners relied upon a decision in K.I. Shephard and Others Vs. Union of India (UOI) and Others, and in H.L. Trehan and Others Vs. Union of India (UOI) and Others, in which it has been held that affected persons should be given pre-decisional hearing and the post decisional hearing will not cure the defects of not affording pre-decisional hearing. From the facts discussed above, it is obvious that the petitioners and other similarly situated persons were given opportunity to show cause prior to taking decision of cancelling the panel and staying the

appointments and thus the decisions relied upon by the counsel for the petitioners have no bearing on the facts of the case. Learned Counsel also relied upon a decision in Shrawan Kumar Jha and others Vs. State of Bihar and others, in which it has been held that the notice should be given prior to cancelling the appointment. The aforesaid decision also does not help the petitioners as the notices were given prior to taking decision of cancelling the panel and staying the appointments and thus I am of the view that there is no substance in the submission of the counsel for the petitioners.

8. Learned Counsel for the petitioners next submitted that the petitioners appeared at the interview, panel was prepared which was approved by the Special Director, Primary Education and thereafter the petitioners were appointed. They were paid salary for some time and thus the respondents are stopped by principle of promissory estoppel and they cannot cancel the panel and stay the appointments made.

9. The principle of promissory estoppel is an equitable doctrine and does not apply in such cases. The advertisements are published inviting applications, for appointment and process of selection are made only with a view to select persons of better merit so as to achieve efficiency of work. The law of the land does not permit that the persons of inferior merit be appointed and the persons of superior merit should be left out. It has been brought to our notice that the persons of inferior merit have been appointed and the persons having superior merit have been left out. The persons who had no requisite qualification even for applying for the post as per the advertisement were also appointed. Some of the persons were deprived of their appointment on the pretext that they did not produce the original certificates and there was overwriting and manipulation in the panel. Equity does not demand that persons of inferior merit should be allowed to continue in service and persons of superior merit should be left out. However, counsel for the petitioners relied upon a decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, in which it has been held that principle of promissory estoppel is an equitable doctrine and if it is shown by the government that, having regard to the facts as they have subsequently transpired, it would be inequitable to hold the government to keep the promise made by it, the court would not raise equity in favour of the promisee and enforce the promise against the government. It is settled principle that the action of the government should be reasonable and in the interest of public. The action of the government contrary to the principle cannot be upheld.

10. In the present case if the appointments made are allowed to continue it would result in injustice to the candidates having better merit as they would be deprived of being appointed besides the other irregularities committed in the appointment in a large scale and thus I am of the view that equity is not in favour of the petitioners and there was no promise to appoint the persons of inferior merit. The decision relied upon by the counsel also relied upon a decision in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, in which

it has been held that once a candidate allowed to appear at the examination his candidature cannot be withdrawn by the university authorities. The aforesaid decision has no bearing on the service cases. Nothing was brought to our notice that there is any statute which prohibits the government to rectify the illegality/irregularity committed in the matter of appointment rather it is well established law that government has power to rectify its mistake in the interest of justice. The government cannot be allowed to act in a manner so as to perpetuate the illegality/irregularity. In *C. Channabasavaiah Vs. State of Mysore and Others*, relied upon by the counsel for the respondents it has been held that selection of candidate for appointment who had obtained less marks cannot be allowed to sustain. In the present case it has been shown to us that the persons of inferior merit were selected for appointment and the persons having better merits have been left out besides the other irregularities committed in a large scale, as stated above, and thus I am of the view that the decision relied upon by the counsel for the petitioners does not help the petitioners.

11. Learned Counsel for the petitioners further submitted that some of the petitioners later on acquired requisite qualifications for appointment and subsequently they were allowed to appear at the interview and were appointed and thus the cancellation of their appointment is bad in law on the ground that they had no requisite qualification on the day of filing application. In support of the submission counsel for the petitioners relied upon a decision in *Municipal Corporation of Greater Bombay and others Vs. Dr. Sushil V. Patkar and others*, in which it has been held that the candidates who did not possess the requisite qualification on the date of application and was allowed to appear at the interview to show requisite qualification but the candidate failed to produce the certificate even at the time of interview, such candidate cannot be allowed to upset the selection made by the Board and his candidature has to be ignored. The aforesaid decision does not lay down the law that application of such persons who had no requisite qualification shall also be entertained or such persons shall have right to be appointed. In the cases in hand it appears from the persons having minimum requisite qualification of matric trained. There is nothing in the advertisement to indicate that application of such persons who had no requisite qualification or had appeared at the training examination shall also be entertained. If that would have been the intention of the respondents to entertain such applications it must have been indicated in the advertisement so as to other candidates who had no requisite qualification/or had appeared at the training examination could have applied for the post. In this connection reference may be made to a decision in *Birendra Prasad Singh and others Vs. The State of Bihar and others* reported in 1993(1) PLJR 206 in which Division Bench of this Court has held that entertaining applications of those persons who had no requisite qualification or had appeared at the training examination is violative of Articles 14 and 16 of the Constitution of India and thus I am of the view that the submission of the counsel has no force and the decision relied upon by the petitioners does not help them.

12. Learned Counsel for the petitioners also submitted that the Director of Primary Education has no power to cancel the panel and to stay the appointment made on the basis of the interview held in the year 1989. It was also pointed out that the Committee constituted by the Director, Primary Education under memo no. 709 dated 30.8.1991 for holding re-interview is not in accordance with the rule.

13. The order contained in memo no. 709 dated 30th of August, 1991 no doubt has been issued under the signature of Director, Primary Education but the counsel for the petitioners has over looked the contents of the order. It is apparent from the aforesaid memo that the order cancelling the panel, staying the appointments and constituting a Committee for re-interview of the candidates who had appeared at the interview held in the month of November, 1989 was passed only after approval of the government thus it cannot be said that the order was passed by the Director, Primary Education. Learned Counsel for the petitioners, however, did not dispute the authority of the State Government in this regard. Learned Counsel for the respondents also submitted that the aforesaid order has been passed with approval of the government and thus there is no illegality in it. It was also pointed out by the counsel for the respondents that Committee has been constituted with approval of the government to scrutinise and identify the specific irregularity committed in the matter of preparation of panel and appointment in respect of each candidate. There is no violation of any rule in constituting such Committee to scrutinise and identify the illegality in the matter of appointment. The government is competent to pass such an order to rectify the irregularity committed in the matter of appointment. The action of the government is reasonable and in the interest of public. If the appointment made on the basis of the interview held in the month of November, 1989 is allowed to continue would amount to perpetuating the illegality committed in the matter of appointment and would cause injustice to the candidates of superior merits besides the other irregularities committed in the matter of appointment. Preparation of panel is the natural consequence of the scrutiny made by the Committee, as the Committee has identified the irregularity in preparation of panel. It would be consequential process to prepare a fresh panel in order of merit and in accordance with law. On consideration of the submissions made by the parties it is thus obvious that there is no substance in the submission of the counsel for the petitioners.

14. In view of the findings recorded above I do not find any merit in the writ applications and thus the respondents are directed to publish the panel prepared on the basis of the re-interview held in the month of September, 1991. The respondents are also directed to complete all the process of appointment within a period of five weeks from the date of receipt/production of a copy of this judgment.

15. However, it is made clear that the persons, who were appointed from the panel prepared on the basis of the interview held in the month of November,

1989 and their names have also been included in the panel prepared on the basis of the re-interview held in the month of September, 1991 shall be entitled for salary from the date of their first joining and they shall be paid their salary without any delay and their continuity in service shall be maintained. The petitioners whose names have not been included in the panel prepared on the basis of re-interview and the petitioners whose appointments were not found in accordance with law are not entitled to any relief.

In the result, the writ application are dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Binod Kumar Roy, J.

I agree.