

Ratan Kumar and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Apr-17-2009

Reported in : 2009(57)BLJR2495

Judge : Navin Sinha, J.

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

Appeal No. : CWJC No. 4913 of 2009

Appellant : Ratan Kumar and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : Anom Kumar Bhaskar, AC to SC 2

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

Disposition : Application allowed

Judgement :

Navin Sinha, J.

1. Heard leaned Counsel for the petitioners and the learned Counsel for the State.

2. On 4.11.2006 a merit list for appointment of Panchayat Teachers under Gram Panchayat Raj Shankarpur, District Araria was published. The petitioners were selected in their respective categories and joined after appointment in June 2007. They started to discharge their duties.

3. One Smt. Laxmi Kumari petitioned the District Appellate Authority that she was denied consideration for appointment on the ground that she held the qualification of Intermediate in Vocational course. The order of the Appellate Authority at Annexure 1, presently impugned, makes it apparent that this was the only issue raised by the said Laxmi Kumari before the Appellate Authority. She did not question validity, genuineness or legality of appointment of the petitioners. Her claim was based on a subsequent decision of this Court in LPA No. 496 of 2008 holding that qualification of Intermediate in Vocational course was equivalent to regular Intermediate course and a candidate could not be denied consideration for appointment on that ground. The authorities were thus required to consider her case for appointment. The authorities informed the Tribunal that despite the Court verdict no more vacancies were available. The lis therefore was between Laxmi Kumari and the authorities for denial of consideration to her based on a subsequent interpretation of the equivalence of the qualification by this Court. Either she was to be given appointment or she was not to be appointed for lack of vacancies. It was for her in the latter event to seek appropriate remedy. In no event appointment of the petitioners was the subject matter of consideration or challenge before the Appellate Authority.

4. The Appellate Authority then suo motu proceeded to examine all the appointments and came to a conclusion of grave irregularities, presuming abuse of powers by the appointing authority to hold that all the appointments were illegal and after setting aside recommended for fresh counseling.

5. Learned Counsel for the petitioners submits that since Laxmi Kumari did not have any grievance against the petitioners, they were not impleaded as parties before the Appellate Authority, neither were they noticed or heard. Learned Counsel invites attention to the specific pleading in Para 25 and 26 of the writ application in this regard.

6. Counsel for the State submits that Laxmi Kumari is not a party respondent in the writ application and therefore the writ application should be dismissed for non-joinder of necessary parties. He next submits that the Appellate Authority committed no wrong in examining the entire issue of appointment if materials to that effect surfaced before him during enquiry on the claim of Laxmi Kumari and therefore this Court should not interfere with the order or at best it may remand the matter to the Appellate Authority to hear the petitioners and pass orders.

7. Laxmi Kumari did not raise any issue with regard to appointment of the petitioners. For that reason, this Court is satisfied that there is no occasion for the petitioners to be aggrieved by any action of Laxmi Kumari requiring her to be impleaded as party respondent. The Court therefore rejects this objection of the respondents.

8. The law stands settled that a judicial or quasi judicial body is required to decide a lis as presented before it. This means, the issue raised before the authority was to be decided by the authority. The issue was of the equivalence of a Vocational Intermediate course to a regular Intermediate course. The quandary of the respondents was absence of vacancy. Both these issues did not concern the petitioners and therefore Laxmi Kumari rightly made no grievance against them. What the Appellate Authority did was to proceed at a tangent on an issue not raised by Laxmi Kumari or the authorities and proceeded on a new ground to suo motu examine the illegality of appointments enmasse. It was not his jurisdiction. He does not have the authority which this Court has under Article 226 of the Constitution to entertain public interest litigation. If an authority be needed on the rule of the judicial or quasi judicial authority prohibiting it to decide an issue not raised by either parties reference may be made to : [1953]4SCR789 (Trojan & Company v. R.M.N. N. Nagappa Chettiar) at Para 22 holding as follows:

22. It is well settled that a decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint the court was not entitled to grant the relief not asked for and no prayer was ever made to incorporate in it an alternative case

9. In : AIR 1977 SC890 (Siddu Venkappa Devadiga v. Smnt. Rangu S. Devadiga and Ors.) it has been held at paragraph 8 as follows:

8. It is well settled, having been laid down by this Court in : [1953]4SCR789 (Trojan & Company v. R.M.N. N. Nagappa Chettiar) Trojan & Company Limited and Raruha Singh v. Achal Singh AIR 1961 SC 1097 that the decision of a case cannot be based on ground outside the plea of the parties, and that it is the case pleaded which has to be found. The High Court therefore went wrong in ignoring this basic principle of law, and in making out an entirely new case which was not pleaded and was not the subject matter of the trial.

10. In : (1956)ILLJ227SC (J.K. Iron & Steel Company Limited, Kanpur v. Iron and Steel Mazdoor Union) it has been held at paragraph 24 as follows:

24. It is not open to the Tribunals to fly off at a tangent and, disregarding the pleadings to reach any conclusion that they are just and proper.

11. This Court finds that the impugned order for the aforesaid reason is therefore clearly not sustainable in law. This Court is not persuaded on the submission of the Counsel for the State to remand this matter to the Appellate Authority for the reasons discussed hereinafter.

12. This application is allowed and the impugned orders at Annexure 1 series are set aside with all consequential benefits.

13. Teachers have been appointed by the State Government as a part of the Welfare Scheme for dissemination of education. The speed at which litigations with regard to these appointments are coming to the High Court and the manner in which the statutory authorities have been passing orders without reason, not in exercise of statutory authority, by persons not statutorily authorised to pass orders, without hearing the concerned parties, on issues not raised before the authorities, when despite statutory provisions for appointment of persons trained in law the Appellate Authority is being manned by persons untrained in law leading to plethora of writ applications before this Court creating an unsurmountable burden for this Court. Every order of the appellate authority is suffering from serious and

grave irregularities of procedure in the decision making process making the order prima facie unsustainable in law. The inevitable result of this entire exercise is that the teachers, who were appointed for dissemination of education, remained out of the class rooms for protecting their jobs. They are wandering either in the corridors of the Secretariat to have their termination order cancelled or revoked, or in the corridors of the High Court waiting for their writ petition to be taken up. The inevitable result is that they stayed out of the class room. The education suffers. It is for the government to find the solution.

14. Let a copy of this order be forwarded to the Secretary, Human Resources Department, Government of Bihar, for needful.

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