

Rajendra Oraon and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-20-1999

Judge : Nagendra Rai, J.

Appeal No. : C.W.J.C. No. 2245 of 1997 (R)

Appellant : Rajendra Oraon and ors.

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

Nagendra Rai, J.

1. The question of law and facts involved in all the four cases are same and as such they have been heard together and are being disposed of by this common order.

2. There are 21 petitioners in C.W.J.C. No. 2605/97(R). 32 petitioners in C.W.J.C. No. 2163/07/97 (R), 31 petitioners in C.W.J.C. No. 2052/97(R) and 2 petitioners in C.W.J.C. No. 2245/97(R). They have filed the present writ application for a direction to the respondents for their appointment in Class IV posts vacant in different department of the Gov eminent of Bihar, in the district of Ranchi on the basis of their placement in the district panel in terms of the Government

notification dated 19.11.92 a copy of which has been annexed as Annexure-6 to C.W.J.C. No. 2605/97 (R) and for quashing the Notification dated 20.6.97 published in the Prabhat Newspaper issued by the respondent Deputy Commissioner for preparation of fresh panel for appointment to Class IV post in the regional offices of the Ranchi District, a copy of which has been annexed as Annexure-8 to C.W.J.C. No. 2605/97 (R).

3. The facts which are not in dispute are that on 22nd March, 90 'an advertisement was issued by the respondent Deputy Commissioner, Ranchi for preparation of Panel for filling up vacancies of Class IV employee in the different regional offices within the district of Ranchi. The petitioners in all the cases applied and their names were also sponsored by the Employment Exchange. The different departments intimated to the Dy. Commissioner about the vacancies falling in all the offices at the time of preparation of the panel. All the petitioners' names were included in the panel and they were intimated that they have been selected for appointment against the vacancies notified in the different departments and they were asked to go and join the departments from where the intimation about the vacancies were given to the Dy. Commissioner. The placement of the petitioners in the panel list has been given in the different paragraphs of the writ applications and the same has not been denied. The petitioners wanted to join in the respective offices but they were not appointed by the Department concerned. Even direction was given by the State Government to consider their cases on the basis of the panel but they were not appointed. The Dy. Commissioner also held several meetings with the Officers of the Department concerned and directed them to make appointment but they on one pretext or the other did not appoint the petitioners. It also appears that the persons junior to the petitioners in the panel whose names were recommended for appointment from the said panel have been appointed. While the petitioners were agitating the matter the Dy. Commissioner issued a Notification dated 20.6.97 taking steps for preparation of fresh panel for appointment of Class IV employees.

4. It is asserted on behalf of the petitioners that persons junior to them in the panel have been appointed whereas though their names were sent to the different departments against the vacancies notified at the time of preparation of the panel

they were not appointed. Thus, they have been discriminated in the matter of appointment for no fault on their own. They have also brought to my notice the different directions issued by this Court in similar situation to consider their appointment which will be referred to at the appropriate time.

5. The stand of the State in the counter-affidavit is that in terms of the instructions contained in letter No. 16441 dated 3.12.80 issued by the Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna, a committee consisting of five members under the Chairmanship of the Dy. Commissioner has to be formed to prepare a panel list of the candidates for appointment to Class IV posts in the various offices within the district which will be effective for one year. The names of the candidates, according to the reservation, roster are to be sent from the district panel list to the authorities of the department concerned where the vacancy of Class IV employee is existing. The panel in question was prepared in 1992 and the same remained effective till 14.5.96 i.e. about 4 years and it was cancelled on 14.5.96 and thereafter, it became necessary for preparation of fresh panel and accordingly, action for preparation of fresh panel has been taken in which all the appointing authorities of the district have been requested to send the category wise vacancies of the 4th Grade employees existing under them, copies of which have been appended to the counter-affidavit. As such the Dy. Commissioner has taken steps for preparation of the fresh panel.

6. The State has not denied in the counter-affidavit the position of the petitioners in the panel nor it has denied the assertion of the petitioners that persons junior to them have been appointed from the said panel and the petitioners whose names were recommended to the different offices, where vacancies were existing, have not been appointed.

7. On the direction issued by this Court, a supplementary counter-affidavit has been filed in C.W.J.C. No. 2052/97(R) wherein the Dy. Commissioner has given the vacancy position in the different departments to which the name of these petitioners were sent from the district panel. From perusal of the same, it appears that though the vacancies are there and the names of these petitioners were sent to the different departments but the appointment has not been made by the

concerned offices on one pretext or the other except in case of Adhichak Teeka Ausadhi Partisthan Namkun where the appointment has been denied on the ground of closer of one of its departments. In other cases, appointment has been denied either on the ground of not clearance of roster or on the ground that permission has not been given for appointment from the State level or some other similar grounds. In the counter-affidavits filed by some of the respondents representing the different departments also the appointments have not been denied on the aforesaid grounds.

8. Before advertizing to the respective submissions advanced at the Bar, I will state the policy matter dealing with the appointment of Class IV employees. The Department of Personnel and Administrative Reforms Department, Govt. of Bihar, came out with a policy decision contained in letter No. 16441 dated 3.12.80 providing therein that a committee of seven members under the chairmanship of the Dy. Commissioner or Collector has to be formed for preparation of panel list for appointment of Class IV employees in various offices of the district concerned. The same shall be effective for one year and thereafter, it will be reviewed but the persons in the merit list subject to age and other reasons will be included in the said panel list. The names of the candidates are to be sent from the said panel to the appointing authority concerned where the vacancies of fourth Grade employees exists. The aforesaid department has also issued instructions contained in Resolution No. 5939 dated 18.3.93 and letter No. 4248 dated 2.9.94 that all the vacancies of Class IV employees within the district have to be filled up from the panel prepared in accordance with the aforesaid policy decision.

9. In all the four cases, the vacancies in different departments were notified at the time of preparation of the panel and thereafter, the panel was prepared and these petitioners names are in the panel list which is admitted in counter-affidavit. It is also admitted that their names were sent to different departments for appointment. The Dy. Commissioner also held meetings of the concerned departments where the names of the petitioners were sent for appointment and he also issued direction to them to make appointment and inform the Government with regard to the action taken by him in this connection, a copy of which has been annexed as Annexure-3 to C.W.J.C. No. 2605/97(R), but they have not been appointed.

10. Learned Counsel for the petitioners submitted that denial of appointment to the petitioners is wholly arbitrary and violative of Article 14 & 16 of the Constitution of India inasmuch as the petitioner's names were included in the panel and their names were sent to the different departments which informed about the existing vacancies to the Dy. Commissioner for appointment but they were not appointed and persons below to them in the panel whose names were sent for appointment in the different departments were appointed.

11. Learned Counsel appearing for the State has not denied the fact that the persons junior to the petitioners in the panel have been appointed but submitted that Departments concerned have not appointed them though they were not asked to make appointment in terms of the vacancies notified by them earlier at the time of preparation of the panel. They have not appointed in spite of the best efforts made by the Deputy Commissioner in this regard.

12. Inclusion of names in the panel does not give a right of appointment to the penalist. The life of panel in terms of the Government policy is not of standing status in the sense to remain valid for appointments in future for indefinite period. It has to be revised yearly and the persons having become ineligible either being over age or for any other reason have no right to remain in the panel.

13. The petitioners of these cases are not seeking appointment only on the ground of empanelment in 1992 panel. Their case is that the vacancies were notified before preparation of the panel by the different departments. Their names were included in the panel for appointment and they were asked to report to the different departments for appointment in terms of the vacancies intimated by the department but they have not been appointed whereas the persons below to them in the panel whose names were also recommended and sent for appointment to the different departments have been appointed. The assertion made by the petitioners has not been denied by the respondents. As such there is a clear case of discrimination.

14. The learned Single Judges of this Court in C.W.J.C. No. 3784/95(R) disposed of on 23rd July, 96, C.W.J.C. No. 2693/96(R) disposed of on 29.7.98 and C.W.J.C. No. 287/96(R) disposed of on 28.6.96 have issued direction to the respondents to

take immediate steps for appointment of the petitioners against the vacancies which were notified at the time of preparation of the panel. Taking into consideration the aforesaid facts, I am also of the view that the petitioners have made out a case for issuance of such direction.

15. It appears that in terms of the Government policy, now all the appointments in Class IV posts in the offices falling within the district of Ranchi have to be made from the panel and as such unless this decision of the State Government issued through different instructions of the Personnel and Administrative Reforms Department are not reviewed or revised the other departments having offices in the district where the Class IV posts are vacant cannot take a plea that unless permission is given by the Departments concerned from the State level or higher officers, no appointment can be made to that post. Such ground taken by the respondents in denying the appointment of the petitioners is wholly untenable in law.

16. From perusal of the supplementary counter-affidavit filed by the Dy. Commissioner in C.W.J.C. No. 2052/97(R), it appears that the vacancies were not filled up on different grounds, which are as follows:

Name of the Institution	Number of Ground for not
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Vacancies filling up those vacancies

Chief Inspector 1 Non-clearance of the roster.
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of Factories Ranchi.

Superintendent, 1 He wanted to appoint another
--

Itki Arogya Branch, Ranchi person from the panel.

Superintendent, 1 Matter is pending because of the
--

R.M.C.H., Ranchi. doubt created with regard to the
Caste Certificate filed by the
Candidate whose name was sent.

Director Janjati Sodh 1 Appointment was not made on
Sansthan, Kalyan, Ranchi the ground that the committee
is not competent.

Principal, R.M.C.H., Ranchi, 5 Appointments were not made
because of the ban put by the
Directorate of Health.

Superintendent, Tika 2 Appointments were not made
Ausadhalaya Partisthan, because of the closure of the de-
Namkum. partment and adjustment of the
surplus employees.

Superintendent, Rajya 16 Appointments were not make
Karamchari Bima Yojna, because of non-clearance of the
Namkum roster and pendency of the cases
in the High Court.

State Library, Bihar, Ranchi. 6 Appointment has not been re-
ceived from the State-level of-
fice.

Joint Director, Suchna and 3 State-level authority is the ap
Jansampark Dept., South pointing authority. As such Of-
Chhotanagpur, Ranchi ficer within the district is not
the competent authority.

Incharge Medical Officer, 4 Because of the Ban put on the
Leprosy Research appointment.

Centre, Ranchi.

Executive Engineer, Lok 16 Appointment is being denied on
Swasth Parmandal, Khunti the ground that no order for ap
pointment is being issued at the
State-level authority.

Executive Engineer, Jalpath, 2 No post is vacant.

Parmanchal, Khunti

Executive Engineer, 10 Due to no work.

Irrigation Bundu-Ranchi.

District Fisheries Officer-cum 3 Appointment is not being made
Chief Working Officer, Ranchi. the ground that the matter re
lates to the State level.

Principal, Industrial Training 8 -do-

Centre, Kalyan Ranchi.

National Saving Executive 1 There is no vacancy.

Officer, Ranchi.

Prashashak Bihar Rajya 1 Steps for appointment will be

Sahkarita Nigam, Ranchi taken after constitution of the

Board of Director.

Dy. Director, Paudha 1 No information has been given

Sansthan, Ranchi. about the vacancy at the State

level but vacancies are being

shown at the office level.

Kaniya Paudha, 31 -do-

Sanranchana, Ranchi.

Pracharya, Sahkarita 3 Direction has been sought from

Parsikchan Kendra, Ranchi State level for appointment.

Executive Engineer, Vidhut 12 Necessary direction has been

Karya Mandal, Ranchi. sought from the office of the Su-

perintending Engineer, Patna

and due to that appointment is

not being made.

Joint Director, Statistics 1 Correspondence is being made

Ranchi. at the State level for making ap-

pointment.

Dy. Director-cum-Joint 2 Appointing authority is the State Register, Weight and level, hence the appointment is Measure, Ranchi not being made.

Additional Director, 2 Addl. Director has requested for Education, Branch Secretariat, sending more names for making-Ranchi ing appointment by holding in interview by him.

Dy. Labour Commissioner, 1 Matter is pending due to non-Ranchi availability of roster clearance.

Dy. Secretary, Sought 2 Appointment was not made on Chhotanagpur Parmandal, the ground that no position was Swasashi Vikas Padadhikari intimated to the Dy. CommisArt House, Ranchi sioners. However, it was brought to the notice of the authority that intimation was sent earlier for vacancy but no decision has been taken.

Director, Rural Development, 1 Appointment is not being made Department, Ranchi. on the ground of no roster

dearance.

17. Thus, once the Government has come out with a policy that appointment in the offices falling within the districts to Class IV post has to be made by the panel, the appointment cannot be denied on the ground that the appointing authority is the State-level authority because in that district the appointment has to be made from that panel. The aforesaid grounds given by the officers concerned for not making appointment is wholly untenable. Similarly, the ground of non-clearance of roster or not permission has been granted from the State level are also wholly untenable. The aforesaid acts appear to be a device by the officers concerned not to make appointment in terms of the Government policy and to fill up the post by adopting the backdoor method which is prevalent mode of appointment in this State.

18. To expedite the matter, the Dy. Commissioner is directed first to prepare a list of candidates, whose names were recommended in the different offices, including the petitioner and thereafter, call for a meeting of the offices concerned where the names of the petitioners were recommended for appointment in terms of the vacancy notified by them and thereafter, issues direction to them except Teeka Ausadhalaya Department to make appointment of the petitioners in terms of the Government policy within a month from the date of delivery of direction issued by him. With regard to the two vacancies of Teeks Ausadhayalaya Department, they should be appointed in any other departments by the Dy. Commissioner where the vacancies are existing. The Dy. Commissioner will also look into the facts that even in some departments at present vacancies are not existing because of the financial crunch or otherwise then in those cases candidates should be accommodated in any other departments against the existing vacancies. After the appointment of the petitioners, the existing vacancies should be filled up from the candidates of the new Panel to be prepared in terms of the advertisement.

19. With the aforesaid observation/direction, these writ applications are allowed.