

Arbind Prasad and ors., Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-19-2004

Judge : Chandramauli Kr. Prasad, J.

Acts : Bihar Registration (Amendment) Ordinance, 1991

Appeal No. : C.W.J.C. Nos. 1742 of 2002, 959 of 2003 and 986 of 2003

Appellant : Arbind Prasad and ors., Mahesh Kumar and ors. and Md. Ayub Ansari and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : S.S. Nayer Hussain, G.P. II

Advocate for Pet/Ap. : Jayanandan Singh, Adv.

Disposition : Application dismissed

Judgement :

Chandramauli Kr. Prasad, J.

1. In all these writ applications, common questions of law with little variation in fact arise and as such, they are being disposed of together.

2. Prayer of the petitioners in these writ applications are to quash Memo No. 1988 dated 20th of December, 2001 of the District Sub-Registrar, East Champaran,

whereby it had directed that documents presented by the document writers having licence shall only be admitted for registration. Further prayer made by the petitioners is to quash the advertisement, inviting applications for grant of licence as document writer, and apprentice document writer. Their further prayer is that no licence as document writer or apprentice document writer be granted till the number of document writers is assessed in the light of the decision of the Inspector General of Registration as contained in its letter dated 6th of August, 2002.

3. Petitioners, are document writers engaged in the profession of writing documents, conveyance etc. and carry on their avocation at various registration offices in the district of East Champaran. It is the stand of the petitioners that they are in profession of the document writer for more than ten years prior to coming into force of the Registration (Bihar Amendment) Ordinance, 1991.

4. By Bihar Act 6 of the 1991, Sections 68A and 68B were inserted in the Registration Act. Section 68A of the Registration Act as amended by Bihar Act 6 of 1991, hereinafter referred to as the Act, provided that the person not possessing licence .under Section 68A of the Act shall not engage himself in the profession of document writer and document drawn up and signed by person not holding the licence, shall not be accepted for registration by the registering authority. Section 68B of the Act inter alia, provided for grant of licence of document writer/apprentice document writer by the Registrar of the district or any other officer authorised by him. Section 68B of the Act provided for holding a written test before grant of document writer or apprentice document writers' licence. However, according to Section 68B(2) of the Act, requirement to appear in the written test has been dispensed with in relation to such persons who have been in the profession as the document writer for at least ten years prior to coming into force of the Registration (Bihar Amendment) Ordinance 1991.

5. It seems that the process for grant of licence to the document writer and apprentice document writer was not initiated, even after coming into force of Section 68A and 68B of the Act and hence, the Secretary-cum-Inspector General of Registration, by its letter dated 22.9.2001 addressed to all the District

Magistrate-cum-District. Registrars, emphasised the need to commence process for grant of licence to the document writer and apprentice document writer. In the said letter, the Inspector General of Registration has further observed that in no circumstance, after 31st of December, 2001, the documents written by person having no licence, be accepted for registration. In the light of the aforesaid direction of the Inspector General of Registration, the District Sub Registrar, by the impugned order as contained in its memo dated 20th December, 2001, directed that no documents shall be accepted for registration from unlicensed document writer.

6. It is relevant here to state, that the question of fixing the maximum number of documents writer/apprentice document writer came up for consideration before the State Government and the Inspector General of Registration in its letters dated 6th of August, 2002, gave guidelines for fixing the number. It provided that average number of the documents presented for the last three years, be divided by 104 and the number so arrived, shall be the number of the document writers. The aforesaid number was adopted on the ground that the document writer on average must have two documents to write in a week and thus, for 52 weeks they should have 104 documents.

7. The District Sub Registrar issued advertisement inviting applications from the persons for grant of document writer licence and apprentice document writer licence. The number of vacancies for the document writer and apprentice document writer in the said advertisement are being shown below :--

Sl	Name of the office	Total vacancy of	Total vacancy of
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No.	document writer	Apprentice
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document writer		
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1.	District Registration office.	07	66
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2. Sub-Registration office, Kesariya 01 24

3. Sub-Registration office, Dhaka 13 48

4. Sub-Registration office, Choradano 11 30

5. Sub-Registration office, Chakiya 13 26

6. Sub-Registration office, Areraj 11 33

8. Mr. Jayanandan Singh, appearing on behalf of the petitioner in all the writ applications submits that all citizens in the country have fundamental right to practice any profession and as such the requirement of licence to practice the profession of document writer is illegal. In any view of the matter, he contends that the number of persons who can be allowed to join a profession, cannot be fixed by the State as the same would be in teeth of the fundamental right guaranteed to the citizens of India under Article 19(1)(g) of the Constitution of India. So far as the first submission is concerned that need not detain me much in view of the Division Bench judgment of this Court in the case of Awadhesh Tiwari and Ors. v. The State of Bihar and Ors., 1998 (3) PLJR 665. In the said case, it has been held as follows :

'27. xxx The said provisions are only intended to put a check and limit on influx of unauthorised persons in the said profession of document writers even in the past of the prime quality of a Katib was a good and legible handwriting. The State having apprised about various problems arising out of influx of non-skilled and

inferior qualities of deed writers, the State Government thought it prudent in the larger interest of the public that the deed writers have necessary qualification and skill so that they may be able to discharge their duties properly. In order to avoid the aforesaid problem and in the larger interest of the public, the Legislature introduced aforesaid Bihar Amendment Act, 1991 by incorporating Sections 68A and 68B in the parent Registration Act and also framed rules for the purpose of carrying on the object of the Act.

28. Accordingly, the restrictions imposed by framing of the said Rules, 1996, in my view, cannot be said to be violative of Article 19(1)(g) of the Constitution. The restrictions are reasonable and well within the competence of the State Legislature. Moreover, under Sub-clause (c) of Rule 3 of the said rules, it has been provided that the necessity for passing the Deed Writers Licensing Examination will not be necessary to any person, who has been in profession of the Documents Writers for at least 10 years prior to the date of Registration (Bihar Amendment) Act, 1991 came into force. In other words those Deed Writers, who had been in such profession and had completed 10 years of professional experience as on 25.3.1991 [Before the said Amendment Act, 1991 came into force are not required to pass the examination for grant of licence.

29. Thus in view of the said provisions the impugned legislation cannot be said to be unreasonable, arbitrary and violative of Article 14 of the Constitution of India.'

9. As regards the power of the State Government to fix the number of licensed document writers, I am of the opinion that the same is permissible under the Scheme of the Constitution. True it is that Article 19(1)(g) of the Constitution of India guarantees right to all the citizens to practice any profession but Article 19(6) clearly contemplates that the same will not prevent the State from making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right conferred by Article 19(1)(g) of the Constitution. Thus, the power of the State to make law imposing the reasonable restrictions is available. In fact, in exercise of the said right the State had enacted Bihar Act 6 of 1991 inserting Sections 68A and 68B in the Act prohibiting person having no licence to engage himself in the profession of document writer and the necessity to have the

licence to function as the document writer. Bihar Deed Writers Licensing Rules, 1996, hereinafter referred to as the 'Rules' framed in exercise of the power under Section 69 of the Act, provides for the qualification, condition of licence etc. and Rule 6 thereof, had provided for the number of document writers. Same reads as follows.:

'6. Number of document writer.--The licensing authority shall fix the number of licensed document writers for each subordinate registration office, keeping in view the requirements of the general public.

10. Thus, the rule has fixed the number of documents writers for each subordinate registration office and in exercise of the said power, taking into account that a document writer should have two documents to write in a week, the Inspector General of Registration has fixed the limit. In my opinion, fixing of number of licenced document writer is permissible in law and the number fixed is also based on reasonable ground. It cannot be said that the State has no power to fix the number and the number fixed is arbitrary.

11. Mr. Singh lastly submits that Section 68(2) of the Act providing for exemption of persons from appearing in the written test who had been in the profession of document writer for at least ten years, should be reckoned on the last date of submission of the application. Alternatively, he submits that it should be till coming into force of the rules on 13.3.1997. He emphasises that the Act was not workable till the passing of the rules and hence requirement of a person to be in the profession of document writer for ten years prior to the date of Registration (Bihar Amendment) Ordinance, 1991 coming into force is illegal. In support of the submission, reliance has been placed on a decision of the Supreme Court in the case of S.S. Yadav and Ors. v. State of Haryana and Ors., AIR 1981 SC 561, and my attention has been drawn to para 76 of the said judgment which reads as follows :--

'The amended Rule 12, as in force in Punjab, lays down the length of continuous service in a cadre post as the guiding criterion for fixing seniority. That rule was notified by the Governor on December 31, 1976 and was given retrospective effect from April 9, 1976. Since the Governor exercises a legislative power under the

proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rule made under that provision. But the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case. No such nexus is shown in the present case on behalf of the State Government. On the contrary, it appears to us that the retrospective effect was given to the rules from April 9, 1976 for the mere reason that on August 25, 1976 the High Court had issued a notification fixing seniority of the promotees and direct recruits appointed to the Superior Judicial Service of Punjab.'

12. I do not have the slightest hesitation in rejecting the submission of Shri Singh and the authority relied on has no relevance at all.

13. Registration (Bihar Amendment) Ordinance 1991 was promulgated on 30.7.1991, which prohibited person to engage himself in the profession of document writer without the licence and provided for grant of licence as a general rule after conducting a written test. However, as an exception, it was provided that a licence may be granted to any person without appearing in the test who has been in profession of document writer for at least ten years prior to the date of Registration (Bihar Amendment) Ordinance, 1991 coming into force. Thus, the law, in specific term, had provided for the counting of experience from a particular date and as such, the experience has to be counted on that date and no other date.

14. In the result, I do not find any merit in these applications and they are dismissed accordingly.

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