
(1982) 09 PAT CK 0004

In the Patna High Court

Case No : C.W.J.C. No's. 578 and 658 of 1982

Vishwanath Sharma and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-09-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1982) 30 BLJR 511

Hon'ble Judges : Sarwar Ali, C.J;Lalit Mohan Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Lalit Mohan Sharma, J.—Since the petitioners in these two cases have raised a common point in their challenge to the resolution of the State Government dated 10-11-1981 as per memo No. 1285 of the Health Department fixing the criteria for appointment of Ayurvedic and Unani Medical Officers, they have been heard together and this judgment will govern both the cases. A copy of the resolution has been annexed to the writ application in C.W.J.C. 578/82 as Annexure 8 and in C.W.J.C. No. 658/82 as Annexure 4. The attack is directed against the eighth condition which slightly differs in the annexures given in the two cases. The State counsel, after examination of the original file, stated that Annexure 8 in C.W.J.C. 578/82 is the correct copy, which fact is not controverted before us. The impugned resolution will, therefore, be read accordingly.

2. For the appointment of Medical Officers-Ayurvedic and Unani- an advertisement was made in 1980 and the petitioners applied. There was a fresh advertisement in 1981 which required ten years' residence of the applicants in Bihar. The candidates who had applied were not to file fresh applications but had to submit certificates of residence which the petitioners did. They thus fulfilled all the conditions for appointment. But the petitioners in C.W.J.C. 658 were not issued interview letters and they had to come to this Court in C.W.J.C. No. 266/82 and in C.W.J.C. No. 485/82 and were allowed to appear at the interview

in February, 1982. No such difficulty arises in the case of the petitioner of C.W.J.C. 574/82 as he was duly interviewed; The petitioners state that they learnt later that the authorities were deciding the question of selection for appointment and the basis of the criteria mentioned in the impugned resolution No. 1285 referred to above Including the illegal condition number nine.

3. For judging the relative merits of the candidates the resolution allots marks for certain accomplishments; for example, a candidate gets 4 marks for a Post Graduate degree and 2 marks for completing the training as a Houseman, etc. It is not necessary to give details of all the terms. The eighth condition permits 10 marks to be allotted to a candidate who has passed the matriculation examination or higher secondary examination or an equivalent examination held by the Bihar State Examination Committee or a University within the State. Although the petitioners are residents of the State of Bihar, they passed their matriculation examination/secondary examination from U. P. The petitioner in C.W.J.C. 578/82 states that as his maternal grandfather lived at Benaras, he passed the examination equivalent to matriculation examination from Benaras Hindu University in 1968 and was placed in the second class. However, he came back to Bihar for completing his studies and obtained his G. A.M. S. degree from Government Ayurvedic College, Patna. The petitioners aver that the allotment of 10 marks as said above is wholly illegal and puts them to serious disadvantage and so the same must be struck down. The petitioner in C.W.J.C. 578/82 has also challenged as illegal condition No. 4 of the impugned resolution which directs marks to be allotted to the candidates according to their result at the examination held for the purpose of admission in Ayurvedic college-3 marks for obtaining first division, 2 marks for second division and 1 for third division. It is said that the said examination having been held in non-technical subjects must be ignored as irrelevant. It is argued that a similar condition is never applied to Allopathic Doctors and it should, therefore, be held to prescribe an irrelevant and irrational criterion.

4. Eight persons intervened in the case and prayed by a petition to be allowed to oppose the writ case. The case was, however, admitted on 24-4-1982 and a direction was issued to keep seven posts unfilled so that in case of their success the petitioners may be appointed against them. As the time of final hearing, Mr. Advocate General on behalf of the State and its officers and Mr. T. K. Jha for the intervenors opposed the writ petition.

5. The State has filed a counter affidavit in C.W.J.C. 578/82 and tried to justify the allocation of 10 marks for passing the matriculation examination from Bihar on the ground that this has been done "in view of the mounting unemployment problem for the unemployed technical personal (?) of the State, In paragraph 7 of the counter affidavit, it has been reiterated that the criterion has been fixed to meet unemployment problem".

6. Let me first deal with the objection raised in C.W.J.C. 578/82 to the fourth condition of the impugned resolution. I do not find any merit in this point which

was only faintly argued by the learned Counsel that the result of the candidates in nontechnical subjects cannot be taken into account at all. It was on the basis of this admission test that the petitioners were admitted in Ayurvedic college and no reason is suggested for ignoring the results at the examinations other than held for Ayurvedic degree. The result at the admission test was considered relevant for deciding as to who should be allowed to pursue the Ayurvedic studies and it must, therefore, be presumed as indicating the relative ability of the candidates relevant to the course. The argument on this score, therefore, must be held to be devoid of any merit.

7. The main argument addressed on behalf of the petitioners in both the cases is directed against the allocation of 10 marks for passing matriculation or equivalent examination from Bihar. This undoubtedly gives a considerable advantage to those who have passed the examination in this State. The applicants are thus divided into two groups and the group to which the petitioners belong has been clearly placed at a disadvantage. The question which falls for decision is whether classification is justified on the test of Article 16 ensuring equality of opportunity in matters relating to appointment.

8 It has been firmly and repeatedly held that the validity of a classification in the light of Articles 14 and 16 has to be judged by examining its object. If it has a reasonable relation to the object sought to be achieved and serve the purpose which itself should not be illegal, it should be upheld. What is necessary is that there must be a nexus between the basis of classification and the object it is supposed to achieve. Is the impugned classification founded on an intelligible differentia having a rational relation to the object of removing unemployment which is claimed by the State to be achieved.

9 It has been held that classification on geographical basis may in appropriate cases be held to be constitutional. The interest of the State may be a valid ground in appropriate circumstances. The requirement of "ten years" residence within the State has not been challenged before us as illegal. The respondents were, therefore, not called upon to justify this condition. I would accordingly presume as valid the condition in this regard which has been laid down as essential. The statement in paragraphs 3 and 7 of the counter affidavit that by the appointment in question the State is trying to solve the unemployment problem within the State may justify this decision. Can it be further said that the weightage given to the candidates passing matriculation examination from Bihar helps in any way to achieve the solution of unemployment. I unhesitatingly say that it does not. The petitioners are residents of this State and by preferring other similar persons to them, the position of employment remains the same. The petitioners and others like them are put to a disadvantage merely for the reason that in the past they passed their matriculation examination outside Bihar. The residents of the State have been and will be employed outside the State in fair number. Does the Government expect them to educate their children not where they are working but send them to Bihar so as to escape discrimination in future.

No justifiable reason could be suggested by the learned Advocate General or Mr. Jha for approving such a view. The fact remains that the impugned criterion does not serve the attempted solution of the unemployment in the least and must therefore, be held as irrational, arbitrary and extraneous. The other purpose of employment of judicial Officers- and to my mind the main purpose-must be making of medical assistance available to the people of Bihar. This object again cannot be better achieved by appointing persons who passed their matriculation examination from Bihar in preference to others. For these reasons, I hold that the condition No. 8 of the impugned resolution is ultra vires and must be struck down. The candidature of the petitioners should, therefore, be judged by reference to the said resolution but after excluding the consideration under the eighth condition. The petitioners should, therefore, be appointed if they are found to be so entitled on that basis.

10. In the result, the writ applications are allowed but the parties will bear their own costs.

Sarwar Ali, C.J.

11. I agree.