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Court : Patna

Decided On : May-01-2006

Judge : J.N. Bhatt, C.J. and S.N. Hussain, J.

Acts : Constitution of India - Articles 14, 16, 226 and 311

Appeal No. : L.P.A. No. 205 of 2006

Appellant : Dhananjay Yadav and anr.

Respondent : The State of Bihar and ors.

Advocate for Def. : P.K. Shahi, A.G. 9 to 11, Vipin Kumar, Vikas Kumar and Bindhyachal Singh, Advs.

Advocate for Pet/Ap. : Rajendra Pd. Singh, Sr. Adv. and Rajeev Kumar Singh, Adv.

Disposition : Appeal dismissed

Judgement :

J.N. Bhatt, C.J.

1. Upon a joint request of learned Counsel for the appellants, as well as, learned Advocate General, the matter was taken up for final hearing instead of hearing on an interim relief at this stage so as to see that ongoing process of recruitment is not further delayed.

2. In this Letters Patent Appeal by invocation of Clause 10 of the Letters Patent directed against the judgment of the learned Single Judge in C.W.J.C. No. 2942 of 2006 rendered on 8.3.2006, the following question has surfaced:

Could a person having applied for a particular post pursuant to an advertisement, during the process of recruitment gets declared successful in physical fitness test qualifying himself for being called for written examination, one of the tests of recruitment, namely, the physical fitness test earlier conducted having been cancelled upon process having been revoked on certain complaints of irregularities by the State directing in place thereof to hold a fresh physical fitness test inviting all the candidates including him, be heard to say that he has a right to question the said decision of the respondent State and that too by invocation of extraordinary, plenary, equitable and discretionary constitutional writ remedied under Article 226 of the Constitution of India?

3. Our spontaneous reply in the light of the factual profile, the settled proposition of law of service jurisprudence on this point and the content and colour of the impugned judgment of the learned Single Judge will be positively in the negative.

4. A short spectrum of material facts giving rise to this Letters Patent Appeal may be articulated at this juncture. Pursuant to an advertisement No. 704 of 2004 issued by the Bihar Staff Selection Commission, Patna published on 21.9.2004 in a Hindi Daily Newspaper 'Hindustan' the appellants applied for the post of Sub-Inspector of Police and in course of recruitment process pursuant to the said advertisement a physical fitness test having been conducted in which the petitioners-appellants having been found successful were declared successful in the said physical fitness process which is ongoing process of recruitment for the aforesaid post in the State of Bihar.

5. The respondent State upon complaints took a decision to give up the physical test or fitness process earlier conducted pursuant to the aforesaid advertisement for the recruitment of Sub-Inspector of Police in the State of Bihar. Five successful such persons who were declared fit in the physical fitness test questioned its legality and validity by filing a writ petition which, unfortunately, came to be rejected which has necessitated the filing of the Letters Patent Appeal on hand.

We have been addressed by learned Counsels appealing for the parties.

6. We have considered the factual profile. The impugned judgment is threadbare examined by us. Let it be highlighted at this juncture the celebrated principle of service jurisprudence with reference to the provisions of Articles 14, 16 and 311 of the Constitution of India providing constitutional rights to the civil servants to legitimately voice or raise grievances provided there is a relationship of Master and Servant. Merely because a person has been found successful in one of the tests of ongoing, recruitment, process having been revoked or cancelled upon a complaint or otherwise by the discretionary domain of the Master, employer or management, would not be a right which can be enforced as it is sought to be.

7. During the course of recruitment process for the efficient and effective recruitment of personnel if the Master feels or has reason to believe that there are some reasonable grounds in the complaints of irregularities in one of the aspects or facets of the process of ongoing recruitment exercise reserving rights of the successful candidates having been declared successful in the physical fitness test to reappear they have no right, even if it is difficult to brand it any incohet right. In our opinion, no any injury can be said to have been caused to the petitioners when the Master, or Employer or Management has exercised its managerial wisdom and particularly in absence of having been given preference to others who are below the petitioners. No any right or entitlement can be advanced and that too by invocation of writ jurisdiction, much less, at the stage of ongoing recruitment process.

8. It can not be contended that on receipt of complaints about the irregularities in the physical fitness test 7 without any investigation or inquiry into it such a process ought not to have been scrapped or revoked. This submission of learned Counsel for the appellants - original petitioners is, undoubtedly, prima facie attractive but not convincing, alluring but not acceptable. Merely because the Master has revoked without assigning any reason upon receipt of the complaints of irregularities in holding of physical fitness test it cannot be straightway concluded that it is mala fide or extraneous more so when all the successful candidates have been again directed to appear in the physical fitness test and one should not sigh

of appearing second time if one is clear.

9. Here at this juncture, we would like to add an earlier Division Bench order of this Court dated 13.4.2005 in C.W.J.C. No. 4230 of 2005 in which a similarly situated person had rushed to this Court raising the same controversy. It is in this context, the Division Bench of this Court passed an order the substance whereof is that there has been a direction to the Chairman of the Bihar Staff Selection Commission, Patna and the concerned authorities of the State of Bihar that at the time of physical test for selection of police sub-Inspectors there should be videography so that the chances of favourtism is eliminated and on challenge there is evidence to verify the same. It is a pointer and an indicator that even earlier also some of the petitioners had raised grievance of irregularities and favouritism even at the first stage of ongoing process of recruitment. In this context, if the State of Bihar upon receipt of such complaints reaches a view and revokes the physical test already conducted it is not worth the candle to the successful candidates in the physical fitness test so as to challenge the action of the State and that too to stop the entire process of recruitment wherein almost one lakh candidates have been attracted to file applications for the appointment pursuant to the aforesaid advertisement.

10. Learned Advocate General, Mr. P.K. Shahi in support of the judgment of the learned Single Judge has re-enforced his submission by placing reliance upon a decision of the Hon'ble Supreme Court rendered in State of U.P. and Ors. v. Rajkumar Sharma and Ors. 2006 (2) Supreme 448 and has contended that the Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidates' name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the concerned candidates cannot claim that they have been given a hostile discrimination. He has further contended that in the present case even the final list is not prepared and the test is, also, not concluded. Pursuant to the above advertisement almost one lakh applications came to be received which were being processed and it the very first stage one physical fitness test was conducted and thereafter there had been some complaints which resulted into the revocation of the said test directing all the candidates to reappear in the physical test which was at the stage of one part of

the recruitment process. Of course, the selectee has no right to question unless in certain exigencies which are not before us. Here is the case of first step in the direction of finalisation of the select list for the appointment for the post of Sub-Inspector of Police in the State of Bihar.

11. After having given our anxious thoughts and considerations to the issue of the present case and the relevant proposition of law propounded, service jurisprudence, as well as, the reasons assigned by the learned

12. Single Judge in reaching the conclusion, We are fully convinced that the impugned order deserves no interference at all.

13. Accordingly, this Letters Patent Appeal shall stand dismissed.

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