

(1998) 07 PAT CK 0097
In the Patna High Court
Case No : Civil Review No. 46 of 1998

Upendra Narayan Tiwary

APPELLANT

Vs

Bihar Public Service Commission and Others

RESPONDENT

Date of Decision : 10-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 PLJR 128

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Abhimanyu Sharma, for the Appellant; Ashok Kumar Choudhary, for B.P.S.C., Ashok Kumar Singh, for State and Ravi Shankar Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This review application was preferred under Article 226 of the Constitution of India by one Upendra Narayan Tiwary and two others for review and recall of the judgment dated 3rd February, 1998 passed in C.W.J.C. No. 1376 of 1997. By the aforesaid order and judgment dated 3rd February, 1998, this Court directed the Respondents State of, Bihar and B.P.S.C. to fill up certain Graduate standard posts including the post of Health Educator and Statistical Assistants out of 3rd Graduate Standard examination.

The Petitioner being not party to the said writ petition, have preferred the present review under Article 226 of the Constitution of India mainly on two grounds, namely that the order and judgment are in conflict with the order and direction passed by this Court in C.W.J.C. No. 1412 of 1992 and was filed by the writ Petitioners-opposite parties herein on misrepresentation of facts so far as it relates to the posts of Health Educator and Statistical Assistants of Planning and Development are concerned.

2. The counsel for the Petitioners submitted that the impugned order and

judgment dated 3rd February, 1998 passed in C.W.J.C. No. 1376 of 1997 affected the rights accrued to the Petitioners in pursuance of earlier order passed by this Court in C.W.J.C. No. 1412 of 1992. The Court passed the impugned order without taking into consideration the earlier order passed by Division Bench in C.W.J.C. No. 1412 of 1992 and order passed in M.J.C. No. 242/93 (both still pending) resulting contradictory orders passed in different cases one by Single Judge and the other by a Division Bench. Reliance was placed on a Supreme Court decision in the case of State of U.P. and another Vs. C.L. Agrawal and another, etc., , wherein the Supreme Court held that judicial discipline requires certain norms and smaller Bench should not examine de novo any issue that stands concluded by a decision of a larger Bench of same High Court. If there is any doubt in the mind of the smaller Bench, it should refer the matter to the larger Bench, if in its opinion, the decision did not take into consideration any relevant decision of Supreme Court or other facts.

Before giving a finding on the aforesaid submissions as raised on behalf of the Petitioners, it is necessary to discuss certain relevant facts, as stated hereunder.

4. There are number of Graduate Standard Class-III posts available in different Departments of the State of Bihar which are being filled up through a common competitive examination commonly known as "Graduate Standard Examination".

Earlier one "Bihar State Subordinate Service Selection Board" (Board for short) was entrusted with the power and duties to conduct such competitive examination and to make recommendation to the State of Bihar for appointment. One Advertisement No. 6/85 was issued in the year 1985 by the then Board calling for applications for appointment against different Graduate Standard posts. The Board conducted a common competitive examination in pursuance of Advertisement No. 6/85 which was commonly known as "Second Graduate standard Competitive Examination". A number of persons came out successful in pursuance of said "Second Graduate Standard Examination" including the Petitioners of this review application hereinafter called as Second Graduate Standard Examinees). A number of persons have already been appointed in pursuance of the said Second Graduate Standard Examination who are working under the State.

Subsequently, in the year 1990 an Advertisement No. 1/90 was published by the then Board to fill up Graduate Standard post in different Departments of the State of Bihar. No specific numbers of posts were notified therein. It was mentioned that possible vacancies likely to occur were to be filled up apart from the existing vacancies in pursuance of the said Advertisement. The Board could not conduct the examination till the end of 1991 when by a Resolution dated 7th October, 1991, the State Govt. dissolved the Board and vested its power and duties to the Bihar Public Service Commission (B.P.S.C. for short). The B.P.S.C. subsequently conducted examination in December, 1995 in pursuance of the said Advertisement No. 1/90 which was known as 3rd Graduate Standard Examination.

In the meantime, as results of different examinations already conducted by the then Board, had not been published, and in some cases, part results were published and appointments were made and the State Govt. took decision to abolish the Board, a writ petition, C.W.J.C. No. 1412 of 1992 was prepared by one "Bihar State Subordinate Service Selection Board Examinees Confederation and others", wherein Resolution dated 7th October, 1991 was challenged. In the said case certain directions were passed by a Division Bench of this Court on 30th September, 1992 relating to filling of posts out of results which had already been published by the then Board prior to 22nd October, 1991. In pursuance of the said direction, a number of posts including Graduate Standard Class-III posts, have already been filled up out of successful candidates who applied in pursuance of different advertisements including Advertisement No. 6/85. However, a contempt petition being M.J.C. No. 242/93 was preferred by the Examinees Confederation with grievance that the order passed by Division Bench on 30th September, 1992 in C.W.J.C. No. 1412/92, has not been complied in its spirit. It appears that subsequently, a Division Bench of this Court took up the contempt petition aforesaid and passed certain orders on different dates including the orders dated 12th November, 1993 and 14th December, 1993, which I will discuss at appropriate stage.

5. So far as the 3rd Graduate Standard examination is concerned, which was conducted in December, 1995 by the B.P.S.C. in pursuance of Advertisement No. 1/90, out of the same, first result was declared and recommendation was made in December, 1996. Altogether, 600 and odd persons were appointed in pursuance of such recommendation in 3rd Graduate Standard Examination. The writ Petitioners-opposite parties herein, preferred a writ petition, C.W.J.C. No. 1376/97 with prayer to direct the Respondents to fill up all Graduate Standard Class-III posts, fell vacant upto December, 1996, out of the successful 3rd Graduate Standard Examinees. The said writ petition was disposed of by impugned order and judgment dated 3rd February, 1998, wherein direction was given to fill up different Graduate Standard Class-III posts including the posts of Health Educator of Health Department and Statistical Assistant of Planning and Development Department after necessary scrutiny as stipulated by the impugned judgment.

6. To determine the issue whether the impugned order and judgment dated 3rd February, 1998 passed in C.W.J.C. No. 1376/97 is in conflict and contrary to the order and direction passed by Division Bench in C.W.J.C. No. 1412/92 and M.J.C. No. 242/93, it was necessary to examine the records of the aforesaid two cases and for the said reason, I have examined the entire records of C.W.J.C. No. 1412/92 and M.J.C. No. 242/93 and on perusal, the following fact emerges.

7. The writ petition, C.W.J.C. No. 1412/92 was preferred by Examinees Confederation and others, wherein Resolution dated 7th October, 1991 abolishing the Board and vesting its power with the B.P.S.C. was challenged. No specific prayer was made therein fill up any particular post out of any particular

examination. General pleading has been made in writ petition aforesaid giving details of examination earlier conducted by the Board and the Resolution aforesaid was assailed, appointments against different posts had not been made in pursuance of different examination earlier conducted by the then Board.

In the said writ petition, C.W.J.C. No. 1412/92, no specific pleading has been made with respect to any particular advertisement, much less, Advertisement No. 6/85 in pursuance of which 2nd Graduate Standard Examination was conducted by the Board. However, in subsequent affidavit, grievance was made by the Petitioners of the said case giving reference of examination conducted by the Board in pursuance of Advertisement Nos. 6/85; 8/87; 18/87; 19/87; and 21/87.

8. On 30th September, 1992, aforesaid writ petition was heard when certain general direction was issued by a Division Bench of this Court on the suggestion of the parties. The Respondent State of Bihar was directed to notify the vacancies which was the subject matter of the said writ petition and to forward such vacancies to B.P.S.C. by 30th October, 1992. The B.P.S.C. was directed to send its recommendation to fill up such posts including those which were to be notified. The recommendations were to be made by B.P.S.C. out of successful examinees whose result had already been published prior to 22nd October" 91. The Division Bench further observed that it was not going into the question of any case regarding which results had not been published prior to 22nd October, 1991 and the matter was left to the parties to agitate in any other proceeding, if not already concluded.

9. Subsequently, a contempt petition, M.J.C. No. 242/93 was filed by the Examinees Confederation for non-compliance of aforesaid order dated 30th September, 1992 passed in C.W.J.C. No. 1412/92 in its spirit. A Division Bench of this Court took up the matter on different dates and passed orders with respect to different posts and examinations. All such orders are not relevant for the present case except the orders dated 12th November, 1993 and 14th December, 1993 which relate to 2nd Graduate Standard Examination of which the present Petitioners were the examinees.

It appears from record of M.J.C. No. 242/93 that earlier one Mr. S.N. Biswas, the then Secretary, Personnel and Administrative Reforms Department was asked to look into various disputes as were raised by the Confederation and to submit a report in view of different stands taken by different Departments of the State of Bihar as well as the B.P.S.C. with respect to one or other Advertisements. Such report was submitted before the Division Bench (in M.J.C.) by 12th November, 1992. This Court took into consideration from the report of Mr. Biswas that the Government had already taken a decision to fill up the vacancies occurring upto 31st December, 1989 out of Advertisement No. 6/85.

So far as 2nd Graduate Standard Examination in pursuance of Advertisement No. 6/85 is concerned, the Division Bench took into consideration that already 1028

vacancies had been received with reference to cut off date 31st December, 1989 and recommendation of suitable candidates was to be sent by B.P.S.C. soon.

The Division Bench on 12th November, 1993 observed that it was to go into other aspects on the basis of report of Mr. Biswas but, in the meanwhile, gave liberty to B.P.S.C. to make recommendation for any other vacancies.

10. From order dated 14th December, 1993, passed in M.J.C. No. 242/93, it appears that the Division Bench took into consideration the position of vacancies in the Health Deptt. of the State of Bihar including those which were to be filled up out of 2nd Graduate Standard Examination (Advertisement No. 6/85). With respect to 49 posts of Health Department, it came to the notice of the Court that the vacancies has not been communicated to the B.P.S.C. so the Court directed to send communication with respect to such 49 posts. However, such 49 posts do not relate to the present case.

On 14th December, 1993, the Division Bench took into consideration the fact that the Health Department had already sent requisition with respect to 445 posts of Health Educator, though it had collected information about 738 vacancies. No final order was passed therein with respect to total 738 vacancies. The counsel for the Petitioners of the said case only pointed out that the recommendation had already been made to fill up 445 posts of Health Educator vide letter dated 30th November, 1993. The Secretary of Health Department admitted that the Department had received the recommendation of the B.P.S.C. for appointment against aforesaid posts of Health Educator.

Except with respect to aforesaid 445 posts of Health Educator, no other specific order was passed by this Court to fill up any other post of Health Educator in pursuance of 2nd Graduate Standard Examination (Advertisement No. 6/85).

11. So far as the post of Statistical Assistant of Planning and Development is concerned, neither any pleading was made in C.W.J.C. No. 1412/92, nor any specific direction was given in any of the aforesaid case. The post of Statistical Assistant never fell for consideration nor any direction was given with respect to the same in M.J.C. No. 242/93.

12. From the aforesaid facts, including the pleadings made and orders passed in C.W.J.C. No. 1412/92 and M.J.C. 242/93, so far it relates to 2nd Graduate Standard Examination (Advertisement No. 6/85) is concerned, the following fact emerges with respect to the posts of Health Educator and Statistical Assistant:

(a) By order dated 30th September, 1992 (In C.W.J.C. No. 1412/92), the Court directed to make recommendation and to fill up the posts as notified on the basis of results published prior to 22nd October, 1991. No direction was given and the matter was left open to agitate the matter in other proceeding with respect to results published after 22nd October, 1991;

(b) Altogether, 1028 vacancies have been received in pursuance of Advertisement No. 6/85 with reference to cut off date for which recommendation

was to be made by B.P.S.C. soon (refer order- dated 12th November, 1993 in M.J.C. 242/93);

(c) The cut off date of 31st December, 1989 was decided by State Government and the vacancies were to be filled up out of the said Advertisement No. 6/85;

(d) The Health Department had made requisition with respect to 455 posts of Health Educator for appointment out of Advertisement No. 6/85, which was taken into consideration and for which a select list had already been sent to the Department on 30th November, 1993. (Refer order dated 14th December, 1993 passed in M.J.C. No. 242/93); and

(e) There was no direction that was given nor the Court took into consideration or even any pleading was made in the aforesaid C.W.J.C. No. 1412/92 or M.J.C. No. 242/93 with respect to the post of Statistical Assistant of Planning and Development Department.

13. So far as the Petitioners of 2nd Graduate standard Examination are concerned, it is stated that in pursuance of Advertisement No. 6/85, results were published on five occasions, namely, 21st August, 1989; 25th January, 1990; 3rd June, 1991; 10th December, 1991; and 16th December, 1991. As the direction given by Division Bench on 30th September, 1992 in C.W.J.C. No. 1412/92 relates to persons whose result had already been published prior to 22nd October, 1991, the 2nd Graduate Standard Examinees whose results published thereafter on 10th December, 1991 and 16th December, 1991, cannot derive any advantage out of the aforesaid order nor can raise any grievance in the present case.

14. In the supplementary counter affidavit filed in the instant review application, the B.P.S.C. enclosed a copy of letter No. 173 dated 17th April, 1998 addressed to its lawyer. From the said letter, it will appear that the B.P.S.C. had already recommended to fill up 329 posts of Health Educator vide letter No. 433 dated 30th November, 1993. Further recommendation was made with respect to 122 posts of Health Educator vide B.P.S.C.'s letter No. 229 dated 27th July, 1995. Thereby, against 445 posts of Health Educator as was taken into consideration by Division Bench of this Court, already names of 441 (329+122) have been recommended by B.P.S.C. for appointment against the post of Health Educator in pursuance of 2nd Graduate Standard Examination (Advertisement No. 6/85). Now, more than 2 years have elapsed and thereby the recommendation aforesaid has lost its force, so it will be presumed that the persons have already been appointed and there being no objection raised by any of the recommendees relating to their non-appointment, it will be presumed that they have been appointed and the panel has lost its force.

15. In the aforesaid circumstances, I hold that none of the examinees of Advertisement No. 6/85, particularly, those whose results have been published after 22nd October, 1991 can make any grievance with respect to appointment against 445 posts of Health Education at this stage for which the detailed steps

had already been taken and recommendations were acted upon.

16. So far as the post of Statistical Assistant of Planning and Development is concerned, I hold that it was not the subject matter of C.W.J.C. No. 1412/92 and M.J.C. No. 242/93 nor any direction was given to fill up the aforesaid post in pursuance of 2nd Graduate Standard Examination.

This apart, from the impugned order and judgment dated 3rd February, 1998 passed in C.W.J.C. No. 1376/97, it will be evident that no specific direction has been given to fill up any one or other particular post of Health Educator of Health Department or Statistical Assistant of Planning and Development but direction was given to scrutinise the vacancies, which were vacant as on 31st December, 1993 and are still vacant to fill up the same out of successful 3rd Graduate Standard Examinees (Advertisement No. 9/90).

17. So far as the decision of Supreme Court in the case of State of U.P. and Anr. v. C.L. Agrawal and Anr. (supra) is concerned, as referred by the counsel for the Petitioners, there being no conflict with the order passed by the Division Bench in C.W.J.C. No. 1412/92 and M.J.C. No. 242/93 with the impugned No. 1376/97, I hold that the said judgment is not applicable in the present case.

18. I find no reason to interfere with the impugned order and judgment and reject the prayer as made in the present review application.

19. The review application is, accordingly, dismissed.