

State Of Bihar & Ors vs Mithilesh Kumar on 19 August, 2010

Equivalent citations: AIRONLINE 2010 SC 219

Author: Altamas Kabir

Bench: A.K. Patnaik, Altamas Kabir

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No.2631 OF 2009

State of Bihar & Ors.

... Petitioners

Vs.

Mithilesh Kumar

... Respondent

J U D G M E N T

ALTAMAS KABIR, J.

1. In 1998, the Department of Welfare, Government of Bihar, decided to introduce two new trades (Electronic and Electrical Appliances Repairing) for vocational training in the Kamla Nehru Social Service Institute and Handicapped and Rehabilitation Training Centre, Patna, for training of persons with disabilities. The said proposal was approved by the Empowered Committee constituted under the Bihar Public Service Commission under the Chairmanship of the Development Commissioner and funds were also sanctioned for such training. In the light of the above decision on 12th March, 1999, a requisition was sent by the Welfare Department, Government of Bihar, to the Bihar Public Service Commission, hereinafter referred to as "the B.P.S.C.", for appointment of Instructors and Assistant Instructors, but despite sanction of funds for the year 1998-99, appointments were not made because the Commission failed to make recommendations for the said posts. Subsequently, the Scheme was not extended by the Empowered Committee, but on 30th December, 2001, pursuant to requisition made by the Welfare Department, the B.P.S.C. advertised the posts for making appointments thereto. The Respondent, Mithilesh Kumar, applied pursuant to the said advertisement and was called for and appeared at an interview on 9th November, 2002, but immediately, thereafter, on 14th November, 2002, the Empowered Committee took a decision that

from thenceforth the services of NGOs/institutions would be used for training persons with disabilities. The Assistant Director, Social Welfare, by his letter dated 14th November, 2002, requested the B.P.S.C. not to send any further recommendations as the Scheme was no longer valid and the said Committee had decided to train students of the two trades through professionally established NGOs/institutions.

2. On 5th December, 2002, after the said communication was received from the Assistant Director, Social Welfare, the Respondent was declared successful in the interview which had been held on 9th November, 2002, and despite the request made by the Assistant Director, Social Welfare, the B.P.S.C. recommended the name of the Respondent to the said authority for appointment. The Respondent, in his turn, made a representation seeking appointment pursuant to the results declared by the Commission. Not receiving any response, the Respondent filed Writ Petition No.543 of 2005 before the Patna High Court on 11th July, 2005, for appropriate relief. The High Court disposed of the Writ Petition with a direction to the Director, Social Welfare, Government of Bihar, to dispose of the Respondent's representation. On 15th December, 2005, the Director, Social Welfare, considered the representation of the Respondent and rejected the same.

3. Aggrieved by the rejection of his representation, the Respondent filed a fresh Writ Petition, being CWJC No.447 of 2006, before the Patna High Court and the same was duly allowed. The order dated 15th December, 2005, passed by the Director, Social Welfare, was quashed and the Secretary, Social Welfare, Government of Bihar and the Director, Social Welfare, were directed to appoint the Respondent to the post of Assistant Instructor (Electronics) in Kamla Nehru Social Service Institute and Handicapped and Rehabilitation Training Centre, Patna, after obtaining a recommendation for validation by the B.P.S.C. A direction was given to issue the appointment letter in favour of the Respondent within two weeks from the date of receipt/ production of a copy of the High Court's order.

4. The matter was taken to the Division Bench by the State of Bihar in LPA No.844 of 2007. On 18th July, 2008, the Division Bench of the Patna High Court dismissed the said Appeal relying entirely on the judgment of the learned Single Judge, without giving any reasons of its own.

5. The instant Special Leave Petition has been filed against the said judgment of the Division Bench of the Patna High Court.

6. Without denying the facts of the case, as narrated hereinabove, learned counsel appearing for the State of Bihar submitted that once a request had been made by the Empowered Committee to derequisition the posts in question, the B.P.S.C. ought not to have recommended the name of the Respondent for appointment as Assistant Instructor (Electronics). Referring to the Constitution Bench decision of this Court in *Shankarsan Dash vs. Union of India* [(1991) 3 SCC 47], learned counsel submitted that inclusion in the select panel did not vest the Respondent with an indefeasible right to be appointed, even if a vacancy existed.

7. Reference was also made to the decision of this Court in *Chairman, All India Railway Recruitment Board & Anr. vs. K. Shyam Kumar & Ors.* [(2010) 6 SCC 614], wherein while considering the scope

of judicial review, this Court had occasion to consider the aforesaid question also and it was reiterated that even after vacancies were notified for appointment and adequate number of candidates were found successful, they would not acquire any indefeasible right to be appointed against the existing vacancies.

8. On the other hand, learned counsel for the Respondent reiterated the fact that pursuant to the advertisement published by the Bihar Public Service Commission on 30th December, 2001 for filling up the posts of Instructor/Assistant Instructor, the Respondent had applied and Admit Card was issued to him in October, 2002. Pursuant to the above, the Respondent appeared in the selection process and the results were declared by the Commission on 5th December, 2002 and after declaration of the results a direction was given by the Minister concerned to the Director, Social Welfare, Bihar, Patna, the Petitioner No.3, to appoint the Respondent, Mithilesh Kumar, forthwith. Pursuant thereto, on 24th February, 2004, the Director of Social Welfare asked the Respondent to produce all his certificates before the Assistant Director on 22nd February, 2004, for verification but, thereafter, he was not favoured with an appointment letter. Learned counsel submitted that this compelled the Respondent to file CWJC No.543 of 2005 for issuance of a writ in the nature of mandamus for his appointment to the post in question.

9. Learned counsel submitted that on 5th March, 2005, the Director wrote to the Deputy Secretary of the Commission to revalidate the recommendation which had been made by it and had expired during the pendency of the matter. On 3rd May, 2005, the recommendation was revalidated for a period of three months. Thereafter, on 11th July, 2005, a learned Single Judge of the Patna High Court disposed of CWJC No.543 of 2005 with a direction to the Director, Social Welfare, to dispose of the Respondent's representation after seeking appropriate instruction from the State Government and to ensure disposal of the said representation on or before 3rd August, 2005.

10. Learned counsel submitted that the Respondent's representation was considered and rejected by the Director, Social Welfare, by his cryptic order dated 15th December, 2005, which was, thereafter, affirmed by the Division Bench in LPA No.844 of 2007 on 18th July, 2008, in an even more cryptic fashion. Learned counsel urged that having been selected for appointment after a regular process of selection, the Respondent's claim for appointment could not have been neutralized simply on the basis of a request subsequently made by the Assistant Director, Social Welfare, to the B.P.S.C. not to send any further recommendations as a decision had been taken in the interregnum to train students in respect of the trades in question through professionally established NGOs/institutions.

11. Learned counsel submitted that the conditions of the advertisement inviting applications for filling up the posts of Assistant Instructor (Electronics) in the Kamla Nehru Social Service Institute and Handicapped and Rehabilitation Training Centre, Patna, could not have been altered to the prejudice of the Respondent on account of a decision taken subsequently to have persons with disabilities trained by professionally established NGOs/institutions. Reliance was placed on the decision of this Court in *Y.V. Rangaiah & Ors. vs. J. Sreenivasa Rao & Ors.* [(1983) 3 SCC 284], where this Court in similar circumstances had held that when Service Rules are amended, vacancies which had occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules. Reference was also made by learned counsel to the decision of this Court in *N.T.*

Devin Katti vs. Karnataka Public Service Commission & Ors. [(1990) 3 SCC 157], wherein it was reiterated that where selection process was initiated by issuing advertisement inviting applications, selection normally should be regulated by the Rules and orders then prevailing. It was also emphasized that service jurisprudence provides that normally amendments effected during the pendency of a selection process operate prospectively, unless indicated to the contrary by express language or by necessary implication.

12. Learned counsel lastly referred to the decision of this Court in Secretary, A.P. Public Service Commission vs. B. Swapna & Ors. [(2005) 4 SCC 154], wherein while considering the norms for recruitment/selection for filling up vacancies which had been initially advertised, this Court was of the view that such norms of selection cannot be altered after commencement of the selection process and Rules prescribing qualification, which were amended during the continuation of the selection process, have prospective operation unless something to the contrary is indicated expressly or by necessary implication.

13. Replying to the submissions made on behalf of the Respondent, learned counsel for the Petitioner submitted that the Respondent was not also entitled to any relief having regard to the decision of this Court in Secretary, State of Karnataka vs. Uma Devi [(2006) 4 SCC 1], where in paragraphs 13 and 35, the Constitution Bench quoted with approval the observations of Farwell, L.J. in Latham vs. Richard Johnson & Nephew Ltd. [(1911-13) All E.R. 117] to the effect that the Supreme Court in exercise of its jurisdiction under Article 142 has to be very careful not to allow sympathy to affect its judgment.

14. We have carefully considered the submissions made on behalf of the parties and we are not impressed with the stand taken by the Petitioner, State of Bihar, that the Bihar Public Service Commission ought not to have recommended the name of the Respondent for appointment after the Assistant Director, Social Welfare, had requested the Commission not to recommend any further names in view of the decision taken by the State to have disabled persons trained through professionally established NGOs/institutions in place of Instructors/Assistant Instructors for which advertisements had already been issued by the Commission. Both the learned Single Judge as also the Division Bench rightly held that the change in the norms of recruitment could be applied prospectively and could not affect those who had been selected for being recommended for appointment after following the norms as were in place at the time when the selection process was commenced. The Respondent had been selected for recommendation to be appointed as Assistant Instructor in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms of recruitment were altered to the prejudice of the Respondent. The question is whether those altered norms will apply to the Respondent.

15. The decisions which have been cited on behalf of the Respondent have clearly explained the law with regard to the applicability of the Rules which are amended and/or altered during the selection process. They all say in one voice that the norms or Rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect. As far as the decision in Uma Devi's case (*supra*) is concerned, we share the sentiments as set out in paragraph 35

of the judgment but we are only considering a situation where amendments are introduced to a recruitment process after the same has begun. The question of allowing sympathy to affect our judgment does not, therefore, arise in this case. Our focus is not on any individual, but on a legal principle which has been settled by this Court in various decisions, as referred to hereinbefore. There is no reason for us to have any disagreement with the decision of this Court in All India Railway Recruitment Board case (supra) regarding the right to appointment even of selected candidates, but this is not a case of the Respondent having acquired any indefeasible right which has to be cancelled on account of certain exigencies. On the other hand, this is a case where although selected for the purpose of appointment by the B.P.S.C., Patna, the case of the Respondent was not even considered as there was a change in policy regarding recruitment in the meantime.

16. While a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case the fact situation is different since the claim of the Respondent to be appointed had been negated by a change in policy after the selection process had begun.

17. In these circumstances, we do not see any reason to interfere with the impugned judgment of the Division Bench of the High Court dated 18th July, 2008, in LPA No.844 of 2007, affirming the judgment of the learned Single Judge dated 31st July, 2007, in CWJC No.447 of 2006. The Special Leave Petition is, therefore, dismissed, without any order as to costs.

.....J. (ALTAMAS KABIR)J. (A.K. PATNAIK) New Delhi, Dated: 19.08.2010