

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.722 of 2001

-
-
1. State of Bihar, through the secretary, Primary Secondary and Adult Education, Bihar, Patna.
 2. Director, Secondary Education, Human Resources Department, Bihar, Patna

... ..Respondents/ Appellant/s

Versus

1. The Secretary Vidyalaya Seva Board, West Boring Canal Road, Anandpuri, Patna
2. Krishna Gopal Prasad, son of Shiva Nandan Prasad, resident of village Mirchak P.S. Bind, Nalanda
3. Secretary/Chairman, Staff Selection Commission, Bihar, Patna

... ..Petitioners/Respondent/s

with

Civil Writ Jurisdiction Case No. 14403 of 2001

1. Raj Kishore, son of Late Gangadhar Singh, resident of Village-Chinia Bela, P.O. and P.S. Punpun, District Patna
2. Smt Indra Kumari @ Indira Kumari, W/o Azad Chandra Shekhar Pd. Chaurasia, resident of Village- Balwapur, P.O. Sirstdihra, P.S. Harnaut, District Nalanda
3. Satish Chandra Sinha, son of Late Ram Chandra Sinha, resident of Village-Tarwan, P.O. Satna, P.s. Parsa Bazar, District Patna
4. Surendra Bhagat, son of Nathun Bhagat, resident of Village Paraya Khord, P.O. and P.S. Paraia, District Gaya
5. Ram Vinay Sharma, son of Ram Prabesh Sharma, resident of Village -Sikaria, P.O. Tara Nagar, via-Bihata, District Patna
6. Manoj Kumar, son of Sri Dev Narain Roy, resident of village-Raghunath Tola, P.O. Anisabad, P.S. Gardanibagh, Patna
7. Mejazul Haque, son of Guddus Khan, at and P.O. Piro P.S. Haspura, District Aurangabad
8. Anat Lal Roy, son of Ramdeo Roy, resident of Village and P.O. Khagedih, via-Ladania, District Madhubani
9. Chandradeo Paswan, son of Shri Jhingur Paswan, resident of Village and P.O. Thandih (Sidhap) via-Ladania, District Madhubani
10. Ram Naresh Mahto, son of Late Bouelal Mahto resident of Village-Baghopur, P.O. Nandionagar, via Elmas Nagar, District Samastipur
11. Munna Kumar Sigh, son fo Ram Prabesh Singh C/o Late Ishwr Dutt Tripathi, Gewal Bigha, Near Jagannath Mandir, District Gaya
12. Ram Nath Yadav, son of Bhola Gope, resident of village-Chakiapar, Naubatpur, District Patna
13. Anand Shankar Tiwari, son of Dr. Ramadhar Tiwari, resident of M.IG. 64, Chankyapuri Colony Housing Board, District Gaya.
14. Kumar Anil Prasad, son of Shri Jagdish Prasad, resident of village and P.O. Daniwa, via Kararparsaro, District Patna
15. Amit Shankar Raju son of Sri Baijnath Pd. Singh, resident of village -Mungila, P.O. Shankarpur, Imamganj, P.S. Paliganj, Patna



16. Ashutosh Chaudhary, son of Sri Baleshwar Choudhary, resident of village and P.O. Fulhara, P.S. Singhiya, Samastipur
17. Rajesh Pratap Singh, son of Late Badyanath Pd. Singh, resident of Mohalla Biskoman Colony, P.O. Gulzarbagh, Patna
18. Arvind Kumar Pankaj, son of Shri Karu Prasad, resident of Village Harnichak, Mahully Tolla, P.O. Anisabad, Patna-21

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary Vidyalaya Seva Board, Bihar, Patna having its office at 6th Floor, Biscoman Towar, West Gandhi Maidan, Patna
3. Chairman, Vidyalaya Seva Board, Bihar, Patna having its office at 6th Floor, Biscoman Towar, West Gandhi Maidan, Patna
4. Director, Secondary Education, Budh Marg, Patna
5. Secretary/Chairman, Staff Selection Commission, through its Secretary, Near Veterinary College, Patna

... .. Respondent/s

=====

Appearance :

(In Letters Patent Appeal No. 722 of 2001)

For the Appellant/s : Mr. Sunil Kumar Mandal
Mr. Bipin Kumar
Smt Neelam Kumari

For the Respondent/s : Mr. Anand Kumar Ojha
(In Civil Writ Jurisdiction Case No. 14403 of 2001)

For the Petitioner/s : Mr. Anand Kumar Ojha
For the State : Mr. Sunil Kumar Mandal, SC-3
Mr. Bibin Kumar, AC to SC-3
Smt. Neelam Kumari, AC to SC-3
Mr. Arjun Prasad AC to SC-3

For the B.S.S.C. Mr. Ashok Kumar Dubey

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 30-11-2018

Since both the cases relate to a common Advertisement No. 1/88 for appointment as physical trained teachers and the facts are identical, they have been taken up and heard together and are being disposed of by the present common judgment and



orders.

2. In LPA No. 722 of 2001, the State of Bihar has questioned the legality of the order dated 26.06.2001, passed in CWJC No. 4675 of 2001, whereby a learned Single Judge of this Court allowed the writ application filed by respondent no.2 herein, following the judgment and order dated 15.02.2001, passed in CWJC No. 2994 of 2000 (**Vijay Kumar and others Vs. State of Bihar**) and others analogous cases, reported in **2001(2) PLJR 110**. Though the point involved in the present case is no more complex, the case has a chequered history, which is evident from the fact that this appeal filed under Clause 10 of the Letters Patent of this Court on 08.08.2001, has been taken up by this Court in 2018, after remand by the Supreme Court by order dated 09.02.2018, passed in Special Leave Petition (Civil) Nos. 25365-25366 of 2014. This requires this Court to narrate briefly the facts of the case and the details of the legal proceeding, which started in 2001, with the filing of a writ application by respondent no.2, giving rise to CWJC No 4675 of 2001 which was allowed by an order dated 26.06.2001 by a learned Single Judge of this Court.

3. Admittedly, the Director, Secondary Education, Govt. of Bihar, had sent a requisition on 09.03.1988 to the Vidyalaya



Sewa Board (for short 'the Board') for sending panels of teachers in Mathematics, Biology, Physical Education and other subjects. Following was the number of vacancies against some of the subjects for which the requisition was sent :-

Biology -400

Mathematics - 200

Physical Education -125.

4. Based on the said requisition, the Board issued the Advertisement No.1/88, inviting applications for the post of Assistant Teachers in the Nationalized Secondary Schools as well as in the Project Schools. The Board, thereafter prepared a list in the year 1990 for appointment in the Biology subject. The State Government, however, did not approve the panel and cancelled it. The Board was requested to send a fresh panel. In the meanwhile, new reservation policy of the State Government came into force in 1991. When the fresh panel was sent by the Board, the Education Department raised certain objection through a letter dated 04.11.1993 and asked the Board not to send the panel in respect of the three subjects, as noted above, unless roster clearance was made in accordance with the new reservation policy. The Board, based on earlier requisition sent by the State Government, issued a fresh advertisement in the



year 1995 in the subjects of Economics, Mathematics, Biology and Physical Education, dispensing with the requirement of training for appointment of teachers. The State Government clarified in the said advertisement that those, who had already applied pursuant to the earlier advertisement, were not required to apply afresh. It was also clarified that such applicants, who had crossed the age-bar, would be treated to be eligible. Apparently thus, there were two kinds of applicants, one who had applied against Advertisement No. 01 of 1988 and the other, who had applied pursuant to fresh advertisement issued on 29.04.1995. Since despite the interviews having been held for appointment against Biology subject, and the panel having been prepared and sent to the State of Bihar, the State-respondents were not taking steps for appointment in Biology subject, some of the persons aggrieved filed four writ applications giving rise to CWJC Nos. 2994, 7732, 8926 and 9259 of 2000. The said writ applications were heard analogous by a learned Single Judge of this court and were allowed by a detailed judgment and order dated 15.02.2001 in case of **Vijay Kumar and others vs. State of Bihar and others** (supra) in the following terms:-

19. From the above discussions it follows that the State is obliged to consider the cases of the petitioners who



include, as mentioned above, candidates in both unreserved and reserved categories following 50% rule for their appointment against the existing vacancies. I do not wish to go into the arithmetic of the vacancies though as stated above, I have accepted the figures given by the State to be correct for the purpose of deciding these cases. Some more vacancies presumably might have occurred in the meantime. More importantly, as the number of vacancies has been worked out in the undivided State of Bihar and now a portion thereof has to be allocated to the State of Jharkhand, it is clear that the vacancies have to be re-worked out. Further, 30% of the available vacancies have to be left apart from the Assistant Teachers of Primary/Middle Schools and Clerks of the Secondary Schools. At the same time nothing whatsoever has been stated by the State about vacancies in the Project Schools. The advertisement was for both the nationalized schools and the project schools. Nothing contrary has been stated in the counter affidavit. The State is thus required to calculate the number of vacancies and consider the case of the petitioners and others similarly situate



for their appointment from the panel against those vacancies in accordance with law. Having regard to the number of vacancies and the fact that on account of non-availability of teachers, teaching in Biology in the schools must be suffering, it is proper that the whole exercise is completed at the earliest, say within a period of three months. I direct accordingly.”

5. Respondent no.2 herein was the applicant against the vacancies so advertised for physical trained teachers. He also preferred a writ application, giving rise to aforesaid CWJC No.4675 of 2001 relying on this Court’s decision dated 15.02.2001 in the case of **Vijay Kumar and others** (supra). Since it was accepted on behalf of the State of Bihar that the case of respondent no.2 was not distinct from the case of **Vijay Kumar and others** (supra), and his case was covered by this Court’s decision in the case of **Vijay Kumar and others** (supra), except for the fact that whereas the case of **Vijay Kumar and others** (supra) was in respect of Biology subject, the case of respondent no.2 related to physical trained teachers. Accordingly, following the decision in the case of **Vijay Kumar and others** (supra), a learned Single Judge of this Court allowed



CWJC No. 4675 of 2001 by the impugned order dated 26.06.2001 in the same terms, as stipulated by this court in the case of **Vijay Kumar and others** (supra). While issuing the said direction, this Court took into account the fact that the panel in respect of subject of Physical Education was not communicated by that time and accordingly observed that the claim of the petitioner will be dependent upon the panel prepared by the Board. The State of Bihar, however, preferred an appeal under Clause 10 of the Letters Patent of the High Court, giving rise to LPA Nos. 439, 445, 446,447 of 2001 against this Court's decision in the case of **Vijay Kumar** (supra).

6. After passing of the impugned order dated 26.06.2001 in CWJC No. 4675 of 2001, the State Government took a decision to cancel Advertisement No.01 of 1988 to the extent it related to the appointment against the post of Physical Instructors and other posts. Respondent no.2 filed another writ application under Article 226 of the Constitution of India, which gave rise to CWJC No. 11999 of 2001, seeking quashing of the order dated 23.08.2001, whereby the State Government had taken the decision to cancel Advertisement No. 01 of 1988. He raised a grievance before this Court that instead of complying with the



direction of this court issued in the order dated 26.06.2001 in CWJC No. 4675 of 2001, the State Government arbitrarily came out with a decision to cancel the advertisement itself which, according to respondent no.2, was illegal. A learned Single Judge of this Court, however, dismissed the writ application on the reasoning that respondent no.2 did not have indefeasible right and, therefore, nothing prevented the State Government from cancelling the advertisement for just and valid cause. Respondent no.2 thereafter filed an appeal under Clause 10 of the Letters Patent of the High Court against the order dated 10.03.2003 passed in CWJC No. 11999 of 2001 (**Krishna Gopal Prasad Vs. The State of Bihar and others**) bearing L.P.A. No. 332 of 2003.

7. Another development thereafter took place. As we have already noticed, the State of Bihar had filed appeals against the decision of the learned Single Judge in case of **Vijay Kumar and others** (supra) and the Division Bench by a judgment and order dated 16.12.2004, passed in LPA No.439 of 2001 and other analogous cases (**The State of Bihar and others Vs. the Chairman, Vidyalaya Sewa Board and others**) before the Supreme Court, giving rise to SLP (Civil) Nos. 6369-6376 of 2005 (**The State of Bihar and others Vs. The Chairman,**



Vidyalaya Sewa Board and others) and SLP (Civil) Nos. 2322 of 2005, 17485 of 2003 and 19245 of 2003 against the judgment and order of the learned Single Judge, whereby the learned Single Judge had directed, following the decision in the case of **Vijay Kumar** (supra), to consider the case of respondent no.2, in the light of the said decision, the State of Bihar had preferred Letters Patent Appeal No. 722 of 2001.

8. This is to be noted that SLP (Civil) No.17485 of 2003 was filed by respondent no.2 against the Division Bench decision dated 23.04.2003 rendered in LPA No. 332 of 2003 (**Krishna Gopal Prasad Vs. The State of Bihar and others**). The Special Leave Petition being SLP (Civil) No. 17485 of 2003 was dismissed by the Supreme Court upon making an observation that he was not, in fact, selected and the writ petition filed by him was rightly dismissed by the High Court.

9. CWJC No. 14403 of 2001 was filed, also seeking quashing of the same letter no. 3217 dated 23.08.2001, issued by the State Government, whereby the Advertisement Nos.01 of 1988 and 01 of 1995 was sought to be cancelled. The petitioners of the said writ application were also aspiring for the post of Physical Trained Teachers against the said two advertisements.

10. It transpires that the present Letters Patent Appeal



No. 722 of 2001 and CWJC No. 14403 of 2001 remained pending possibly in view of the pendency of various cases before this Court and before the Supreme Court, involving same/similar issue, till the two cases came to be decided finally by order dated 15.04.2013, passed by a Division Bench of this Court. The Division Bench of this Court disposed of the two matters in the following terms:-

“The Supreme Court on 28.08.2012 in SLP (Civil) No.6369-6376 of 2005 preferred by the Appellants after noticing the advertisement, the subsequent new reservation policy, cancellation of the panel and publication of fresh advertisement on 29.04.1995 declined to interfere with the order of this Court and dismissed the Special Leave Petitions.

The argument on behalf of Appellant that SLP No. 17485 of 2003 filed by respondent no.2 came to be dismissed does not appeal to us for the reason that respondent no.2 was not selected and empanelled. Those who were not empanelled obviously cannot have the benefit of the Supreme Court order. But others who have been empanelled are entitled to similar relief and cannot be distinguished on grounds of change in the discipline or subject.



Once the Supreme Court has pronounced on the issue with regard to the same advertisement no.01 of 1988, the appellants are required to act in accordance with the orders of the Supreme Court irrespective of the discipline with regard to those empanelled in accordance with law. Therefore, the withdrawal of SLP (Civil) No. 19245 of 2003 preferred by the petitioners in C.W.J.C. No. 14403 of 2001 in view of the order passed in SLP (Civil) No 6369-6376 of 2005 entitles them to consideration in accordance with their empanelment as claimed.

LPA no. 722 of 2001 is allowed to the extent that respondent no.2 is not entitled to any relief in view of his non empanelment in the original select list itself.

C.W.J.C. No. 14403 of 2001 is disposed with direction to the respondents to act in accordance with the direction of the Supreme Court in SLP (Civil) No. 6369-6376 of 2005.

Both the applications stand disposed.”

11. The State of Bihar assailed the Division Bench decision dated 15.04.2013, passed in LPA No. 722 of 2001 and CWJC No. 14403 of 2001 by filing a petition under Article 136 of the Constitution of India, giving rise to SLP (Civil) No.



25365-25366 of 2014. The Supreme Court has, after setting aside the Division Bench decision, remanded the matter back to this Court for a fresh decision on merits in accordance with law with the following observation:-

“Since this Court had not issued any specific direction and only dealt with the peculiar facts and circumstances of particular case, direction by the High Court to follow that the said order as precedent without going into the merits of the case can not be sustained.

Accordingly, we set aside the impugned order and remand the matter to the High Court for fresh decision on merits in accordance with law.

The appeals are accordingly allowed in above terms.”

12. This is the background in which these two matters have been placed before us for decision on merit.

13. While considering the case of respondent no.2 Krishna Gopal Prasad in LPA No. 722 of 2001, we find that there is clear observation made by the Supreme Court in the judgment and order dated 28.08.2012 in SLP (Civil) No.17485 of 2003 which was filed by him that his writ application was rightly dismissed by the High Court, in view of the stand taken by the



Staff Selection Commission that the petitioner, in fact, was not selected. The SLP preferred by respondent no.2 stood dismissed by the Supreme Court. In that background LPA No. 722 of 2001 of the State of Bihar deserves to be allowed, since no relief can be granted in his favour. The impugned order dated 26.06.2001, passed by the learned Single Judge in CWJC No. 4675 of 2001 is, thus, set aside.

14. LPA No. 722 of 2001 is accordingly allowed.

15. The case of the petitioners of CWJC No. 14403 of 2001 also relates to the same selection/recruitment for the post of Physical Trained Teachers. The writ application was filed on 05.11.2001 and by order dated 11.01.2002, it was directed to be listed after disposal of LPA No. 722 of 2001 in the background of an intervention application filed in the said appeal being I.A. No. 7734 of 2012 for intervention. The said I.A. No. 7734 of 2012 was allowed by the Division Bench.

16. Mr. Rajendra Prasad Singh, learned Senior Counsel and Mr. Anand Kumar Ojha, learned counsel, representing the writ petitioners have argued that the case of the writ petitioners is clearly distinguishable from the case of respondent no.2, whose individual case was dismissed by the Supreme Court with the observation that he, in fact, was not selected by the



Board. It has been submitted on behalf of the petitioners that the case of Krishna Gopal Prasad (respondent no.2) was of his non-selection and that will not amount to dismissal of the SLP on merits against the Division Bench decision rendered in LPA No. 332 of 2003. It is their contention that these writ petitioners should be given similar treatment as has been given to the applicants for the subject 'Biology'. Reliance has been placed on a Division Bench decision of this Court in the case of **Amresh Kumar Singh Vs. State of Bihar**, reported in **2018 (2) PLJR 929** to contend that it is mandatory for the State of Bihar to follow its own Bihar State Litigation Policy, 2011 and thereby treat all similarly situated employees by granting benefits of the covered matters. It has been contended that since the orders of the Court have been implemented in case of Biology teachers, the cases of these petitioners, who are applicants for Physical Trained Teachers, should also be dealt with in identical manner.

17. What we notice from the pleading on record in the writ application that there is no averment that the Bihar Vidyalaya Sewa Board found these petitioners successful for appointment against the post of Physical Trained Teachers after completion of the process of selection.

18. We had called for the concerned original records



from the Department which does not indicate that recommendations in the form of panel for appointment of Physical Trained Teachers was ever received by the Department. As has been discussed, the State Government had decided to cancel the advertisement to the extent the same related to the teachers in Physical Education. Though the decision of the State Government to cancel the said advertisement was assailed before this Court by way of a writ application registered as CWJC No. 11999 of 2001, as noticed above, this Court specifically observed, while dismissing the said writ application in the order dated 10.03.2003 that nothing prevented the respondents from cancelling the advertisement for just and valid cause, in the absence of indefeasible right the said order dated 10.03.2003. The said order dated 10.03.2003 has been affirmed by the Division Bench by order dated 23.04.2003, passed in LPA No. 332 of 2003 and even the petition for Special Leave was dismissed by the Supreme Court. The decision of the State Government, thus, to cancel the advertisement itself has attained finality up to the Division Bench of this Court and affirmed by the Supreme Court. In such circumstance, we find it difficult to accept the submissions on behalf of the petitioners that they should be given similar treatment as has been done in the case



of others, particularly in view of the Supreme Court's order dated 28.08.2012, passed in SLP (Civil) No. 6369-6376 of 2005. No direction can be issued at this stage after 30 years of issuance of advertisement as is being sought on behalf of the petitioners, even on equitable consideration.

19. This writ application is accordingly dismissed.

20. LPA No.722 of 2001 is allowed.

21. There shall be no order as to cost(s).

22. Let the the original record be returned to Mr.

S.K.Mandal, learned SC-3.

(Chakradhari Sharan Singh, J)

Jyoti Saran,J: I agree

(Jyoti Saran, J)

HR/-

AFR/NAFR	AFR
CAV DATE	06.08.2018
Uploading Date	04. 12.2018
Transmission Date	

