
(1999) 12 PAT CK 0021

In the Patna High Court

Case No : C.W.J.C. No's. 9927, 9555, 11522 and 11751/98 and 3550/99

Vijay Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-12-1999

Acts Referred:

Citation : (2000) 1 BLJR 665

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

Bench : Single Bench

Judgement

S.N. Jha, J.—These five writ petitions involving a common grievance on behalf of seven petitioners have been heard together and are disposed of by this common order.

2. The petitioners seek quashing of the final result of selection for the post of lecturer in Government Polytechnics and Mining Institutes under the Science and Technology Department of the State Government, and for consequential reliefs. C.W.J.C. No. 9555/98 has been argued as the leading case and the relevant facts, therefore, are taken from that case.

3. In November, 1990 the Bihar Public Service Commission (in short "the Commission") published an advertisement (Advt. No. 75/90) for appointment of lecturer in Civil Engineering in the Government Polytechnics and the Mining Institutes. As per the advertisement the candidates were required to possess first class graduate degree in the concerned discipline/subject and pass the GATE or equivalent examination. It was made clear that if the number of applicants is found to be excessive, it will be open to the Commission to hold screening test for selecting the candidates for the interview. On 28-8-94, the Commission issued a corrigendum deleting the requirement of passing GATE or equivalent examination. On 28-7-95, another advertisement (Advt. No. 32/95) was issued for appointment of lecturers in physics in the Polytechnics and Mining Institutes. In the meantime, several writ petitions were filed on behalf of part-time lecturers working in the Polytechnics, being C.W.J.C. No. 6751 of 1991 and analogous,

challenging the proposed recruitment of lecturers and seeking regularisation of their services and other reliefs. The writ petitions were dismissed on 28-6-95. This Court while negating the claim of the part-time lecturers for their regularisation as full-time lecturers and payment of emoluments on "equal pay for equal work" basis, directed the respondents to immediately take steps to fill up the sanctioned posts within a period of six months. The unsuccessful petitioners moved the Supreme Court in SLP (Civil) No. 20904/95 and analogous. The Supreme Court vide its order dated 19-2-96 did not interfere with the order of this Court but gave certain concession to those petitioners. I shall again refer to the said order of the Supreme Court later in this order. On 17-10-97, the Commission notified its decision to hold screening test on the ground that the number of candidates was far in excess of the available vacancies. As per the programme notified by the said notice, the screening test was held on 9-11-97 and the result of the screening test was published in 8-1-98. On or about 12-1-98 the successful candidates were issued interview letters. On 22-1-98, however, the proposed interview was postponed. On 22-2-98, a corrigendum was published allowing the part-time lecturers working in different Polytechnics to submit their application for appointment on the post of lecturer in subjects advertised by Advt. Nos. 75/90, 10/95, 32/95 and 38/95. The corrigendum mentioned that this was being done in the light of the order of the Supreme Court dated 19-2-96, in SLP (Civil) No. 20904/95. I shall again refer to the said corrigendum later in this order. By yet another notice dated 1-3-98, the last dated for submission of the application pursuant to the corrigendum dated 22-2-98 was extended. After the issuance of the said corrigendum and, presumably, on receipt of fresh applications pursuant to the corrigendum, the Commission issued fresh interview letters. Those who submitted fresh applications pursuant to the corrigendum (and were also successful in the screening test) were issued two interview letters bearing two different roll numbers with respect to the interview on different dates-one on the basis of the screening test and the other on the basis of experience as part-time lecturers. After completing the process of interview on 12-10-98, the Commission published the final result.

The main grievance in these writ petitions is directed against the selection of such candidates who had failed in the written (screening) Test. It was contended that screening test was part of selection process and those who had failed in such test could not be selected. On behalf of the Commission it was contended that selection was made on the basis of interview and screening was not a part of the selection process, which really began after the screening. It was submitted that in terms of the order of the Supreme Court opportunity had to be given to the part-time lecturers to participate in the recruitment process and to consider their merit on the basis of their work experience as part-time lecturers. Therefore, the fact that some of them did not pass the screening test was immaterial.

5. The stand of the Commission is wholly misconceived. "Recruitment" is a

comprehensive term. The process of recruitment begins with the making of advertisement and culminate in the actual appointment of the successful candidates. As a matter of fact, as noted above, in the very first advertisement it had been clearly stated that if the number of candidates is found to be excessive vis-a-vis the number of vacancies, the Commission would be at liberty to hold screening test for selecting the candidates for the interview. This is what was done when on 17-10-97 the Commission intimated its decision to hold the screening test which was held on 9-11-97 as per the programme. The stand of the Commission that the selection process began after the screening was over has to be summarily rejected. Holding a preliminary test for the purpose of shortlisting the candidates for the final test is permissible in law, and if the Commission's stand were to be accepted that the selection began only after the screening test, it would amount to not considering the cases of such candidates who were not called for the main test-which could be written and oral or only oral, as in the present case-vitiating the entire recruitment process. The holding of screening test, therefore, has to be treated as part of the recruitment process at which stage also the merit of the candidates is considered. The only difference lies in the mode, nature and extent of consideration.

6. So far as the order of the Supreme Court is concerned, all that was said was that if the part-time lecturers, who were the petitioners before the Supreme Court, had crossed the maximum age limit, they would be given one time relaxation so as to enable them to participate in the selection and secondly, while making selection, the authority would take into account their experience as part time lecturers. It would be useful to quote the order of the Supreme Court in extenso as under:

We have heard the learned senior Counsel appearing for the petitioners as well as Shri B.B. Singh, the learned Counsel appearing for the State. We do not find any ground to interfere with the impugned judgments of the High Court in so far it holds that the petitioners cannot seek regularisation on the post of lecturers held by them but the petitioners can appear at the stage of regular selection for appointment on the said posts. While upholding the said direction of the High Court, we however, direct that if any of such persons is found to have crossed the maximum Age prescribed for such regular selection, the State Government and the Bihar Public Service Commission shall make one time relaxation in favour of such person so as to enable him to be considered for such selection. It is also directed that while making such selection, the concerned authority may take into account the experience as part time Lecturers of the persons who applies for such consideration. The SLPs, are disposed of accordingly.

7. The above order of the Supreme Court was passed on 19-2-96. The Commission should have acted promptly and issued the kind of corrigendum which was eventually issued on 22-2-98, prior to publishing the programme for holding the screening test on 17-10-97. I do not wish to go into the question as to whether the petitioners of the earlier cases had also applied pursuant to the

initial advertisement of 1990 and appeared in the screening test which was held on 9-11-97, that is, prior to the issuance of the corrigendum on 22-2-98. The grievance of the petitioners being that even such candidates who appeared in the screening test but failed have been finally selected on the basis of interview and the past work experience, I wish to confine myself to the question as to whether it was permissible. It should be kept in mind that the Supreme Court did not interfere with the pending selection process, all that it did was to give two fold concession to the part-time lecturers-regarding relaxation of age bar and some weightage on the basis of work experience. This did not amount to changing the mode or criteria of selection. In other words, the part-time lecturers desirous to regularisation of their sendees were required to participate in the selection process along with the others but with certain advantages on account of past work experience. They were thus required to appear in the screening test. As matter of fact, they did appear in the screening test, some of whom did not succeed, and that is the grievance in these cases.

8. Passing written (screening) test being thus a necessary condition for being called for interview was part of process of consideration, those who either did not appear at such test or having appeared did not pass, were clearly not eligible to be called for interview and ultimately recommended for appointment. May be, largely on account of lethargy or lack of awareness on the part of the Commission, two sets of interview letters were issued to the part-time lecturers but issuance of two interview letters cannot be treated as constituting separate recruitment processes. The recruitment was really made pursuant to Advt. Nos. 75/90, 32/97 and others and therefore, the selection has to be traced to those advertisement and they cannot be treated as fresh selection. Such a conclusion also does not follow from the order of the Supreme Court by which only certain concession were given to the part-time lecturers without interfering with the selection process in any manner.

9. The most significant aspect of the case is that such part-time lecturers who appeared at the screening test and took chance of success, cannot be allowed to say that for them there was no necessity of holding screening test and they could be selected only on the basis of interview or work experience. In the above premises, the conclusion is irresistible that such of the part-time lecturers who appeared in the written (screening) test hold on 9-11-97, but failed, cannot be treated as eligible for being called for interview and be finally selected for appointment.

10. The above finding, however, it must be clarified, would not affect the whole selection, that is to say, the selection of the candidates either from the open market or from the category of part-time lecturers-who passed the written (screening) test and eventually found place in the merit list on the basis of the final interview. The posts of lecturer have remained vacant in the Polytechnics and Mining Institutes for a long time and in fact, the advertisement itself was published more than 9 years ago. It was largely on account of the pendency of

the writ petitions and SLPs that the appointment could no be made at least up to 1996. It would, therefore, be unjust and indeed unwarranted to, interfere, with the entire selection. The result of the above finding would be that the names of such part-time lecturers who did not pass the written (screening) test, would be required to be deleted from the merit list/panel, replaced by candidates in order of merit in accordance with law.

11. I am conscious of the fact that the above finding is likely to visit the concerned part-time lecturers with adverse consequences. Counsel for the parties however, agreed that this Court may merely clarify the position and lay down the principles on which the selection has to be made, and rest of the work may be performed by the Commission. I would, therefore, clarify that if as a result of the aforesaid finding, the selection/recommendation of any part-time lecturer is to be withdrawn, the Commission would be well advised to give notice to them before taking such action.

12. Shri Manan Kumar Mishra, appearing for the petitioners in some of the cases, made certain additional submissions. He referred to the interim order of this Court dated 2-12-98 passed in C.W.J.C. No. 9927/98 and submitted that in respect of the additional vacancies notified by the corrigendum dated 28-8-94 there should have been a fresh selection. At any rate after the order of the Supreme Court, a fresh advertisement should have been issued. He also contended that the selection has been made only on the basis of interview and on this ground alone, the selection is fit to be struck down. On the first point, reliance was placed on *State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union 1986 and Others*, .

13. The decision in the *Secretariat Assistant Successful Examinees Union's* case was rendered on concession and on its own facts. The decision does not lay down any principle of law. In any case, the petitioners participated in the selection process with full awareness of the so-called infirmities. Having taken chance of success, they are estopped from challenging the same. Counsel relied on *Haridwar Rai Vs. State of Bihar*, . Where the Court finds that "glaring illegalities" have been committed in making the selection, the position may be different. No such case is made out here.

14. In the result, these writ petitions are disposed of with a direction to the Bihar Public Service Commission to take necessary action in the light of the findings and observations made hereinabove.