

Manoj Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-24-2000

Judge : S.J. Mukhopadhaya, J.

Appeal No. : C.W.J.C. No. 1501 of 1999

Appellant : Manoj Kumar

Respondent : State of Bihar and ors.

Disposition : Petition Allowed

Judgement :

S.J. Mukhopadhyaya, J.

1. The writ petition was initially filed by one Manoj Kumar to recommend his name and to appoint him to the post of Assistant Teacher (Hindi) in any nationalised High School in pursuance of Advertisement No. 2/91 on the ground that he (petitioner) is an handicapped. Subsequently, one intervenor Application (I.A. No. 2823/2000) was filed by four others, namely, Gajendra Jha, Om Prakash Chaudhari, Smt. Indu Singh arid Janardan Singh to implead them as party-petitioner to the writ petition and to grant them similar relief, they being handicapped.

2. The fact as pleaded and not disputed shows that an Advertisement No. 2/91 was published by the Vidyalaya Sewa Board, Patna (Board for short) for appointment to the post of Assistant Teachers in nationalised High Schools. Such advertisement was published on the requisition of the State, when a Guideline No. 148 dated 21st November, 1990 was, in vogue, to provide certain benefit of reservation to handicapped persons against their respective reserved vacancies the Divisional level and District level posts. The petitioners being eligible for appointment to the post of Assistant Teacher (Hindi) applied, claiming themselves to be handicapped. They were asked to appear in the interview held in December 1996.

The Board, on selection published the merit list on 22nd January, 1996 showing the petitioners as successful in the selection under the category of 'Handicap'. However, when the Director, Secondary Education published a notice in the newspaper on 20th April, 1990, showing the names of successful candidates for appointment as Assistant Teachers, the names of petitioners and other handicapped persons were not shown therein. The appointments were made out of the list published by the Director, Secondary Education, but petitioners having not considered as handicapped persons for appointment and they having not provided with order of appointment, the writ petition was preferred by petitioner Manoj Kumar.

3. The Respondent Board in their counter-affidavit, while accepted that the name of petitioner Manoj Kumar was shown to be successful and recommended, in the counter-affidavit filed on behalf of the State and its authorities, they have shown the ground for not issuing orders of appointment in favour of petitioners as handicapped persons.

4. The main plea taken by the State and its authorities is that on receipt of panel, the matter was discussed in the Department and as it was found that no reservation for handicapped persons was made on the State level, in view of Reservation Acts, 1991 and 1993, such provisions for reservation in favour of handicapped persons, were not made available and so the petitioners were not provided with orders of appointment, they having not competed with other

general/reserved candidates.

5. This Court vide order dated 8th May, 2000, allowed time to the State to file further affidavit making their stand clear on the following questions:

(i) whether the post of Assistant Teachers advertised belonged to State Cadre or Divisional Cadre or District Cadre; and

(ii) whether in the matter of reservation to the post in the services of the State, Central Act 1 of 1996 shall prevail over Bihar Act, 1992 or not?

6. The Respondents State and its authorities in their supplementary affidavit while stated that the Bihar Act 3 of 1992, commonly known as Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991 was published in Bihar Gazette on 7th January, 1992, there was no reservation made in favour of handicapped persons. It was accepted that the Union of India, promulgated Act No. 1/96 published in the Gazette on 1st January, 1996, known as the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995. Therein, it provided reservation not less than 3% for persons or class of persons with disabilities.

It was accepted by the State and its authorities that the State of Bihar also published a separate guideline on 18th December, 1993 wherein taking into consideration the fact that no reservation was made in favour of disabled persons under 1991 Reservation Act, decided to provide preference to selected disabled persons over others, if the posts are of Divisional and District level and to treat them against their respective unreserved/reserved vacancies. It has also been accepted that the junior teachers posts under the 1983 Service Conditions Rules belong to District cadre, whereas the posts of sub-ordinate and Selection Grade Teachers are of Divisional cadre. It is only the posts of Head Masters of such schools which belong to State level cadre. The only plea taken is that the appointing authority is the Director (Secondary Education), Government of Bihar, a State level authority.

7. From the pleading made by the parties, enclosures attached thereto, it will be evident that the posts, in question (Assistant Teachers) are not of State level cadre, but of Divisional level cadre. Thus, the petitioners are covered by the State Government's decision dated 19th December, 1993, wherein it has been decided to give preference to handicapped persons over others in the matter of appointment against the posts of Divisional level. The said circular dated 13th December, 1993 relates to posts of Divisional and/or District level cadre and has nothing to do with the appointing authority. Thereby, even if the power of appointment is vested with the Director (Secondary Educational), a State level authority, the Respondents cannot deprive the petitioners from the benefit to which they are entitled under the circular dated 13th December, 1993.

8. In the aforesaid circumstances, as the cases of petitioners are required to be reconsidered by the Respondent State for their appointment as handicapped persons, it is not necessary to decide the issue as to whether Central Act 1 of 1996 shall prevail over Bihar Act, 1992 or not.

9. Accordingly, I remit the case to the Director, Secondary Education to consider the cases of petitioners, as handicapped persons in the matter of appointment to the post of Assistant Teachers (Hindi) in pursuance of Advertisement No. 2/91. If in pursuance of advertisement, no post is available, they will consider their cases against the existing vacancies. Such consideration is to be made in the light of circular dated 13th December, 1993 and if one or other petitioner having declared successful and recommended by the Board; if they have produced relevant certificate relating to handicapped, their cases for appointment to be considered giving preference over others similarly situated candidates selected and appointed against reservation (unreserved/reserved posts) to the extent of 3 (three) per cent of the total vacancies.

10. A decision, in this respect, be taken and communicated to the petitioners within three months from the date of receipt/production of a copy of this order. If claim of one or other petitioner is rejected, such petitioner be also communicated the ground of such rejection within the aforesaid period of three months.

11. The writ petition is allowed with the aforesaid observations and directions. However, in the facts and circumstances, there shall be no order, as to costs.

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