
(1993) 01 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 3280 of 1991

Vijoy Kishore Singh and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 05-01-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 227

Citation : (1993) 1 PLJR 296

Hon'ble Judges : U.P. Singh, J;S.K. Singh, J

Bench : Division Bench

Advocate : Shyama Prasad Mukherjee, Satish Kumar Agrawal, Shanti Pratap, Ashok Kumar Jha and M/s Shiv Kirti Singh and Abhimanyu Sharma for Intervenor, for the Appellant; Prabhat Ranjan for the State, for the Respondent

Final Decision : Dismissed

Judgement

U.P. Singh, J.—In the present writ application under Articles 226 and 227 of the Constitution the petitioners have prayed for the following reliefs :? (A) To command the respondent-State to consider their case for appointment to the post of Sub-Inspector of police or any equivalent post in pursuance of policy decision of the Government dated 13.2.90 contained in Annexure 2 ;

(B) To command the respondent-State to appoint the petitioners to the said post on the basis of revised merit list dated 14.1.91 prepared by the Bihar Subordinate Service Selection Board.

In response to Advertisement no. 4/85 inviting applications from the eligible candidates for appointment to the post of Sub-Inspector of Police or equivalent posts, the petitioners appeared in the competitive test held by the Bihar State Subordinate Service Selection Board (hereinafter to be referred as the Board) in the year 1985-86. In the said advertisement it was notified that 33 posts of Company Commander shall be filled up by (he candidates on the basis of merit list drawn up by the Board on the basis of competitive test. The Board had

decided to fix 50% as qualifying marks for considering the appointment to the said post in order of merit. The result of the competitive test was published on 6.2.90. Subsequently by its order dated 13.2.90 the Government reduced the minimum qualifying marks from 50% to 40% for the general category, 35% for backward class-I and 33 1/3% for Scheduled Caste/Scheduled Tribe and ladies candidates. In the said advertisement dated 25.6.1985, number of posts available for Sub-Inspector of Police and Sergeant of the Bihar Military Police was not given but, however, 33 posts existing vacant in the cadre of Company Commander was reported. It was also mentioned in the advertisement that number of vacant posts will be notified later on.

2. After physical test, the written test was held on 21st and 22nd January 1986 in which those candidates, who passed the Physical test, were allowed to appear.

3. Before publication of the final result a writ application (C.W.J.C. No. 3104 of 1986) was filed in the High Court by the Educated Unemployed Welfare Council, alleging large scale of bungling and mal practices during the examination committed in collusion with the Board. After hearing the parties an agreed order was passed on 5.5.1988 whereby a three men committee consisting of Home Secretary, Secretary Personnel and Commissioner Patna Division, was constituted by the Government for rechecking the physical fitness and writings by obtaining specimen of writings from all those candidates who obtained minimum qualifying marks.

4. In accordance with the direction of the High Court, a three men committee was constituted and the Board published the names of 485 candidates having obtained minimum of 50% marks and directing them to appear for written test on 25.2.1989 and physical test on 26.2.1989. After conducting the aforesaid test by the three men committee, a list of 348 candidates, who were found fit, was submitted by the committee with its report and the Board recommended their names to the State Government for being considered for appointment to the post of Sub-Inspector of Police or on equivalent post. Out of these, 309 candidates joined as Sub-Inspector of Police, 7 of them joined as Sergeant and 8 of them joined as Fire-Station Officer, and they were sent for training.

5. It was contended that in the year 1986 itself the Board had conducted the examination i.e. 2nd Graduate Standard Examination for different posts i.e. Assistant etc. to be appointed in different departments and while preparing the list of successful candidates, it Included all those who had obtained 40% marks in view of the policy decision of the State, but while preparing the list of candidates for appointment to the post of Sub-Inspector of Police etc. fixing 50% as the minimum qualifying marks, double standard was adopted ignoring the policy decision of the State in the case of these petitioners. It was, thus, submitted that if double yard stick was not used by the Board the names of all the candidates including the petitioners obtaining 40% marks or above in the examination held in 1986 for selection and appointment to the post of Sub-Inspector of Police, would have been published whereby they would have been

called to appear before the three men committee. The petitioners represented against this arbitrary fixation of qualifying marks as 50% for the candidates for appointment to the post of Sub-Inspector and other equivalent posts. It appears, that the Home (Police) Department prepared a draft resolution on 12.12.1989 relating to the appointment, in accordance with a cabinet decision fixing 30.6.1990 as cut off date. While preparing the said draft resolution the Home (Police) Department called for a revised merit list from the Board prepared on the basis of 40% minimum qualifying marks. The Home (Police) Department was also requested to intimate vacancies up to 30.6.90.

6. In its letter dated 20.4.1990 the Police Department informed that there was no vacancy up to 30.6.90 since the same had been filled up with the promotees Sub-Inspector. It was alleged that the names of ladies candidates were picked up and published on 25.7.90 calling them for physical and written test by the three men committee. They accordingly appeared and were appointed to the post of Sub Inspector of Police.

7. It was contended that the petitioners having secured much more than 40% qualifying marks, as fixed by the Government on 13.2.90 contained in Annexure 2, they ought to have been considered for appointment. The petitioners learnt that 155 posts earmarked for direct recruit was unfortunately filled up illegally by the promotees. The petitioners have, therefore, been denied the employment on the basis of their placement in the second merit list. In respect of the examination of the 2nd Graduate Standard conducted in 1985-86, the appointment is still being made from the said panel prepared with 40% minimum qualifying marks. But in the case of the petitioners and others 1985-86 Sub-Inspector examinees, who have been included in the revised select list, are being wrongly discriminated. The selection of ladies candidates and Backward Class Annexure 1 candidates from the revised list and leaving the candidates of general category and candidates of Backward Class-Annexure-II in respect of availability of vacancy is violative of Article 14, 16 and 21 of the Constitution.

8. The Bihar State Subordinate Selection Services Board (Respondent no. 2) as also Respondents 4 to 7 have filed their counter affidavits and reply thereto has also been filed by the petitioner.

9. After careful consideration of the various contentions raised by the petitioners and the Respondents I am unable to agree with the contentions raised on behalf of the petitioners. The Bihar State Subordinate Service Selection Board published Advertisement no. 4/85 for filling up the posts of Company Commanders and other posts equivalent to Sub-Inspector of Police on the basis of competitive test in 1985. On receipt of applications, physical and written test were held in 1985-86. Meanwhile, the Director General (Police) reported 400 vacancies of Sub-Inspector of Police till December 1988. But the State Government vide its resolution dated 13.2.1990 decided to fill up all the vacancies of Sub-Inspector of Police and other equivalent posts till 30.6.90 by reducing the minimum qualifying marks of the different categories of candidates in the following manner : ?

- (a) For Scheduled Castes, Scheduled Tribes and ladies candidates ?33 1/3%
- (b) Extremely Backward Castes (Annexure-1) ?35%
- (c) Others -40%

No recommendation for the posts of Company Commander had been made up till now because the Home (Police) Department did not ask for it after advertisement was published. The reduction in the minimum qualifying marks would not mean that all candidates obtaining the minimum qualifying marks would be appointed. The appointments were made on the basis of the vacancies reported by the D. G. (Police). Therefore, there was no discrimination. The contentions of the petitioners that their names be recommended by the Board to the three members committee for physical and handwriting test only on the basis of minimum qualifying marks, cannot be sustained. The names were sent by the Board to the three member committee for physical and handwriting test on the basis of vacancies vis-a-vis marks obtained by the candidates. Obviously, the petitioners were not appointed because their marks were below the marks of the last appointed candidate. The list of the candidates sent to the committee had been prepared by the Board on the basis of the marks obtained by the candidates vis-a-vis the number of vacancies. Since the petitioners did not come under the consideration zone on the basis of marks and number of vacancies, they were not tested by the committee. Those candidates, securing 50% marks of the category, to which the petitioners belong, were thus appointed. Therefore, the question of discrimination cannot be sustained since they secured less than 50% marks. Again, the allegation of double standard is without any merit. All candidates, who had secured the minimum qualifying marks, were appointed in the Second Graduate Standard Examination and in Assistant Examination on the basis of the number of vacancies vis-a-vis the marks obtained by the candidates. Therefore, double standard was not maintained by the Board. Since the vacancies were limited and the appointments are made on the basis of vacancies, the question of appointment of all the candidates securing 40% or more marks did not arise. It is true that the Government had reduced the minimum qualifying marks for the general candidates from 50 to 40% but reduction in the minimum qualifying marks did not mean that all the candidates obtaining the minimum marks would be appointed. The names of ladies candidates were sent by the Board to the committee for physical and handwriting test on the basis of marks obtained by them and since there was vacancies in category no. 7 for the ladies candidates. The committee had published a notice for physical and handwriting test on 30.3.1991 for 52 candidates of categories no. 04, 06 and 02 on the basis of list submitted by the Board. Out of 52 candidates, 44 candidates were of category no. 04, 6 candidates were of category 06 and 2 candidates were of category 02. Although vacancies existed only in category nos. 04 and 06 and there were no vacancy in category 02 but the lesser marks obtained by the candidates had been appointed earlier in this category no. 02 and, therefore, the names of such two candidates had to be

considered for physical and handwriting test by the three member committee. The petitioners had secured lesser marks than the candidates already appointed in their categories. They cannot claim appointment simply on the basis of their obtaining minimum qualifying marks. The list contained the names of all candidates who had secured 40% minimum qualifying marks, but it was not the list of recommendation. The recommendation is to be made on the basis of vacancies reported by the D. G. Police. The petitioners could not claim their appointment only on the ground that their names found place in the 40% list which had been prepared irrespective of the vacancies. Therefore, there was no unequal treatment to the petitioners since the candidates appointed so far had secured higher marks than the petitioners in their own categories. The recommendations were made on account of the vacancies existing in the reservation categories backward (Annexure "1") and ladies. The Board did not send recommendation of Company Commanders because the details of vacancies under different reservation categories had not been received from the Home (Special) Department. In the counter affidavit the position was accepted that 155 posts of direct recruit quota was filled up by the promotees S. I. of Police in view of the public exigencies and that posts of direct recruit quota of S. I. of Police would be filled up in the next recruitment. It was also accepted that due to reversion of 424 Sub-Inspectors of Police, equal number of posts were vacant but due to the 12 writ petition filed by the reverted adhoc promoted Sub-Inspector, the Division Bench had stayed the operation of the reversion order and in view of the stay order of reversion of adhoc promoted Sub-Inspectors by the High Court, there is no vacancy at present in the rank of Sub-Inspector of Police.

10. In the case of *State of U. P. Versus Ram Gopal Shukla* (AIR 1981 Supreme Court-1041) it was held that :?

A rule which contemplates that unless the list of 300 persons is exhausted, no other persons can be selected, obviously is unjust and it deprives other persons under the same situation of the opportunity of being considered for promotion.

In the said case the Supreme Court was considering the validity of statutory rule providing appointment of the persons from a particular panel, till the same is exhausted. The Supreme Court deprecated the same by observing that there was no rational basis for such a departure from the ordinary rule, which provides for preparation of a new list or panel every year, and for singling out one particular list for giving preferential treatment to the persons whose names are contained therein. The Supreme Court observed that although the State has got executive power to frame rules regulating the conditions of service, but the same must be reasonable, fair and not grossly unjust, if they are to survive the test of Articles 14 and 16 of the Constitution.

11. In the present case, the appointment is claimed on the basis of panel prepared on the basis of examination held in the year 1985-86. This would certainly deprive all other similarly situated persons, who might have acquired the necessary qualifications and eligibility for such appointments during these

intervening period of five to six years. It may also be possible that for years to come there may not be any such vacancies against which their cases may be considered. Therefore, in the facts and circumstances of the present case and after considering all the contentions raised in this matter I am of the view that for all such vacancies which are to be filled up, should be filled up by a fresh advertisement and not from the same panel prepared five to six years ago. The advertisement shall be made by the Bihar Public Service Commission without any further delay indicating such vacancies which may be required to be filled up for all the vacant posts of the Sub-Inspector of Police or any equivalent posts keeping in view the policy decision of the State Government and the criteria laid down for filling up such posts. In the result, the writ application is dismissed with the directions indicated above. There shall be no order as to cost.

Shashank Kumar Singh, J.

I agree.