

Surendra Prasad Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jan-03-2002

Judge : S.N. Jha, J.

Acts : Bihar Re-organisation Act, 2000 - Sections 77; Service Law; Bihar Civil Service (Judicial Branch) Recruitment Rules, 1955; [Constitution of India](#) - Article 226; Bihar Civil Service (Judicial Branch) Recruitment Rules, 1955 - Rules 19 and 20

Appeal No. : CWJC No. 11930 of 2001

Appellant : Surendra Prasad

Respondent : State of Bihar and ors.

Advocate for Def. : S.K. Ghose and Rajeshwar Kumar Singh, Advs.

Advocate for Pet/Ap. : Ganesh Pd. Singh and Subhro Sanyal, Advs.R.K. Dutta, Adv.Ashoka Kumar Choudhary and Mithilesh Mouar, Advs.R.S. Roy, Siya Ram Sahi, Kundan Bahadur Singh, Binod Kumar Singh, Sanjeev Kumar and Anil Kumar

Disposition : Petition allowed

Judgement :

S.N. Jha, J.

1. This writ petition relates to appointment to the Bihar Judicial Service on the basis of the 25th Judicial Service Examination. The relevant facts are as follows.

2. On 18.9.1999 the Bihar Public Service Commission (in short the Commission') issued, advertisement (Advt. No. 18/99) for appointment of 152 Munsifs in the Bihar Judicial Service. Written test was held between 24.1.2000 and 31.1.2000. On 29.6.2000 the result of 352 candidates successful at the written test was published. The viva-voce test was held between 24.7.2000 and 3.8.2000. On 4.8.2000 the final result of 137 successful candidates was published. This comprised of 114 candidates in the general category, 21 in the scheduled caste category and 2 in the scheduled tribe category. It may be mentioned here that 15 vacancies were earmarked for the Scheduled Tribe candidates against which only two candidates could make grade while the case of one candidate was kept pending. Thus 12

vacancies in the Scheduled Tribe category remained on account of non-availability of suitable candidates. Some of the candidates belonging to general category filed CWJC No. 11341/2000. By judgment and order dated 24.1.2001, titled Narayan Das Sharma and Ors. v. State of Bihar, reported in 2001 (2) PLJR 12 : 2001 (1) BLJ 578, this Court directed the Commission to proceed in accordance with the provisions of Rule 20 of the Recruitment Rules i.e. Bihar Civil Service (Judicial Branch) Recruitment Rules, 1955 by preparing supplementary list of the successful and suitable candidates from the merit list prepared under Rule 19 and recommend them to the Government for appointment against the remaining vacancies. Pursuant to the said Judgment on 13.5.2001 the Commission recommended 12 candidates belonging to general category, placed below the 114th candidate of the general category, referred to above. By virtue of the said recommendation the number of recommended candidates increased to 149. Taking into account three pending cases--one in the ST category (referred to above) and two in the general category--152 vacancies advertised thus stood exhausted.

3. A significant development had taken place in the meantime. The State of Bihar stood divided under the Bihar Re-organisation Act, 2000 (in short, the Re-

organisation Act) with effect from 15.11.2000. This also led to cadre division and also brought about reduction in the number of vacancies. The case of the petitioner and the respondents including the State of Bihar on this regard is one and the same. The case is this. The total sanctioned strength of the Munsif's cadre of the Bihar Judicial Service was 1043 out of which 741 posts were allocated to the State of Bihar while 302 of them were allocated to the State of Jharkhand in the ratio of 71 : 29. However, as against the said total sanctioned strength, the working strength in the Munsif's grade was only 727 out of which 517 have been allocated to the State of Bihar and 210 have been allocated to the State of Jharkhand in the ratio of 71 : 29, and thus 224 (741-517) vacancies remained in the State of Bihar. Against said 224 vacancies, 122 candidates were appointed on the basis of 24th Judicial Service Examination and thus 102 vacancies finally remain. It may be recalled that vacancies notified were 152 for which selection had been made.

4. At this stage it would be appropriate to notice the stand of the State of Bihar through the Department of Personnel and Administrative reforms, as under :

'4. That out of 1043 posts of Munsifs 302 were recommended for allotment to the State of Jharkhand. Till 22nd June, 2001 only 727 Munsifs were working. Out of 727 Munsifs, 210 Officers (29% of the total actual strength) have been recommended for allotment to the State of Jharkhand and the remaining 517 Officers have been recommended for allotment to the State of Bihar. Thus, the vacant posts of Munsifs available was $741-517 = 224$ which included 122 posts to be filled from 24th Exam. However, only 102 vacancies have been available as per above calculation for the 25th Judicial Service Examination to be filled in the State of Bihar. According to roster 77 seats for General category are available in 102 vacancies. Only 2 candidates are available from ST category and 01 is still pending with the B.P.S.C. Therefore, from general category 77, SC-15 and ST-2 i.e. total 94 candidates appointment is under process. Simultaneously for appointment for 7 General against the reserved seats of ST is under consideration of the State Government'.

5. The case of the petitioner is that in the list of general candidates his position is 82, in order of merit. Though his position is beyond 77 vacancies in the general category he should be appointed against the unfilled vacancies in the Scheduled tribe category due to non-availability of suitable candidates in that category in accordance with Rule 20 of the Recruitment Rules. It is said that he has secured more marks than the 12 general candidates recommended under Rule 20 on 13.5.2001 pursuant to the judgment of this Court in Narayan Das Sharma's case (supra).

6. The State of Bihar does not seem to contest the petitioner's claim. The objection has come from the Interveners. They do not dispute the facts regarding strength of the Munsif s cadre. They admit that upon division of cadre 517 working strength was allotted to the State of Bihar while 210 were allotted to the State of Jharkhand leaving the number of vacancies in the two States, respectively, at 224 and 92. They however, contend that the State Government committed error in appointing 122 candidates of the 24th Judicial Examination against the said 224 vacancies. According to them the successful candidates of the 24th Examination should have been appointed in both the States because they were selected against combined vacancies of the undivided State of Bihar. Thus, at the time of the division only 194 vacancies (316-122) were available which should have been allocated to the two States in the ratio of 71 : 29, and in this way State of Bihar should have been allotted 138 vacancies (instead of 102), 56 vacancies going to the share of Jharkhand.

7. The submission of the Interveners is in the teeth of Section 77 of the Reorganisation Act. That section provides for a separate Public Service Commission for the State of Jharkhand and, therefore, the recommendation of the Bihar Public Service Commission can not be acted upon in that State. It appears that the Government of Bihar had sought clarification from the Government of India about the validity of the recommendation of the Bihar Public Service Commission as to whether the candidates recommended by it could be appointed or allocated to Jharkhand State. The Government of India vide its letter No.28.10.2000. SR(S) dated 22.2,2001 answered the query in the negative. The relevant part of the letter in the form of question and answer runs as follows :--

Issue No. 3

Some recommendations for appointment to the State services have been received from the Bihar Public Service Commission (BPSC). Whether the candidates recommended by the BPSC can be appointed and can some of them be allocated to Jharkhand State?

GOI's Clarification

For appointment to the State service of Jharkhand, the Government of Jharkhand will set up their State Public Service Commission under Article 316 of the [Constitution of India](#). Section 77 of the Bihar Re-organisation Act, 2000 categorically provides that 'the Public Service Commission for the existing State of Bihar shall, on and from the appointed day be the Public Service Commission for the State of Bihar'. In the absence of a specific provision in the Act as well as an arrangement made in accordance with Article 315(2) of the Constitution, the recommendations made by the Bihar Public Service Commission (BPSC), is not binding on the State of Jharkhand. Appointees recommended by the BPSC can only be appointed to serve in connection with the affairs of the State of Bihar. Appointees who have joined service before the appointed day i.e. 15.11.2000 could be allocated to the State of Jharkhand.

The above clarification leaves no room for doubt that the recommendations of the Bihar Public Service Commission have no binding effect in the State of Jharkhand and therefore no direction can be issued for apportionment of the recommended candidates between the two, nor can any direction be issued for allocation of the recommenders to the State of Jharkhand merely on the ground that when the advertisement was made and the written test etc. were held the State was one and the vacancies also comprised of the posts now allocated to the Jharkhand State. The allocation of posts by the Government of India was a one-time act and can not be interfered with by the Court.

8. It is unfortunate that some of the interveners, such as Anil Kumar Mishra, were recommended by the Commission in the supplementary list under Rule 20 of the Recruitment Rules but on account of the reduced vacancies now are not likely to

be appointed. But it is settled law that em-panelment does not confer any vested right. Where as the Interveners figure below 114th candidate of the general category, the petitioner herein is at Sl. No. 82, that is, above them. The case of the petitioner that

he secured more marks than the 12 candidates of the supplementary list is not controverted by the Interveners.

9. In the above premises, a chunk of the vacancies having been allotted to the State of Jharkhand, roster points have to be re- worked out. According to the State, as per the roster, 102 vacancies comprise of 77 vacancies in the general category, 15 in the Scheduled Caste category and 10 in the Scheduled Tribe category. However, only 2 candidates (besides one pending case) are available in the Scheduled Tribe category. According to the petitioner, the remaining vacancies of that category should be filled from the candidates of the general category, in order of merit, as per Rule 20 of the Recruitment Rules.

10. It would be apt to refer to Rule 20 of the Recruitment Rules at this stage. The rule is as follows :

'The Commission shall, while submitting their recommendations under Rule 19, consider the claims of qualified candidates belonging to the Scheduled Castes and the Schedules Tribes. If the list of nominees submitted under Rule 19 does not contain an adequate number of candidates belonging to the Scheduled Castes and the scheduled Tribes who may be appointed to the vacancies reserved for them, the Commission shall submit a supplementary list nominating a sufficient number of such candidates as in their opinion attain the required standard of qualifications and are in all respects suitable for appointment to the service.'

Rule 20 has fallen for consideration in a number of cases before this Court and, at least, in one case before the Supreme Court viz. the case of Surendra Narain Singh v. State of Bihar, AIR 1998 SC 1941. The dispute in that case had arisen on account of appointment of general category candidates against the vacancies which were earmarked for the reserved category candidates, after converting the unfilled vacancies in the reserved category into general vacancies. An argument

was made that the supplementary list required to be prepared under Rule 20 of the Recruitment Rules refers to only ST/SC candidates.

Rejecting the argument the Supreme Court observed :--

'Upon careful consideration of the rival contentions on interpretation of Rule 20, we are of the considered view that the expression 'such candidates' in Rule 20 cannot be given the restricted meaning to include only SC/ST candidates in the supplementary list.... the expression 'such candidates' in Rule 20 would be referable to the candidates who figure in the merit list prepared by the BPSC and out of this merit list a supplementary list of candidates under Rule 20 was required to be prepared who in the opinion of the BPSC had attained required standard of qualification and are in all respects suitable for the appointment of service. This may even include SC/ST candidates. Any other construction would result into keeping the 33 posts reserved for SC/ST vacant and consequently there would have been shortage of Munsifs to man the judiciary. It is not the contention of the appellants that the SC/ST candidates were available in the merit list who fulfill the qualifying marks yet they were not nominated in the supplementary list. It must be remembered that judiciary being the vital organ to administer the law, any future relaxation may cause damage to the institutional structure. For these reasons in our considered opinion, the expression 'such candidates' appearing in Rule 20 cannot be given restricted meaning. The supplementary list has to contain the names of the candidates from the merit list. Once the merit list is prepared the same cannot be modified and the same has to remain in force until the supplementary list is prepared to fill in the advertised post but without any compromise as regards merit. While submitting the supplementary list the BPSC shall nominate sufficient number of such candidates i.e. candidates from the merit list who in its opinion have attained the required standard of qualification and are all respect suitable for appointment to the service. In this view of the matter, we must hold that 33 candidates nominated by the BPSC in a

supplementary list drawing from the merit list could not be assailed on any ground.'

11. In view of the clear interpretation of Rule 20 by the Apex Court there is no room for any doubt that where the list of candidates recommended under Rule 19

does not contain adequate number of candidates in the SC/ST categories who may be appointed against the vacancies reserved for them, the Commission has no option but to submit a supplementary list from the merit list prepared treating the vacancies to be reserved (sic--unreserved?) It must be clarified here that in course of hearing of the case the Court made an observation that Rule 20 of the Recruitment Rules, in terms, applies to the stage of recommendation and as in the instant case recommendation has already been made by the Commission, it is doubtful if Rule 20 can be applied again at the stage of appointment. However, neither the counsel for the petitioner (the observation was apparently not in his interest) nor the counsel for the respondents including the State of Bihar took up the issue and offered any argument in that regard. In that view of the matter. I would direct the State Government to fill the unfilled vacancies of the ST category from amongst the general candidates placed below serial No. 77 of the merit list in the general category as there is no dispute about the composition of 102 existing vacancies in the Munsif s grade of the Bihar Judicial Service comprising of 77 in the general category, 15 in SC category and 10 in ST category and the vacancies in the ST category remaining unfilled on account of non-availability of suitable candidates.

12. I would, however clarify that the above observations or direction of mine should not be construed as my concluded opinion on the point of invocation of Rule 20 at the stage of appointment by the Government. Indeed the direction aforesaid is in accordance with the stand of the respondents, including the State of Bihar, the Patna High Court and the BPSC. The only opposition, which was like a cry in wilderness, came from the interveners but the basis of their claim or objection has been found to be without any substance.

13. In the result, the writ petition is

allowed. The State Government is directed

to consider the case of the petitioner and

others in the light of the observations/direc

tion made hereinabove. In the circumstan
ces, there will be no order as to cost.

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