

(2013) 04 PAT CK 0018
In the Patna High Court
Case No : CWJC No. 11090 of 2006

Vijay Kumar Sinha and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:

Citation : (2013) 3 PLJR 802

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Chitranjan Sinha, Satya Prakash Sriwastava, Sanjay Kumar Pandey and Satya Prakash Sinha, for the Appellant; Sanjay Kumar -2, Pawan Kumar for the State and Mr. Sanjay Pandey for the Commission, for the Respondent

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioners for the following reliefs:--

- (i) For issuance of an appropriate writ/order or direction to fill up the sanctioned vacancies of Assistants in Secretariat and its attached offices from the select list prepared in pursuant to advertisement No. 11 of 1985 which has been found to be vacant up to 31.12.1988 as directed by the Hon''ble Supreme Court in its judgment and order passed in Civil Appeal No. 5298 of 1993 dated 8.19.1993 (sic).
- (ii) For an appropriate direction to the respondents to determine the sanctioned vacancies on the cadre strength at 4837 of Assistants in Secretariat and its attached offices and not on the sanctioned strength at 434.
- (iii) For a direction to the respondents to fill up the remaining vacancies which has remained unfilled due to non-joining of candidates who despite issuance of appointment letters did not chose to join the post.
- (iv) For any other relief or reliefs as the Hon''ble Court deem fit and proper.

Learned counsel for the petitioners stated that Advertisement No. 11 of 1985

was issued in newspapers for appointments in the Secretariat and its attached offices and in response to that a large number of persons filed their applications, including the petitioners. Thereafter, the matter remained pending and after about five years result was published. However, due to controversies several litigations travelled up till the Apex Court, but even after specific orders passed by the Courts of law nothing concrete was done by the authorities concerned specifically with respect to the petitioners who fulfilled all the criteria.

2. Learned counsel for the petitioners averred that from the noting dated 21.8.2004 on the file No. 15/Sa. S.-1602/2001 Ka. on the concerning file relating to appointment of Secretariat Assistant and its attached offices out of the panel of Adv. No. 11 of 1985 it transpired that when the vacancy was recalculated by the Personnel Department, following figure came to light:--

3. Thus, learned counsel for the petitioners argued that from the aforesaid facts it was quite clear that a large number of vacancies out of panel of successful candidates with respect to Advertisement No. 11 of 1985 were still lying vacant and were required to be filled up in terms of the decision of the Apex Court in case of State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union 1986 and Others, , and the respondent-authorities of the State of Bihar were squarely responsible for the delay in filling up all the vacancies although appointment letters had been issued by the authorities as far back as on 10.2.1999 and 27.9.2004.

4. Learned counsel for the State of Bihar and its authorities as well as learned counsel for the Bihar Public Service Commission and its authorities opposed the contentions of learned counsel for the petitioners and claimed that advertisement in question was already 28 years old as it was Advertisement No. 11 of 1985 and appointments in that regard had already been made and completed much earlier and thereafter much water had flown and appointments had already been made pursuant to the advertisement of the subsequent period. Hence, they claimed that the petitioners had no valid claim at all and the writ petition was fit to be dismissed.

5. From the arguments of learned counsel for the parties and the materials on record it is quite apparent that due to controversy with respect to large number of vacancies some of the successful candidates filed CWJC No. 2912 of 1991 through their Union, whereafter a Division Bench of this Court allowed the writ petition vide order dated 11.10.1991 directing the respondent-State of Bihar and its authorities to fill up all the vacancies lying vacant till July, 1990. Against the aforesaid order of the Division Bench, the State of Bihar and its authorities filed SLP (C) No. 7423 of 1992 which subsequently gave rise to Civil Appeal No. 5298 of 1993 and in that case the authorities of the State of Bihar filed rejoinder indicating the sanctioned strength of Assistants in Secretariat and its attached offices as 4334. Finally, the Apex Court disposed of the aforesaid Civil Appeal vide its order dated 8.10.1993 setting aside that part of the order of the Division Bench which directed to fill up all the vacancies of 1989, 1990 and 1991 out of

the list of candidates who had appeared in the examination held in 1987, but upheld the judgment of the Division Bench of this Court in all other respects, including filling up the vacancies which existed till 31.12.1988 and for that purpose issued following directions:--

(i) That the appellant State of Bihar shall issue an advertisement inviting applications for the posts of Assistants within four weeks from the date of this judgment.

(ii) That the advertisement shall indicate the total number of vacancies actually existing and likely to arise in the cadre till 31.12.1993 which are required to be filled up. Thus, apart from the existing vacancies of 1989-1992 the probable vacancies till 31.12.1993, shall also be included while indicating the number of vacancies to be filled up.

(iii) That the age bar shall be relaxed in favour of candidates of the 1987 examination who had secured 40% or above marks in that examination, to enable them to appear in the fresh examination, if they so choose.

(iv) That the selection process including the holding of the examination and publication of the select list shall be completed within a period of 9 months from the date of the publication of the advertisement/notification inviting applications.

(v) That after the publication of the select list, the appointments shall be made within four weeks from the date of the publication of the select list.

(vi) That the rules relating to reservation etc. shall apply to the selections to be made.

6. It further transpires that subsequently some of the successful candidates filed interlocutory applications bearing I.A. No. 5 of 1994 and I.A. No. 6 of 1994 for determination of the vacancies which occurred due to non-joining and non-turning up of candidates and the Apex Court vide its order dated 1.8.1994 disposed of the aforesaid applications directing the authorities that out of vacancies existed on 31.12.1988, 50% should be filled up by direct recruits and the remaining by promotees, but since it was admitted fact that out of total posts of Assistants existing on 31.12.1988, promotees occupied 357 posts which was against 50:50 parity between the direct recruits and the promotees as direct recruits were short by 48. Hence, it was directed that out of 239 total vacancies the first 48 vacancies shall be filled up by direct recruits, whereas out of remaining 191 posts, 50% each should go to direct recruits and promotees in accordance with the Rules.

7. It also transpires that after passing of the aforesaid orders of the Apex Court, no petition for initiating a proceeding of contempt was filed before the Apex Court and hence it can be safely presumed that the said order was fully complied and nothing remained. Furthermore, one of such candidates filed a contempt petition bearing MJC No. 2069 of 1994 of Patna High Court which was rejected by a Division Bench vide order dated 3.5.1996 after being satisfied that the

direction of this Court had been fully complied with.

8. However, one of the candidates of Advertisement No. 11 of 1985 much subsequently filed CWJC No. 12314 of 2003 claiming to be left over/waiting list candidates prepared pursuant to the recommendation of the Bihar Public Service Commission for a direction to the respondents to appoint him as an Assistant in the Secretariat or its attached offices. The said writ petition was considered in detail and was dismissed vide order dated 27.4.2005 in the following circumstances:--

This Court feels that this is nothing but legal jugglery. Once this aspect has been considered by this Court rather allowed in favour of the petitioner in a writ filed by similarly situated candidate which was reversed and interfered by the L.P.A. Bench. The order of L.P.A. Bench is binding till now not interfered by larger Bench or Supreme Court.

This court feels that once the cadres have been merged, central pay scale has been introduced and the State of Bihar divided into Bihar and Jharkhand these intervening facts cannot be ignored while calculating the vacancies and as the entry point was now only L.D.C. they could have only been considered for the aforesaid post that too for the post which remained in the bifurcated State of Bihar. As such, as the posts have already been ordered to be filled up which in view of counter affidavit of the State process has already been initiated, recommendation of the B.P.S.C. received and appointment letters were being issued, this court is not in a position to grant any further relief to the petitioner. The writ application fails and is accordingly dismissed.

9. Furthermore, mere some notings on the files by some authorities cannot legally confer any right of appointment in favour of the petitioners especially when it is settled principle that no further requisition can be legally made to the Commission in such matter with respect to a panel which has become very old being in response to the Advertisement No. 11 of 1985. In this regard, reference may be made to a decision of a Bench of this Court in case of Secretariat Assistant Successful Examinees Union Vs. The State of Bihar and Others, .

10. A Division Bench of (sic--court?) this in case of Subodh Kumar Vs. The State of Bihar and Others, , had also relied upon a decision of the Apex Court in case of State of Orissa and Another Vs. Rajkishore Nanda and Others etc. etc., , which specifically held that the select list cannot be treated as a perpetual reservoir for purposes of appointment. If the selection process is over, the select list has expired and appointments have been made, no relief can be granted by the Court subsequently on that basis. In the aforesaid facts and circumstances, this Court does not find any merit in this writ petition which is, accordingly, dismissed.