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Court : Patna

Decided On : Feb-28-1994

Judge : S.B. Sinha and Shashank Kumar Singh, JJ.

Appeal No. : C.W.J.C. No. 5595 of 1991

Appellant : Mithilesh Mishra and ors.

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

S.B. Sinha, J.

1. The petitioners in this application have prayed for issuance of a writ of or in the nature of mandamus directing the respondents to appoint them on the post of Assistant Teachers in the elementary school in the district of Begusarai.

2. The facts of the matter lies in a very narrow compass. The petitioners are claiming themselves to be handicapped persons. Allegedly for the year 1978-80 an advertisement was issued for the purpose of getting training. Certain seats were reserved for the handicapped candidates. Pursuant to the said advertisement, the petitioners also applied and they were admitted to training and eventually completed their training course. In the year 1984 an advertisement was

issued for appointment in the post of Assistant Teachers, pursuant whereof the petitioners applied. They were also called to appear at the interview, According to the petitioners a penal was prepared wherein their names were at Serial Nos. 195, 50 and 74 respectively.

3. It has further been contended that one Ram Sati Devi also applied with the petitioners and her name appeared at Serial No. 221 of the said penal. It is stated that the State Government issued a circular dated 30.5.77 bearing letter No. F/B-3-0775/shi-1989 dated 30.5.1977 whereby preference has been directed to be given in the matter of appointment of handicapped persons. Another circular bearing letter No. S/B-3-0147/80 Shi. 318 dated 5.2.1981 was issued wherein it was stated that possession of a training certificate would not be necessary for appointment of handicapped persons but they must complete such training within a period of two years from the date of appointment. The petitioners have contended that on 24.1.1989 the Establishment Committee held a meeting and appointed 68 persons out of whom 34 persons were male teachers and 34 were female teachers. It has been submitted that although the posts were reserved for the handicapped persons but the petitioners were not appointed. In the meantime on or about 1.3.1989 the State of Bihar issued an advertisement pursuant to a judgment of this Court. That advertisement was issued inviting applications for appointment only from the candidates who were respondents of that case and it was directed that no further appointment should be made. The said direction of the State Government allegedly reached the concerned authority of the District of Begusarai after 18.3.1989. On 30.12.90 the Establishment Committee took a decision for appointment of the petitioner but before appointment letter could be issued, ban imposed by the State Government in the matter of further appointment reached the concerned authority and thus the petitioners were not issued with the appointment letters. On 28.12.90 the Government withdrawn the said ban. On 30.12.90 the District Superintendent of Education sought for guidelines in the matter of appointment of the petitioners from the Director, Primary education. The said letter is contained in Annexure-2 to the writ application. It has been stated that in relation to the appointment of the aforementioned 68 persons, no guideline was sought for from the Director and as such all of them were appointed. The petitioners have further brought to the notice of this Court that in the meantime.

One Ram Sati Devi whose name also figured in the panel filed C.W. J.C. No. 5887/89 which was disposed of on 6.3.90 whereby and where under this Court directed the concerned authority to consider her case for appointment and pursuant thereto an office order dated 25.1.1991 was issued appointing the said Ram Sati Devi. The contention of the petitioner is that in this situation the petitioner cannot be discriminated against.

4. Mr. Rajendra Prasad Singh, learned Counsel appearing for the petitioners has submitted that the case of the petitioners is covered by the-judgment of the Supreme Court in Civil Appeal No. 2032/90 (Sabita Prasad v. The State of Bihar). learned Counsel submitted that in view of the fact that four posts were reserved or handicapped persons, there is absolutely no reason as to why the petitioners could not be appointed.

5. The State in its counter-affidavit has, inter-alia stated that in the advertisement no provisions was made for keeping the post reserved for the handicapped persons and thus he decision of keeping four posts reserved was illegal. It has been stated that only in the year 1988 a provision was made for reservation of 3% post for appointment to the and capped candidates but prior thereto no such policy decision existed. It has also been contended that the petitioners did not produce their certificates on 24.1.1989. It has also been denied that the petitioners made any representation. It has further been stated that respondent No. 4 has also not received any direction to appoint the petitioners from the Director, Primary Education. According to the respondent, petitioners had appeared as general candidates and thus they could not get preference. With regard to the case of Ram sati Devi, it has been stated that she was appointed pursuant to the direction of this Court and thus her case stands on absolutely different footing.

6. It is not disputed that the State Government had not adopted any policy decision it the relevant time to reserve any post for the handicapped candidates. It is also not in dispute that in terms of the advertisement no post was directed to be reserved for handicapped persons. Such a policy decision admittedly has been taken by the State Government in terms of a notification dated 11.7.1988 which the petitioners themselves have annexed with the writ application. The petitioner

have not annexed the copy of the advertisement issued in the year 1984. The petitioners have also not stated that in those advertisement any preference was to be given to the handicapped candidates. It is true that in terms of the circular dated 30.5.1977 some preference was to be given to the handicapped persons mentioned therein, but the same does not mean that the respondents could reserve four or any number of seats for such handicapped persons.

7. It is not the case of the petitioners that any person has been appointed whose position in the panel was below the petitioners. It may, however, be true that the aforementioned Ram Sati Devi was appointed by the State of Bihar but the order passed by this Court in the aforementioned judgment is not on the record. However, it is evident that the said appointment was made pursuant to the order passed by this Court in C.W. J.C. No. 5887/89. As it appears from Paragraph 19 of the Counter-Affidavit.

8. In this view of the matter, in my opinion, no writ in the nature of mandamus can be issued. Further evidently the advertisement had been issued in the year 1984. According to the respondents appointments have been made up 1989 and thereafter no appointment had been made. However, this fact is disputed by the petitioners. But we cannot determine such a question of disputed fact. If the petitioners are appointed, other persons who were above the petitioners in the panel, would be deprived from the appointment. At this juncture, therefore, in my opinion, it would not be proper to issue a direction upon the respondents to appoint the petitioners, particularly in view of the fact that they were considered as condition of the general category and their names appear below in the panel.

9. However, there cannot be any doubt that if the petitioner's case is covered by the decision of the Supreme Court in Sabita Prasad case, the cases have also to be considered by the competent authority. In this view of the matter, in my opinion, it would be appropriate that the petitioners may file a representation in this regard before the Director, Primary Education and if the Director, Primary Education finds that the case of the petitioners is covered by the case of Sabita Prasad, he may pass an appropriate order in this regard as early as possible and preferably within a period of two months from the date of receipt of the copy of representation.

10. This application is allowed with the aforementioned observations. However, there will be no order as to costs.

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