

Pushpa Devi Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-06-1998

Judge : R.A. Sharma and P.K. Sarkar, JJ.

Appeal No. : L.P.A. No. 605 of 1997 (R)

Appellant : Pushpa Devi

Respondent : State of Bihar and ors.

Disposition : Petition Dismissed

Prior history : 1. Heard the learned Counsel for the appellant and the J.C. to the Government Pleader No. II for the respondents. 2.The petitioner-appellant filed C.W.J.C. No. 1268 of 1972(R) seeking appropriate writ directing the respondent to appoint her in one of the posts of Sanskrit Teachers in Primary School in the district of Dhanbad. Incidental and consequential reliefs in connection therewith have also been claimed. The said writ petition having been dismissed, the appellant has filed this appeal. 3.

Judgement :

1. Heard the learned Counsel for the appellant and the J.C. to the Government Pleader No. II for the respondents.

2.The petitioner-appellant filed C.W.J.C. No. 1268 of 1972(R) seeking appropriate writ directing the respondent to appoint her in one of the posts of Sanskrit

Teachers in Primary School in the district of Dhanbad. Incidental and consequential reliefs in connection therewith have also been claimed. The said writ petition having been dismissed, the appellant has filed this appeal.

3. In this State, district-wise panels for appointment of assistant teachers in primary schools on the basis of residence of the candidates in the particular district were prepared. A Division Bench of this Court in *Anil Kumar v. State of Bihar and Ors.* 1987 PLJR 846, has declared such panels to be ultra vires being unconstitutional. But the appointments already made were not disturbed by this Court. Following the said decision of this Court, the Government of Bihar issued an order dated 2.7.1989 prohibiting any further appointments from such panels and further directed for fresh selection after due advertisement. The above order of the Government was challenged by various persons before this Court by filing several writ petitions. These writ petitions were dismissed. The decision of this Court was challenged before the Supreme Court, whose decision is reported in 1994(1) PLJR 62(SC) *Sabita Prasad and Ors. v. The State of Bihar and Ors.*

4. The Supreme Court in *Sabita Prasad's* case has held that the list of persons in the panels prepared were neither related to the existing vacancies nor was it related to the anticipated vacancies of the near future and as such, such a panel did not create any vested right on the candidates whose names were included therein. On the basis of the concession made by the learned Counsel for the State of Bihar, the Supreme Court did not disturb the appointments already made. As regard the teachers of Nalanda district, the Apex Court on the basis of the concession made by the learned Counsel for the State of Bihar directed for consideration of their cases for appointment if the persons figuring below them in the panel have been appointed. Similar directions were issued by this Court in *Surendra Kumar Singh and Ors. v. The State of Bihar and Ors.* 1995(2) PLJR 594, while considering the claim of the petitioners therein for appointment as primary teachers since the persons below them in the panel have already been appointed. The same controversy again came up before this Court in *Ranyi Tiwary and Ors. v. The State of Bihar and Ors.* 1996 (1) All PLR 279. This Court after considering the relevant case law and the previous history of the litigation declared that no direction should be issued to the Government for making further appointment from

the panels prepared district-wise. The claim of the petitioners therein was also rejected on account of delay and laches. So far as the decision of the Apex Court in the case of Sabita Prasad is concerned, it was held that the orders/directions were issued by the Apex Court on the basis of concession made by the learned Counsel for the Government of Bihar.

4. In the present case, the panel was prepared in 1987. In paragraph 9 of this appeal, it has been stated that the appellant's claim was rejected by the respondents on the ground that she is not a resident of the district of Dhanbad. If that is so, the appellant should have challenged the panel and the rejection of her claim/non-issuance of letter of appointment to her in 1987 itself or immediately thereafter. It is too late in the day now to file this writ petition seeking direction for appointment after ten years. The appellant is, therefore, guilty of excessive delay and laches.

5. That apart, when such panels have already been declared as unconstitutional by this Court in Anil Kumar's case in 1987 itself, the question of issuing any direction for appointment of a person from such panel does not arise. The Apex Court in Bihar Public Service Commission and Anr. v. State of Bihar and Ors. : AIR 1997 SC2280 , has declared that the writ of mandamus cannot be issued to implement an invalid panel for selected candidates.

6. For the reasons given above, this appeal lacks merit. The learned Single Judge was fully justified to dismiss the writ petition. It is, accordingly, dismissed. No cost.

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