

Anil Kumar Mahto, and ors. Vs. the State of Bihar, and ors.

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Court : Patna

Decided On : Jun-24-2010

Judge : Ajay Kumar Tripathi, J

Acts : Village Level Workers Appointment Rules, 1987 - Rule 3

Appeal No. : CIVIL WRIT JURISDICTION CASE No.2168 of 2004

Appellant : Anil Kumar Mahto, and ors.

Respondent : The State of Bihar, and ors.

Advocate for Def. : Mr. S S Mishra; M/S. Shyama Prasad Mukherji; Shanti Pratap, Advs.

Advocate for Pet/Ap. : M/S. Chitranjan Sinha; S.B.K.Mangalam, Advs.

Judgement :

1. Ajay Kumar Tripathi,J There are five petitioners before this Court. According to them, they had successfully made it to the select list or panel of candidates, who were to be appointed on the post of VLW in the district of Madhubani. The advertisement in question was issued way back on 27.12.1993 and there were many a candidates including the present petitioners. The 1993 advertisement culminated into final selection, according to the petitioners, only on 27.1.2001 as would be evident from Annexure-15 to the writ application. The present petitioners belong to other districts of the State and not to the district of Madhubani. This fact has relevance to the present dispute. When the joining of these petitioners was not

taken, they decided to file a civil writ namely, CWJC No. 7348 of 2002. Learned single Judge disposed of the writ application vide order dated 25.11.2002, which is Annexure-11 to the writ application.

2. Pursuant to the said observation and

direction, contained in Annexure-11, a speaking order contained in Annexure-16 came to be passed by the learned District Magistrate and the present petitioners were ousted from the panel of selected candidates. The primary reason for the ouster of the present petitioners is that they did not belong to the district of Madhubani and in terms of the observation of the High Court passed in CWJC No. 7348 of 2002 read with rules relating to appointment of VLW, which is known as 1987 Rules and has been annexed as Annexure-19, only candidates from the district had to be given preference in matters of appointment to the post of VLW. The present writ application has been filed challenging Annexure-16.

3. Another dimension is that there was other spate of writ applications and cases which came to be filed before the High Court on the issue of appointment or non-appointment. Some unsuccessful candidates also filed a writ which was CWJC No. 10076 of 2000 (Annexure-20). Petitioner was one Deo Kumar Singh with some others. Learned single Judge while recording his opinion in the order dated 10.10.2001 categorically came to the view that 1987 Rule known as Village Level Workers Appointment Rules, 1987, envisages appointment of candidates from the district. This was on plain reading of Rule 3, coupled with a decision which had been rendered in CWJC No. 2425 of 1998. A categorical direction was issued to the District Magistrate, Madhubani for a fresh consideration of the matter and preparation of select list in accordance with 1987 Rules meaning thereby that preference to the candidates from the district had to be given.

4. An LPA by certain interested candidates came to be filed challenging the learned single Judge's order contained in Annexure-20. LPA No. is 1448 of 2001. Appellant was one Surendra Kumar Singh and another. The appeal was heard and it was permitted to be withdrawn vide order dated 24.7.2002 (Annexure-21) on the ground that the appellants were not made parties before the learned single Judge and therefore they had liberty to either file a review or to file a fresh writ

application. .

5. An impression has been given to the Court during the course of submission that present petitioners were party to the said LPA and present writ application has been filed on their behalf in light of observation of the LPA Bench and that is why the present writ application was being maintained and argued.

6. A deeper look into the matter reveals that the present petitioners had absolutely nothing to do with the said LPA and now it is accepted at the bar that they were not party to the said LPA and present writ application has been filed on the basis of the observation of the learned Division Bench that since those appellants were not made party and heard by the learned single Judge they had a right to file a review or a writ in their own right. That observation has given the present petitioners a right to file and maintain the present writ.

7. This Court is constrained to record that such a submission is not acceptable at the bar since it is not supported by any procedure or law in this regard. The observation of the Division Bench is restricted to the party to the dispute and it would not mean that any person or every person has liberty to file writ application challenging the decision of the learned single Judge, more so before yet another single Judge without there being direction by a superior Bench. The effort on the part of the petitioners to get the matter re-heard or to persuade this Bench to adjudicate and decide on the merits of a decision rendered by yet another single Judge is totally misplaced. It is a mistaken advice or misplaced strategy on the part of the petitioners and it is for them to ponder over the same. The Court would not like to further record its opinion on the conduct of the petitioners.

8. The Court categorically records that this Bench has no authority to sit in appeal over a decision which has already been rendered by another single Judge. Since before the Division Bench in the LPA case these petitioners were not party, the observation of the Division Bench does not help them in maintaining the present writ application.

9. The present writ application is totally misplaced and it is dismissed.

10. Petitioners are cautioned and advised to be more careful in future.

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