

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11266 of 1997

Subodh Prakash Singh son on Rameshwar Prasad Singh, resident of Mohalla-Bibiganj Bhatta, P.S. Danapur Cantt, District-Patna.

.... Petitioner

Versus

1. The State of Bihar
2. The Bihar Public Service Commission through its Secretary
3. The Director, Soil Conservation Agriculture Department, Government of Bihar, Patna.
4. The Director, Statistical and Evaluation Directorate under Planning Department, Government of Bihar, Patna.
5. The Secretary Agriculture Department, Government of Bihar, Patna.
6. The Commissioner, Personal and Administrative Reforms, Government of Bihar, Patna.
7. The Secretary, Planning Department, Government of Bihar, Patna
8. Sri Mahfooj Alam, resident of Mohalla-Khitari Jail Talab, P.O. Arrah-Bhojpur.

.... Respondents

Appearance :

For the Petitioner/s : Mr. SHAKALYA KAUSHIK

Mr. Ajay Kr.Singh

Mr. Rajiv

For the Respondent/s : Mr. (GP4)

Mr. Anil Kr.Tiwary

Mr. Murlidhar Mishra

Mr. Mithilesh Prasad

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 04-02-2015

The present writ application under Article 226 of the Constitution of India has been filed seeking quashing of Memo No. 603 dated 27.04.1993, issued under the signature of Director, Soil Conservation, Government of Bihar, Patna (Respondent No. 3) whereby the service of the petitioner from the post of Field Supervisor in the Department of Soil conservation has been terminated on the ground that his name did not find place in the revised merit-list

prepared by Bihar Public Service Commission, (Hereinafter referred to as the 'Commission').

2. Though the dispute involved in the present case is simple, the background facts need to be narrated keeping in view the nature of relief sought for.

3. There was an advertisement issued by Bihar State Subordinate Service Selection Board (hereinafter referred to as the 'Board') being Advertisement No. 19/87 published on 01.01.1988 inviting applications from eligible candidates for the posts of Field Supervisor under the Statistics and Evaluation Directorate of the Planning Department, Government of Bihar. Total 75 posts were advertised out of which 37 were required to be filled up on the basis of open merit, rest 38 posts were kept reserved for various categories of candidates including Scheduled Castes, Schedules Tribes, Extremely Backward Class, Backward Class, Economic Backward Class and Women. It is the petitioner's case that in the meanwhile, by the time the results were published, the vacancies rose up to 115. As has been stated in the writ application and which is not in dispute that out of these 115 posts, 98 were meant for Statistical Department (Junior Field Investigators) whereas 17 for the post of Field Supervisor in the Directorate of Soil Conservation, to be filled up on the basis of said advertisement No. 19/87.



4. The petitioner belongs to none of the reserved categories and fulfilling the eligibility conditions, he had applied as general candidate. The Board published the result of the written examination of successful candidates on 14.07.1990. The recommendations were to be made on the basis of marks obtained in the written examination. The petitioner is said to have been declared successful and placed at serial No. 107, having scored 252 marks in all.

5. This is to be noted here itself that the candidates were required to appear in three papers, including General Hindi in written examination.

6. The petitioner's name, on the basis that he had scored a total of 252 marks was finally recommended for appointment in Soil Conservation Department as Field Supervisor. On 06.12.1990, in the light of recommendation made by the Board, the petitioner submitted his joining against the post of Field Supervisor in the Directorate of Soil Conservation, Government of Bihar.

7. Some of the unsuccessful candidates who had applied against the Advertisement No. 19/87 had approached this Court by filing writ petition under Article 226 of the Constitution of India, giving rise to C.W.J.C. No. 7932 of 1991 seeking quashing of the said result dated 14.07.1990, on the ground that marks scored by the candidates in Hindi was wrongly taken into account for the purpose of preparation



of merit-list. The writ application was allowed by a Division Bench of this Court vide order dated 24.02.1992. This Court held that the Board was in error in taking into account the marks obtained in General Hindi, beyond 30 marks (Qualifying marks) for the purpose of preparing merit list. Accordingly, the Court had directed the Respondents to prepare another list, in the light of observations of the Court. It would transpire that in the meanwhile, the Board stood dissolved and the functions and duties, which the Board was discharging, came to be assigned to the Bihar Public Service Commission. In the light of Division Bench order of this Court, a fresh merit-list was prepared, excluding the marks obtained by the candidates in General Hindi beyond 30 marks (qualifying marks). In the merit-list so prepared, the petitioner's name did not figure. Accordingly, the Soil Conservation Directorate came out with the office order dated 27.04.1993, which is impugned in the present writ application, terminating the services of the petitioner.

8. This fact is not in dispute that upon exclusion of marks obtained in Hindi, for the purpose of preparation of merit-list, the petitioner was shown to have scored 182 marks and was not placed at such position in merit list, adequate for his continuance. It is in this background that impugned Memo No. 603 dated 27.04.1993 came to be issued terminating the service of the petitioner, in view

cancellation of recommendation for his appointment itself.

9. Much emphasis has been laid in course of hearing, by learned Senior Counsel appearing on behalf of the petitioner over a letter dated 16.03.1991 written by the Board to the Director, Statistical and Evaluation Department mentioning names of 18 candidates, whose recommendations stood cancelled as they had failed to produce the original certificates. The said letter dated 16.03.1991 has been brought on record by way of Annexure-5 to the writ application, which includes the names of Shri Hari Lal Pandit, Shree Padeep Kumar, Shree Abhay Kumar, Shree Prabhat Ranjan, Shree Nityanand Sinha, Shree Nirmal Kumar, Shree Prem Kumar Prasad, Shree Nandu Choudhary, Shree Sheetal Prasad Sharma, Smt. Manju Lata, Shree Kamlesh Choudhary, Shree Anil Prasad Singh, Shree Mukesh Chandra Rakesh, Shree Shiv Shankar Prasad, Shree Ram Shankar Ram, Shree Maryanus Saras, Shri Shri Ram Sahay Bhagat and Shree Raven Pradeep Marikyal Sasa.

10. Referring to the statement made in paragraph No. 14 of reply by the petitioner to the counter affidavit filed on behalf of the Respondent No. 2 (B.P.S.C.), learned Senior Counsel has submitted that after the judgment of this Court in case of Subodh Prakash Singh and Ors. Vs. The State of Bihar and Ors. dated 28.03.1995, a fresh merit list of 95 candidates was prepared for appointment under the



Statistics and Evaluation Directorate through letter No. 356 dated 24.11.1995. It has been asserted that the said list contains atleast 13 names of such candidates whose candidature were also cancelled by the erstwhile Board by letter No. 82/C dated 16.03.1991. He has contended that once candidature of such candidates were cancelled by the Bihar State Sub-ordinate Service Commission on 16.03.1991, there could have been no occasion for recommending their names, subsequently for appointment. He has contended that had those names been not recommended by the Commission, after preparation of revised merit list, the petitioner would have been appointed either in the Directorate of Statistics and Evaluation or in the department of Soil Conservation. I do not find any merit in this submission for the apparent reason that through the said letter dated 16.03.1991, the erstwhile Board had not cancelled the candidature of those 18 candidates. The Board had merely cancelled the recommendations made in their favour as they had failed to turn up for the verification of their original records after their selection.

11. This is to be noted that the entire merit list prepared on the basis of Advertisement No. 19/87 by the Board, which was the basis for making recommendation, was cancelled as has been noted above by a Division Bench of this Court in case of Satish Kumar and Ors. Vs. State of Bihar. Under the orders of this Court, the



Board/Commission was required to prepare a fresh merit list and make fresh recommendations. Accordingly, on the basis of fresh merit list prepared, fresh recommendations were made. The subsequent recommendation made by the Commission with respect to those 13 persons cannot, therefore, be questioned on the ground that recommendations made earlier by the erstwhile Board, in their favour were cancelled as they were not coming forward to submit their certificates. Further, those persons have not been impleaded party respondents in this case.

12. I do not find any force in such submission and it is accordingly rejected.

13. Learned Senior Counsel appearing on behalf of the petitioner has taken me to another Division Bench decision of this Court in case of Law Lal and Ors. Vs. State of Bihar and Ors. reported in 1995 BBCJ 650. The said Division Bench decision of this Court in case of Law Lal and Ors. (supra) arose out of same process of selection. The petitioners before the Division Bench in case of Law Lal and Ors. (supra) were aggrieved by the decision of the Commission cancelling earlier recommendations made in their favour in view of the revision of the merit list in the light of this Court's order dated 24.02.1992 passed in case of Satish Kumar and Ors. (supra). The Division Bench of this Court disposed of the cases with

the following observations:-

“32. The learned counsel for the petitioner could not point out before us as to on what ground the earlier decision of the Division Benches of this Court should be reconsidered. As indicated hereinbefore, we sitting in Division Bench are also bound by the earlier Division Bench decisions.

33. However, we may observe that in the event there exists any vacancy, in other departments as was argued before us by the learned counsel, we hope and trust that the State of Bihar shall take a decision in this regard as early as early possible for filling up the existing vacancies from amongst the candidates who have been selected strictly in accordance with the second select list.”

14. Leaned Senior Counsel referring to paragraph No. 32 of the said decision of the Division Bench of this Court in case of Law Lal has submitted that the petitioner can be considered for appointment as even today, as the vacancies exist in the Department of Directorate of Statistics and Evaluation of the Government of Bihar. He has referred to paragraph No. 15 of petitioner's reply to the counter affidavit filed on behalf of the Commission. In my opinion, no such direction can be issued to the present proceeding under Article 226 of the Constitution of India as the petitioner has not been able to make out any legal right to be appointed on the basis of merit list prepared pursuant to the selection process in the light of Advertisement No. 19/87 dated 01.01.1988. The panel, in my opinion can no more be utilized as it has outlived its utility.

15. Learned Senior Counsel has also attempted to convince that the termination of service of the petitioner from government service is

in violation of Article 311 of the Constitution of India because once the petitioner joined against a post under the State Government, he acquired a right to hold the post and such right cannot be taken away in the manner the State Respondents and the Commission have done. This submission is not convincing to me because the Division Bench of this Court had found preparation of first merit list itself, on the basis of the said Advertisement No. 19/87, to be defective and illegal and, accordingly, directed the Board/Commission to prepare a revised merit list, which was accordingly prepared. Petitioner's name did not figure in the revised merit-list.

In such circumstances, it cannot be said that the petitioner had any right to hold the post merely because he was appointed as such.

16. I also notice the fact that the petitioner's right to hold the post was on the basis of a merit list and when the merit list itself was declared to be illegal by this Court, the petitioner cannot claim any right to hold the post on the basis of such merit list.

17. I do not find any merit in this application. This application is accordingly rejected.

(Chakradhari Sharan Singh, J.)

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