

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 230 of 2013

IN

Civil Writ Jurisdiction Case No 5787 of 2012

=====

Moti Lal Sanatan S/O Ramdeo Nishad R/O Mohalla- Bhuli Nagar, B-Block,
Quarter No. 236, P.O.- Bhuli Nagar, District- Dhanbad (Jharkhand)

.... Appellant/s

Versus

1. The State Of Bihar through the Transport Commissioner, Vishweshvariya Bhawan New Secretariat, Patna
2. The Secretary Bihar Staff Selection Commission, Patna, P.O. - Veterinary College, Patna-14
3. The Chairman Bihar Staff Selection Commission, Patna, P.O. - Veterinary College, Patna-14
4. Members of Re-Scrutiny Committee Bihar Staff Selection Commission, Patna under the Chairmanship of the Secretary

.... Respondent/s

=====

Appearance :

For the Appellant/s : M/s Sanjay Singh, Apurv Harsh & Vinod Kr, Advocates

For the S t a t e : Ms Suruti Singh, AC to AAG 10

For the Commission : M/s Kamla Kant Upadhyay & Chandra Bhushan Das,
Advocates

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 26-07-2016

The present intra-Court appeal under Clause 10 of the Letters Patent of Patna High Court has been filed against the judgment and order dated 23.04.2012 passed by the learned Single Judge in CWJC No 5787 of 2012 (Moti Lal Sanatan –Versus- State of Bihar & Others). By the said order, the writ petition was dismissed, in our view, on hyper technicality.

2 Heard learned counsel for the appellant, learned counsel for the Bihar Staff Selection Commission (for brevity, *the Commission*) and learned counsel for the State.

3 As the facts are not in dispute and pleadings are complete, with consent of parties, this appeal is being disposed of at this stage itself.

4 On or about 18.08.2007, Advertisement No 2607 was issued by the Commission, inter alia, in relation to appointment of Motor Vehicle Inspector for a total vacancy of 59 posts subject to reservation. One of the requirements, as per the advertisement, was that the applicant had to file a declaration in Form II, as prescribed, which was a certificate granted by the District Motor Vehicle Office certifying that the applicant had a valid requisite driving licence. The appellant and large number of persons applied. All of them did obtain the certificate as required but most of them, while filing the application, filed either Xerox copy thereof or self-attested copy thereof as Form II. The Commission received all such applications and processed them. There being certain defects in relation to some of the applicants, finalization of their selection process got delayed, whereas in the meantime, it is not disputed, that about 20 applicants were selected and, upon recommendation of the Commission, were appointed as Motor Vehicle Inspector by the State Government. It is

not in dispute again that most of them, who were so selected and appointed, had also, in their application, annexed Xerox copies of Form II and not the original certificate as granted from the District Motor Vehicle Office.

5 When further scrutiny of the remaining applicant's application forms were done, an objection was taken that Form II had to be appended in original and not Xerox copy thereof. The matter travelled to this Court and in some cases (not the appellant), the learned Single Judge took the view that the objection was not unfounded and their application could have been rejected as not conforming to the advertisement. Some matters even travelled in intra-Court appeal where the view of the learned Single Judge was affirmed. When the writ petitioner/appellant's application was rejected on this ground based on other orders of this Court, he also filed the writ petition which was dismissed and, hence, this intra-Court appeal.

6 Petitioner/appellant drew attention of the Court, the learned Single Judge, that the affidavit of the Commission itself admitted that there was a confusion in the matter as to whether original certificate or the Xerox copy thereof had to be annexed. Before the learned Single Judge, it was an admitted position that in view of this confusion at the level of the Commission itself, several



appointments had already been made, even though the applicants had annexed Xerox copies instead of original certificate. Based on these undisputed facts, on behalf of petitioner/appellant, it was submitted that it would be highly discriminatory for the Commission to have accepted and recommended appointment of some of the candidates in the same very transaction ignoring the defect, and in cases of others, to disqualify the others for the same very defect. Either all such applicants whether selected or not be declared unfit and their applications be rejected as incompetent, or the defect, being hyper technical, be ignored and all applicants be accepted as it otherwise would be highly discriminatory on the part of the Commission to take a different view in different similar cases. It was also urged before the learned Single Judge that this was a hyper technicality and when the Commission itself stated that the Commission itself was confused then the benefit of the confusion should accrue in the citizen and not to his detriment. The certificates were verifiable and would be verified before ultimate recommendation for appointment was made as they were issued by competent Government officials. It was a certificate in respect of the licence, copy of which had to be annexed.

7 The learned Single Judge considered the matter and clearly held that the Commission was itself under confusion in the matter but for the Court, it was clear that the certificate in original had



to be annexed and even though a Xerox copy had been annexed by several people, that was not sufficient compliance and that was sufficient to render the application invalid. As to the question of discrimination, the Court held that it was not a discrimination by the Commission but a discrimination by virtue of orders of the Court which cannot be complained and noticing that about 20 persons had already been appointed who had filed application with Xerox copies, instead of certificates, the Court refused to give the same treatment to the writ petitioner and held his application to be invalid and relying upon earlier judgment on this issue, dismissed the writ petition.

8 To us, *stricto sensu*, the learned Single Judge may be correct but in the overall facts this hyper technicality would do greater injustice than justice and that is what has impelled us to interfere. Firstly, we may quote the findings:

“It is submitted that earlier the Commission was satisfied with the information in Form-II furnished by the petitioner, both with regard to submission of it in a Xerox copy and that it was not in the form prescribed under the Advertisement. Subsequently, CWJC No 18744/11 on 15.12.2011 held that the information in Form-II had to be submitted in original and also in the prescribed format only. The respondents then rejected his candidature.

In CWJC No 18744/11 the Commission had itself contended that information in Form-II was not required to be submitted in original as it could be verified subsequently. Even the confirmation by the District Transport Officer was acceptable in a Xerox copy. It did not meet

the approval of the Court. Initially a state of uncertainty existed both in the mind of the Commission and the candidates for the manner in which information in Form-II was required to be submitted. The requirements under the Advertisement finally surfaced on the interpretation as held by the Court. The candidates therefore cannot be prejudiced outright shutting them out from consideration on that ground only.

Twenty appointments were made before the pronouncement in CWJC No 18744/11. Xerox copy of Form-II was accepted by the Commission from these candidates. Either these appointments should be cancelled and fresh selection ordered or the petitioners be likewise permitted to participate in the interview. It amounts to hostile discrimination. His suitability and capability for the post can always be verified by the expert at the time of interview as observed in CWJC No 3773/11.”

9 First coming to the issue of the compliance of the advertisement, we are assuming that Form II, as prescribed, had to be filed in original on a correct determination of facts in this regard. Yet applicants, not conversant with legal logics, were confused. Large number of persons appended Xerox copies. Commission, the apex body for recruitment of subordinate staff, itself admitted that it was itself confused on the issue and that is why, till the judgments of this Court, Commission did not consider it mandatory for original certificates to be appended. Accordingly, 20 persons were selected and even recommended for appointment and who had already been appointed who had similarly submitted Xerox copy of the certificate



in Form II. To us, if this was the factual position, which even the learned Single Judge did not dispute and could not have disputed because this was the stand of the concerned respondents themselves then there being a bona fide confusion, the benefit should have accrued for the protection of the unwearied citizens and they cannot be trapped in such a situation. It would be a hyper technicality. There was no deliberate action of the petitioner/appellant or his like to defy the advertisement. The Photostat copy of licence was acceptable but the certificate had to be in original. This genuinely caused confusion to all, right up to the Commission. In our view, on this hyper technicality, application form of large number of applicants having already been accepted and acceded upon and persons appointed thereto, surely the petitioner/appellant upon these confusions being brought to light have been allowed to participate in the selection process. All we can say is what the Apex Court, in the case of *Mangalore Chemicals and Fertilizers Limited –Versus- Deputy Commissioner of Commercial Taxes & Others* since reported in AIR 1992 Supreme Court 152 as held in paragraph 11 of the reports:

“11. There is a fallacy in the emphasis of this argument. The consequence which Shri Narasimha Murthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are conditions and

conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

*... .. The words are that he 'will grant'. There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld – not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told "we are sorry. We should have given you the permission. But now that the period is over, nothing can be done." The answer to this is in the words of Lord Denning: "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality" (see *Wells v Minister of Housing and Local Government*, (1967) 1 WLR 1000 at p 1007).*

Francis Bennion in his 'Statutory Interpretation', 1984 edition, says at page 683:

"Unnecessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfillment of the purposes of the legislation."

10 In that case, certain sales tax concessions were available for 5 years. The applicant was not granted this within the 5 years and upon expiry thereof, he was told that even though he was entitled, as the period had expired, he could not be granted the benefits. The matter travelled to the Apex Court and the Apex Court rejected the ground taken by the State, on ground of it being hyper technical. In the present, the case is better. Even the Commission



admits that there was confusion. Surely, there was confusion. The benefit ought to have come or accrued to or be given to the petitioner/appellant. We cannot be misunderstood to see that the finding of the learned Single Judge that the requirement was to file original certificate is wrong, but notwithstanding the aforesaid, these facts and circumstances require departure from rigidity. Thus, we cannot accept the stand of the learned Single Judge in view of the facts noted above that there was no option but to reject the application of the petitioner/appellant while others similarly situated got appointed.

11 Next we may deal with the question of the alleged permissible judicial discrimination as noted by the learned Single Judge placing reliance upon the judgment of *Bharat Petroleum Corporation Ex-Employees Association –Versus- Bharat Petroleum Corporation Limited* since reported in (1995) 2 Supreme Court Cases 15. To us, the facts are totally different and the case is clearly distinguishable. Firstly, the discrimination is not being done by the Court or Court's order for the Court never upheld nor had it occasion to consider the validity of the appointment of 20 similarly situated persons who had been selected, recommended for appointment and appointed, notwithstanding that they had annexed Photostat copies or Xerox copy of the certificates nor what is being done is that the



Commission ignored the defects in case of those 20. It made an issue of the same defect in respect of the others. This is not a discrimination by judicial order but it is a discrimination by the Executive which is anti-thesis of Article 14 of the Constitution. If the law was once declared by this Court that such applications were invalid then all such applicants, whether appointed or not, have to be treated similarly by the Commission. Either all applicants had to suffer or it be ignored. In the case of *Bharat Petroleum Corporation (supra)*, some of the employees of Corporation got certain benefits. The Trade Association moved the Industrial Tribunal which negated their claim. Ultimately, the Tribunal's award is based upon the agreement between the Management and the Association, negating the claims. Later on, Association wanted to avoid the Tribunal's award. The Court said that the award bound the Association and that was the judicial determination binding the parties and, thus, it may be a judicial discrimination, because some have already been granted the benefit which could not be taken away but the others were bound by the inter party award which could not be avoided. The case at hand is totally different. Therefore, we are unable to accede to what was held by the learned Single Judge.

12 As the Commission itself admitted that it was also confused and it is in that confusion, it selected and recommended

appointment of several others under similar circumstances, surely, if not on legal, on equitable principles of equal treatment and the non-discriminatory principles enshrined in Article 14, the petitioner/appellant should have been permitted to undergo the selection process especially when this issue was not raised in any other writ petitions. It was not brought to the Court deciding the earlier cases that there were others who had similarly made application but the defect was ignored. Upon these facts having been brought on record and remained undisputed, surely the result would have been different.

13 We, accordingly, are of the view that the judgment of the learned Single Judge, in the facts and circumstances noted above, cannot be sustained. It is, accordingly, set aside. The writ petition is allowed. Commission and State are directed to consider the application of the petitioner/appellant and all other similarly situated persons and proceed to appoint them subject to other criteria being fulfilled.

14 This appeal is, accordingly, allowed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

U			
---	--	--	--