

Vikramkant Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Feb-05-2008

Judge : Navin Sinha, J.

Appeal No. : CWJC No. 16285 of 2007

Appellant : Vikramkant Kumar

Respondent : The State of Bihar and ors.

Advocate for Def. : Ranjan Kumar, J.C. to AAG 9 and Indeshwari Pd. Mandal, J.C. to G.A. 8

Advocate for Pet/Ap. : Saket Kr. Jha and Amit Prakash, Adv. in CWJC 16285/07 and Saket Kr. Jha, Adv. in CWJC 16289/07

Disposition : Application allowed

Prior history : Navin Sinha, J. 1. Heard learned Counsel for the petitioners and learned Counsel for the State. 2.1 The controversy in both these writ applications relate to appointment on the post of Constable in the Bihar Police under advertisement No. 1 of 2004. The crux of the controversy in both the applications is with regard to grant of 5 extra marks to the petitioners for N.C.C. (B) certificate as provided for in the advertisement. 2.2 An advertisement was issued on 8.2.2004 inviting applications for

Judgement :

Navin Sinha, J.

1. Heard learned Counsel for the petitioners and learned Counsel for the State.

2.1 The controversy in both these writ applications relate to appointment on the post of Constable in the Bihar Police under advertisement No. 1 of 2004. The crux of the controversy in both the applications is with regard to grant of 5 extra marks to the petitioners for N.C.C. (B) certificate as provided for in the advertisement.

2.2 An advertisement was issued on 8.2.2004 inviting applications for appointment on the post of Constable. The last date fixed under the advertisement for submission of applications was 25.8.2004. The advertisement required the applicants to enclose attested copy of necessary certificates. It further provided that all successful candidates at the time of their appointment shall produce the originals before the Selection Committee. It inter alia provided for a written examination. The selection process did not materialize in time for reasons not attributable to the petitioners. This led to a fresh advertisement on 11.8.2004 in continuation. The latter advertisement provided that there shall be no written examination; that those who had applied in response to the earlier advertisement (8.2.2004) need not apply again and that their roll number shall remain the same as allotted to them under the original application. The last date for submission of applications was 25.8.2004. The petitioners obtained their N.C.C. (B) certificate on 21.6.2004 and 17.6.2004. Armed with the original certificates, they appeared for the physical selection test on 26.8.2006 and 31.8.2006 respectively. Both the petitioners came to this Court earlier in CWJC No. 8601 of 2007 and CWJC No. 7788 of 2007. A Bench of this Court on 30.7.2007 noticed the submission that similarly situated persons had been given weightage for N.C.C.(B) certificates, discriminating the petitioners. The respondents were directed to file a comprehensive counter affidavit. In the meantime, if vacant posts were available as was submitted on behalf of the petitioners, it would be kept vacant for the petitioners if they were ultimately found eligible. The writ applications came to be disposed finally on 3.10.2007, on basis of the representations stated to have been filed by the petitioners. It was again noticed that if the benefit of N.C.C. (B) certificate had been allowed to others, there is no discernible reason as to why the

same certificate shall not be considered favourably in the case of the petitioners. In CWJC No. 16285 of 2007 the representations came to be rejected by orders impugned dated 26.10.2007 and 30.10.2007 at Annexures 12 & 13 respectively while in the latter case it came to be rejected by order dated 26.10.2007 at Annexure-13.

3. The submission on behalf of the petitioners was that the advertisement dated 8.2.2004 was followed by corrigendum on 11.8.2004. In the interregnum the petitioners obtained their N.C.C.(B) certificate on 21.6.2004. There was no occasion for them to file the certificates before the authority afresh in pursuance of the latter advertisement which in Clause 5 provided that those who had applied under the earlier advertisement need not apply again. They had therefore become eligible in terms of the subsequent advertisement. They did produce their original certificate at the time of physical test on 26.8.2006. The rejection of their applications was also bad for the reason that the persons similarly situated, as also noticed in the earlier orders of this Court, had been considered. The petitioners had been subjected to hostile discrimination, which had not been denied in the counter affidavit. It is their case that if the additional weightage of N.C.C.(B) certificates be granted to them they shall become eligible for selection and appointment.

4. Learned Counsel for the State opposing the applications submitted that the attested copies of the necessary certificates were required to be appended to the application. The last date for submission of the application was specified in the advertisement dated 8.2.2004 as 22.2.2004. The petitioners had not appended their N.C.C. (B) certificate along with their application. It was for this reason that their applications were rejected as not being according to the stipulation of the advertisement. It was next submitted that an administrative decision had been taken on 14.9.2006 as appended at Annexures-A & B to the counter affidavit not to accept such applications. This decision was prompted as several such cases had surfaced. The representations of the petitioners have now been rejected by a reasoned order which calls for no interference.

5. The advertisement dated 8.2.2004 did not make any progress. Before the last date for submission of applications thereunder i.e. 22.2.2004 a fresh advertisement was issued in continuation on 11.8.2004. The last date for submission of applications was extended to 25.8.2004. The earlier advertisement merged with the subsequent advertisement. By a fiction of law, the applicants to the earlier advertisement were deemed to be applicants under the latter advertisement. They shall be so deemed for all purposes and cannot be bifurcated as to pin them down to the advertisement dated 8.2.2004. The petitioners clearly acquired their N.C.C. (B) certificates before the last date fixed in the subsequent advertisement as 25.8.2004. They, therefore, clearly became eligible to be considered for the additional marks on basis of their N.C.C. (B) certificates. That the subsequent advertisement prohibited them from re-applying, cannot disqualify their eligibility in pursuance of the N.C.C.(B) certificates obtained by them in time. There cannot be separate eligibilities under two advertisements.

6. The essential conditions of eligibility are provided in Clause 10 of the advertisement. It is not in controversy that the petitioners fulfilled the essential conditions of eligibility. What they now seek is an additional wightage by five points during selection on basis of the eligibility acquired for the same before the last date of the advertisement.

7. The advertisement stipulated that the attested copies of necessary certificates shall be appended to the application. It simultaneously stated that the selected candidates at the time of their appointment were required to produce the originals. The last date for submission of applications was fixed as 22.2.2004. The advertisement did not stipulate any cut-off date for acquiring the qualification, though it did fix the cut-off date with regard to age. The advertisement further did not specify that those applications which were not accompanied by necessary certificates would be rejected. In the facts of the present case, it is not in controversy that the petitioners have acquired the N.C.C.(B) certificate in between the original advertisement and the subsequent corrigendum thereto. There was no occasion for them to bring it to the attention of the authorities in view of clear stipulation in the latter advertisement that they need not apply afresh.

8. This Court, therefore, has no hesitation in holding that in terms of the fresh advertisement dated 11.8.2004 the petitioners are deemed to have become eligible in view of their admittedly having acquired N.C.C. (B) certificate on 21.6.2004; that they were precluded from bringing it to the attention of the authorities by reason of the condition of the subsequent advertisement not permitting them to apply again and it cannot operate to their prejudice. The petitioners have produced it at the time of their physical selection on 26.8.2006 and 31.8.2006 respectively. In any event of the matter as on the date of their selection, they fulfilled the conditions under the advertisement for grant of benefit of extra 5 marks on basis of N.C.C. (B) certificate.

9. In view of the findings hereinabove that the advertisement did not stipulate that such applications which were not accompanied by attested copies of necessary certificate shall be rejected, coupled with the clause in the advertisement that the original shall be produced at the time of such selection, even under the latter advertisement dated 11.8.2004, the petitioners cannot be faulted with. They have produced their original certificate at the time of their selection.

10. Despite the fact that this Court on the earlier occasion had noticed the specific allegation of hostile discrimination when others similarly situated have had their N.C.C. (B) certificate considered for grant of additional 5 marks and the details whereof have been spelt out in the writ application including the names of such candidates, which has not been denied in the counter affidavit, this Court is not impressed by the argument of the Respondents that all such applicants are being reconsidered so as to deny the benefit to the petitioners. From Annexure-B to the counter affidavit, it is apparent that marks have not been awarded to candidates based on their attested copies of certificates until and unless their originals were verified at the time of selection.

11. This Court, therefore, arrives at a finding of hostile discrimination meted out to the petitioners rendering the action of the respondents arbitrary.

12. In view of the discussions aforesaid, this Court finds it difficult to sustain the impugned orders dated 26.10.2007 and 30.10.2007 in CWJC No. 16285 of 2007 and 26.10.2007 in CWJC No. 16289 of 2007. The same are, accordingly,

quashed. The writ applications are allowed.

13. The Respondents are now directed to consider the case of the petitioners for appointment on the post of Constable on basis of their performance in the physical test after granting them 5 extra marks on basis of their N.C.C. (B) certificate after examination of their original to their satisfaction. Let such consideration be done and final decision with regard to the petitioners be taken within a period of eight weeks from the date of receipt and/or presentation of a copy of this order.

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