Binod Kumar Gupta & Ors vs Ram Ashray Mahoto & Ors on 31 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2103, 2005 (4) SCC 209, 2005 AIR SCW 1872, 2005 LAB. I. C. 1617, 2005 AIR - JHAR. H. C. R. 1237, 2005 (4) SRJ 589, 2005 (2) ALL CJ 1342, (2005) 3 JCR 72 (SC), 2005 (2) BLJR 987, (2005) 3 MAD LJ 90, 2005 (3) SCALE 557, 2005 BLJR 2 987, 2005 ALL CJ 2 1342, 2005 (3) SLT 443, 2005 SCC (L&S) 501, (2005) 2 LAB LN 663, (2005) 2 PAT LJR 218, (2005) 2 SCT 663, (2005) 3 SCJ 585, (2005) 7 SERVLR 253, (2005) 3 SUPREME 147, (2005) 3 SCALE 557

Author: Ruma Pal

Bench: Ruma Pal, C.K. Thakker

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           CASE NO.:
Appeal (civil)  2298-2299 of 2005

PETITIONER:
Binod Kumar Gupta & Ors.

RESPONDENT:
Ram Ashray Mahoto & Ors.

DATE OF JUDGMENT: 31/03/2005

BENCH:
Ruma Pal & C.K. Thakker

JUDGMENT:
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J U D G M E N T (Arising out of SLP(C) Nos. 20781-20782 of 2001) RUMA PAL, J.

Leave granted.

The appellants' claim that they had been validly appointed as Class IV Civil Court employees in the District of Sitamarhi has, by the impugned order, been negatived for the second time by the High Court at Patna. The appellants' appointments were challenged under Article 226 of the Constitution by four temporary Class-IV employees, who had been continuing in such appointment since 1985. The High Court allowed the writ petitions. The appellants appealed to this Court when by an order dated 1st February, 2001 this Court remanded the matter to the High Court on the ground that the High Court had failed to consider the several contentions raised by the parties in the writ petitions. This time again, the High Court has set aside the appointment of the appellants on the ground that the appellants had been appointed in violation of the existing norms and rules. Learned counsel

appearing on behalf of the appellants has submitted that the relevant procedure which had been followed in the appellants' case had been laid down in Rules 73 and 77 of the Civil Court Rules of the High Court of Judicature at Patna, Volume-I. These Rules which were operative at the relevant time provided:-

> 73. The Nazir shall keep a register of candidates for filling up leave and permanent vacancies. These candidates will be enrolled under order of the Judge in-charge or Nazarat and their number shall not exceed 15 per cent of the total strength of permanent peons employed at any station.
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> 77. Vacancies occurring at any station shall ordinarily be filled up by appointment of enrolled candidates attached to that station.

Note:- The appointment of peons lies with the District Judge.

The appellants have also relied upon a note prepared on 7th June, 1990 by the Nazir addressed to the Judge in-charge (Administration) in which it noted that the respondents 1 to 4 in the present appeal had been continuing on temporary posts for more than five years without break in the service and that the Government had been approached for creation of 12 additional posts including the four posts held by the respondents 1 to 4. According to the appellant, these 12 posts were distinct from the vacant posts which already existed. The Nazir's Note said that there was no list of candidates pending under Rule 73 of the Civil Court Rules and so the Nazir recommended that applications could be invited for preparing a list of candidates under the judgeship for the IVth Grade employees. The Nazir also said that there was no need for advertisement in the newspapers and that applications could be invited by putting up notices in the Civil Court and Collectorate.

This procedure, the appellants say, had been accepted by the judge in-charge, who recommended the preparation of the list of candidates of IVth Grade employees to the District Judge. The appellants say that notices were duly put up on the notice boards pursuant to which they applied for appointments. Initially fourteen names were "empanelled" under Rule 73. A note of the Judge in-charge was forwarded by the District Judge to the inspecting Judge of the High Court for approval of the list of 14 candidates. The 14 candidates are the first 14 appellants in these appeals.

It is not necessary to go into the further correspondence exchanged in this context except to note that an order dated 7th November, 1990 of the District and Sessions Judge, Sitamarhi was passed stating that the appointments of the appellants 1 to 14 was purely temporary and that their services could be terminated any time without any notice.

The names of the appellants 15 to 27 were recommended to the Judge in-charge by the Nazir Civil Court Sitamarhi on 21st November,1990. The Judge in-charge forwarded the list to the District Judge, who in turn submitted a report before the Inspecting Judge on 23rd November, 1990. On 7th December, 1990 these appellants were appointed as temporary Class-IV staff.

The respondents 1 to 4 say that the vacancies which existed in 1986 in the posts of IVth Grade employees in the Sitamarhi Judgeship had been applied for by some of them. The Nazir's note that there were no pending applications was incorrect. At that time a selection Committee was constituted. However, no selections were made. The then District Judge, one A.P. Srivastava (the respondent No.6 in these appeals), appointed the appellants without holding any interviews and without consulting the members of the Selection Committee. The High Court allowed the respondents' writ applications and held that Rules 73 to 77 of the Civil Court Rules had been struck down as constitutionally invalid by a Division Bench of the Patna High Court in the cases of Mohammad Saghir and Ors. Vs. State of Bihar & Ors. 1994 (2) PLJR 427, and Mohammad Sohrab and Ors. Vs. High Court of Judicature at Patna (unreported Judgment dated 12.7.1995 in CWJC No.5202/1991). Therefore the appointments of the appellants in purported compliance with Rules 73 and 77 were invalid. This contention had been upheld by the High Court in the previous round of litigation. When the matter came up before this Court the appellants had contended that the respondents 1 to 4 had not challenged the Rules in their writ petitions and that even without reference to the Rules the appointments of the appellants were valid. This Court had allowed the appeals to the extent that it was held that the High Court should consider these grievances. It does not appear that the High Court on remand has considered the first contention. But the High Court did go into the second contention and held that even otherwise it could not be said that the appellants had been validly appointed. It was held that the members of the Selection Committee had not participated in making the appointments. It was also held that the advertisements asking for applications had been couched in language which should not have passed the scrutiny of District Judge and did not inspire confidence. The third ground was that no interview of any kind had been held. It was, therefore, concluded that the appointments were not made in a bonafide manner. After setting aside the appointments, the High Court directed fresh advertisements to be issued for filling up the Class-IV posts in the Judgeship. It was made clear that the appellants could apply if they were otherwise entitled and suitable and that their cases should not be rejected only on the ground that they had crossed the age limit.

In our opinion the High Court's conclusion is unimpeachable. Rules 73 and 77, assuming them to be constitutionally valid, do not prescribe the mode for the empanelment of the candidates. In 1992, the High Court framed the Bihar Civil Court Staff (Class-III and Class-IV) Rules, 1992. Rule 7 prescribes advertisements in two daily newspapers in addition to notices on the notice board of the District head quarters as well as the Sub-Divisional Head- quarters. It may be that the Rules had no application in 1990 when the appellants were sought to be appointed. Nevertheless as early as in 1984, the High Court had issued a directive on its administrative side in which it was stated that for appointment to Class-IV staff in the Civil Courts, it would not be necessary to advertise the vacancies in the State level newspapers, but that notices should be placed on the notice board of the respective Civil Court premises and in the local daily newspaper of the District. This directive was binding on the District Judge.. In view of the express instructions, it was not open either to the Nazir, or the Judge in-charge or the District Judge or the Inspecting Judge to have acted to the contrary in filling up the posts. Admittedly, there was no advertisement issued in any newspaper at all. Furthermore, as far as the second lot of appointees is concerned, there is no evidence of the District Judge putting up any notice even on the notice board.

Indeed, learned counsel appearing on behalf of the appellants conceded this position but contended that since they had continued to serve for the last 15 years, a selection could be held amongst the appellants 15 to 27.As far as the first 14 are concerned, it is submitted that they should be permitted to continue as there had been an advertisement.

The "advertisement" was no 'advertisement' as required by the High Court. Without adequate notice no fair opportunity was given to others who might have applied. Apart from this, it does not appear from the records that there was any selection procedure followed at all. There is no explanation why the Selection Committee had been by passed nor any acceptable reason why the persons who had applied as far back as in 1986 were ignored. This singular lack of transparency supports the finding of the High Court that the appointments were not made bonafide. The District Judge, who was ultimately responsible for the appointment of Class-IV staff violated all norms in making the appointments. It is regrettable that the instructions of the High Court were disregarded with impunity and a procedure evolved for appointment which cannot be said to be in any way fair or above board. The submission of the appellants that they had been validly appointed is in the circumstances unacceptable. Nor can we accede to their prayer to continue in service. No doubt, at the time of issuance of the notice on the special leave petition, this Court had restrained the termination of services of the appellants. However, having regard to the facts of the case as have emerged, we are of the opinion that this Court cannot be called upon to sustain such an obvious disregard of the law and principles of conduct according to which every judge and any one connected with the judicial system are required to function. If we allow the appellants to continue in service merely because they have been working in the posts for the last 15 years we would be guilty of condoning a gross irregularity in their initial appointment. The High Court has been more than generous in allowing the appellants to participate in any fresh selection procedure as may be held and in granting a relaxation of the age limit.

We, therefore, dismiss the appeals but without costs.