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Court : Patna

Decided On : Sep-10-2001

Judge : Narayan Roy, J.

Appeal No. : C.W.J.C. No. 10627 of 2001

Appellant : Sanjeev Kumar and ors.

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Prior history : Narayan Roy, J. 1. Heard learned Counsel appearing on behalf of the petitioners and JC to AAG II for the respondents. 2. By this writ application, the petitioners have prayed for issuance of a direction upon the respondents to issue appointment letters to them as they were selected for appointment on the post of Assistant in the Secretariat and its attached offices pursuant to advertisement No. 1 of 1993. 3. It is submitted by learned Counsel appearing on behalf of the petitioners that process

Judgement :

Narayan Roy, J.

1. Heard learned Counsel appearing on behalf of the petitioners and JC to AAG II for the respondents.

2. By this writ application, the petitioners have prayed for issuance of a direction upon the respondents to issue appointment letters to them as they were selected for appointment on the post of Assistant in the Secretariat and its attached offices pursuant to advertisement No. 1 of 1993.

3. It is submitted by learned Counsel appearing on behalf of the petitioners that process of selection and verification etc. was already completed way back in April 2001 and, for some how or the other, the petitioners have not been appointed in spite of direction of this Court dated 30-11-1999, passed in Civil Writ Jurisdiction Case No. 8697 of 1997.

4. My attention has been drawn to the earlier direction of this Court passed in Civil Writ Jurisdiction Case No. 8697 of 1997. It appears that this Court firstly directed the authorities to identify the vacancies and thereafter Bihar Public Service Commission (hereinafter to be referred to as 'BPSC') was directed to recommend the candidates for the vacancy of the wait list, according to merit out of advertisement No. 1 of 1993 and further direction was issued directing the authorities to issue appointment letters in favour of the recommended candidates within two weeks from the date of such recommendation. this Court further directed that the post should be filled up pursuant to subsequent advertisement and the process should be completed within a period of six months from the date of receipt/production of a copy of that order.

5. It is further submitted by learned Counsel appearing on behalf of the petitioner that pursuant to the direction of this Court, 241 vacancies were identified by the State Government and BPSC recommended for appointment of 241 candidates vide Annexure 5 for filling up the vacancies, where the petitioners are within the zone of appointment. It is also submitted that these petitioners were finally selected and their certificates etc. were verified, but till date appointment letters have not been issued to them.

6. A counter-affidavit has been filed today on behalf of respondent Nos. 2 and 3. In the counter-affidavit, inter alia, it is stated that the Government is reconsidering the matter for demerger of the posts of assistants in the Secretariat by dividing them into three categories, namely, Lower Division Clerk, Upper Division Clerk and

Assistant. It is stated in the counter-affidavit that process though has not been completed for demerger, it is very much under contemplation, and, therefore, decision was taken by the Finance Department giving its consent for appointment of the petitioners and other eligible candidates on the post of Lower Division Clerk on 9-7-2001 instead of taking a decision pursuant to earlier direction of this Court and on the basis of the recommendation of the BPSC for appointment on the post of Assistants. The counter-affidavit filed on behalf of respondent Nos. 2 and 3 further states that the matter has been sent to the Chief Minister's Secretariat for further direction in the matter.

7. The fact that the petitioners were finally selected for the post of Assistant in the Secretariat is not in dispute. It is also not in dispute that advertisement No. 1 of 1993 was for filling up the post of assistants in the Secretariat and to its attached offices and pursuant to the direction of this Court further 241 vacancies of assistants were identified and necessary recommendations were made by the BPSC and finally these petitioners as well as other eligible candidates were selected for appointment on the post of assistants. There is nothing in the counter-affidavit to indicate that a decision has been taken by the State Government for demerger of the posts. Till date the post of assistant in the Secretariat is subsisting and the petitioners are eligible for appointment on the post of assistant in the Secretariat. Nowhere it has been denied in the counter-affidavit that the petitioners were not finally selected for the post of assistant. As decision, which has not yet been taken, though under consideration by the authorities for demerger of the posts, the submission, made on behalf of the State that the appointment letters will be issued for the posts of Lower Division Clerk, it not acceptable. When the matter was set at rest by the State Government and also BPSC, whereby and where under the petitioners were selected for appointment, appointment letters could have been issued to the petitioners and other eligible candidates by now for their appointment on the post of assistants in the Secretariat. Even assuming that there will be demerger of the post, it shall be given effect to prospectively and not retrospectively, as the vacancies relate to the year 1993 and the petitioners pursuant to thereto were finally selected for appointment to the post of assistants in the Secretariat.

8. Considering the facts and circumstances of the case, I have no option but to direct the authorities to issue appointment letters to the petitioners and other eligible candidates for the post of assistants in the Secretariat.

9. In the result, this application is allowed and respondent Nos. 2 and 3 are directed to issue appointment letters to the petitioners and other eligible candidates for their appointments in the Secretariat within a period of a fortnight from today. No order as to costs.

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