

Sachindra Kumar and ors. and Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Sep-15-2003

Reported in : [2003(4)JCR594(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Service Law; [Constitution of India](#) - Article 226

Appeal No. : CWJC Nos. 863 and 6254 of 1995(R)

Appellant : Sachindra Kumar and ors. and ;binod Kumar Giri and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : M.M. Banerjee and; A. Sen, Advs.

Advocate for Pet/Ap. : Dilip Jerath, Adv. in CWJC 863/95 and V. Shivnath, Adv. in CWJC No. 6254/95; Ravindra Prasad and;

Disposition : Petition dismissed

Judgement :

M.Y. Eqbal, J.

1. Heard Mr. Dilip Jerath, learned counsel for the petitioners, r. M.M. Banerjee for the respondents and the learned counsel appearing on behalf of the intervenors.

2. Both the writ petitions have been heard together for the sake of convenience and are being disposed of by this common judgment.

3. CWJC No. 863/95(R) has been filed by the petitioners seeking a direction upon the respondents to consider their cases for appointment against the resultant vacancies caused due to removal of respondents Nos. 4 to 8 in the Judgeship of Godda.

4. Petitioner's case is that in 1990 some class III posts were advertised and pursuant to that advertisement the petitioners, intervenors and others applied and they were subjected to written test and interview. Thereafter a select list was prepared by the Selection Committee which was approved by the High Court.

5. As per the direction of the High Court, Patna the select list was published. In the meantime, the District Judge, Godda sought clarification from the High Court with regard to six persons working on ad hoc basis including respondent Nos. 4 to 8. It is stated that without issuing appointment letters another advertisement was published in 1993. Petitioners and others filed CWJC No. 8915/93(R). The said writ application was allowed by the Patna High Court and the District Judge, Godda was directed to give effect to the select list. When the petitioners came to know that appointment letters have been issued in favour of some persons whose names appear in the select list and they were working, the petitioners filed MJC No. 1296/ 94(R) which was disposed of directing the petitioners to approach the District Judge, Godda who, in turn, was directed to dispose of the representation. When the representation was not disposed of, this writ application was filed.

6. Mr. Dilip Jerath, learned counsel appearing on behalf of the petitioners has drawn my attention to the Division Bench judgment of the Patna High Court in CWJC No. 8915/93(R) and submitted that specific direction was issued by the Patna High Court for appointing the selected candidates from the select list. Learned counsel contended that although respondent Nos. 4 to 8 who were ad hoc employees, have been removed, the petitioners have not been appointed against those vacant posts.

7. Earlier writ petition was filed by the petitioners for a direction upon the respondents to make appointment in class III post as per the select list. The Division Bench of the Patna High Court, after discussing the entire facts of the case held as under :

'For the reasons aforesaid I am of the considered opinion that in this case the selection process was concluded with the issuance of the notice, dated 9.5.1991, containing the select list. The subsequent order, dated 3.6.1991, had no application to it and the select list also remains unaffected by the new rules coming into force on 3.10.1992. The candidates included in the select list cannot be denied appointment on any of these grounds and the action of the respondents in not issuing appointment letters to the selected candidates is unreasonable and arbitrary and warrants interference by this Court.

I, accordingly, direct the authorities to give effect to the select list, dated 9.5.1991, and to make appointments from the list in accordance with law. It will be open to the second respondent to seek any clarifications in this regard from the High Court shall issue clarifications regarding appointment of Class III employees in the judgeship of Godda without in a manner impeding to give effect to the select list, dated 9.5.1991.

In the result, this application is allowed. There will be no orders as to costs.'

8. In the contempt petition No. 1296/ 94(R) filed at the instance of the petitioners the Patna High Court held that there was no reason to proceed any further as the opposite parties, in compliance of the direction of the Division Bench judgment, issued appointment letters to several persons as per select list.

9. A supplementary affidavit has been filed on 18.8.2003 wherein it is stated that vide order dated 9.8.1995 respondent Nos. 4 to 8 who were the ad hoc employees, have been discharged from service. There is now no vacant post in the judgeship of Godda so far class III posts are concerned. The sanctioned strength of 59 class III posts is already full. Petitioners' case in nut shell is that since they were selected and their names appear in the select list, they are entitled to be appointed in class III post. It is not the case of the petitioners that the

persons below them in the select list have ever been appointed by the respondents. It is well settled law that inclusion of name in the select list does not give indefeasible right of appointment and the persons whose names appear in the select list cannot, as a matter of right, claim to be appointed on the said post. Reference in this connection may be made to the decisions of the Supreme Court reported in 1991 (1) SCC 62 : 1992 (1) UJ (SC) 441 and 1996 (1) JT (SC) 16.

10. Besides the above, after creation of State of Jharkhand, the Jharkhand High Court has framed its own service rules for appointment of ministerial staff. Moreover, this Court, as per the policy decision taken by it, has made appointment in classes III and IV posts in different districts of the State. The select list which was prepared in 1991 cannot be given effect to in absence of any specific direction of this Court or the Patna High Court to appoint the petitioners in class III post from the said select list.

11. Respondents Nos. 4 to 8 are the petitioners in CWJC No. 6254/95(R). They have challenged the order dated 7.8.1995 passed by the District Judge, Godda whereby they have been discharged from service.

12. Mr. V. Shivnath, learned counsel appearing for the petitioners in this writ application submitted that in 1988 the petitioners were appointed on ad hoc basis and it was mentioned in the letter of appointment that their appointment is subject to the condition that they shall have to appear at the examination when the post of clerks is advertised. Learned counsel drew my attention to Annexure 3 to the writ application which is an advertisement issued in 1990. In the said advertisement it was mentioned that preference shall be given to the candidates who had past experience in service and also who had passed Hindi Noting and Drafting Examination. It is contended that the petitioners passed the written test and their names were included in the panel prepared by the respondents. In that view of the matter, according to the learned counsel the impugned order of termination/discharge of these petitioners from service is wholly illegal, arbitrary and violative the principles of natural justice.

13. Admittedly petitioners were appointed on the post of clerks purely on ad hoc basis and in the letter of appointment it was mentioned that such appointment is

subject to the condition that they shall have to appear at the examination when the post of clerk is advertised. But it was also mentioned that the appointment was purely temporary and liable to be terminated without service of notice. Even if the submission of Mr. V. Shivnath is accepted that because there was a clause in the advertisement regarding preference to be given to the candidates having past experience and they appeared and passed written examination, that does not give right to the petitioners for appointment on the posts of clerks. The theory of legitimate expectation will not apply in the present case. Recently in the case of Mrs. Church Goel v. State of Rajasthan (2003) 2 Supreme Today 810 it was held that termination of service of an ad hoc employee cannot be challenged howsoever long period he might have put in as an ad hoc employee. Their lordships held that the theory of legitimate expectation does not apply in the case of a person who continued in service purely on ad hoc basis. Besides the above, admittedly no one from the select list has been appointed whose name appears below the name of these petitioners. Had it been a case that persons below the petitioners had been appointed, then certainly the petitioners would have right to claim appointment.

14. In the light of the ratio decided by the Supreme Court in the Mrs. Church Goel's case (supra) I have no option but to hold that the petitioners in both the writ applications have not acquired any indefeasible right for being appointed on the post of clerks merely because their names appear in the select list.

15. For all these reasons I do not find merit in these two writ application which are, accordingly, dismissed.

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