

State Of Bihar vs Secretariat Asstt. Successful ... on 8 October, 1993

Equivalent citations: 1994 AIR 736, 1994 SCC (1) 126

PETITIONER:

STATE OF BIHAR

Vs.

RESPONDENT:

SECRETARIAT ASSTT. SUCCESSFUL EXAMINEES UNION

DATE OF JUDGMENT 08/10/1993

BENCH:

ANAND, A.S. (J)

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VENKATACHALLIAH, M.N. (CJ)

CITATION:

1994 AIR 736

1994 SCC (1) 126

JT 1993 (6) 462

1993 SCALE (4) 38

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by DR A.S. ANAND, J.- Leave granted.

2. The Bihar State Subordinate Services Selection Board (hereinafter referred to as the 'Board') issued advertisement No. 11 of 1985 inviting applications from unemployed Graduates for appointment to the post of Assistants in the Secretariat and other connected offices of the Government of Bihar. It was stated in the advertisement that vacancies upto the year 1985-86 were to be filled up, after holding an examination. The number of vacancies, however, was not notified. The examination was held at different examination centres within the State in November 1987. The result of the examination, however, was published only in July 1990. Vide a communication dated August 25, 1987 issued by the Joint Secretary in the Department of Personnel and Administrative Reforms to the Secretary of the Board, the break-up of the vacancies in a tabulated form, indicating the total number of vacancies, as then existing, to, be 357, was provided. On the recommendation of

the Board dated July 31, 1990, 309 candidates out of those who had qualified in the examination were given appointments. Candidates securing more than 50 per cent marks in the general category and whose names were in the select list were empanelled and made to wait in anticipation of the release of further vacancies by the State. Since, the vacancies available uptill December 31, 1988 were not disclosed or communicated to the Board despite enquiries, no further appointments could be made. Candidates who had applied for employment in response to the advertisement published in 1985 and were selected and empanelled after being brought on the select list in the order of their merit after the result was declared in 1990, found their expectations and hopes being belled and frustrated. They represented to the State Government for appointment against the vacancies as available on the date of the publication of the result. Their representation was rejected. On August 8, 1991 a letter was issued by tile State Government requiring the Board to issue fresh advertisement for appointment of, Secretariat Assistants and holding of fresh competitive examination. The aggrieved empanelled selectees, accordingly, approached the High Court of Patna through Civil Writ Petition No. 291 of 1991 seeking a direction to appoint them. In the High Court a plea was raised by the writ petitioners that since normal practice and procedure being followed by the State over the years had been that the vacancies available till the date of the publication of the result were filled up by the candidates brought on the merit list, all the empanelled candidates on the select list were entitled to be appointed against the vacancies as existing on the date of the publication of the result in 1990. The plea of the State on the other hand was that though number of vacancies had arisen during the period 1985-90 that fact alone could not clothe the empanelled candidates on the select list with any right to appointment or claim adjustment against the vacancies arising after 1988.

3. The High Court noticed that there had been no fresh advertisement after 1985; that the result of the examination held in 1987 was declared in 1990; that there were existing vacancies and that the empanelled candidates had been waiting in the wings all through for no fault of theirs expecting their appointments. The High Court, therefore, held:

"Considering the peculiar circumstances of the present case, therefore, we quash Annexure 16 dated August 8, 1991 and in order to do justice between the parties and not to leave these young graduates in a lurch, we direct the Board to recommend the names of these petitioners in accordance with their seniority in the merit list for appointment on the posts of Secretariat Assistants in accordance with the existing vacancies as available on the date of publication of their result, i.e. July 1990 "

4. The High Court also directed the filling up of the vacancies upto 1991 from the list of selected candidates who had been empanelled after the declaration of the result in 1990. The State of Bihar has, through the present appeal, challenged the judgment of the High Court.

5. On May 12, 1992, after considering the facts and circumstances of the case and hearing learned counsel for the parties, we made the following order:

"We are not in agreement with Mr Rao's stand that the entire impugned judgment is erroneous and requires reconsideration. However, we do consider that notice should be issued asking the respondents to show cause as to why special leave may not be

granted against that part of the judgment which directs all the vacancies upto 1991 to be filled up from the list of candidates who had appeared in the examination held in 1987 and why the impugned judgment may not be modified so as to remain operative with respect to the vacancies arising up to December 31, 1988 only. Since the respondents are already appearing through counsel, they may get ready with this aspect of the case. The case may be finally disposed of at the present stage if found practicable. There is some controversy with respect to the number of vacancies available upto December 31, 1988. The parties may file further affidavits dealing with this question."

6. We directed the stay of that part of the impugned judgment under which the State was obliged to fill up the vacancies which arose in the years 1989, 1990 and 1991. Directions were, however, issued by this Court on May 12, 1992 to fill up the vacancies as existing till 1988 promptly.

7. Counters and rejoinders have been filed but the confusion as regards the actual number of vacancies persists and there is a serious dispute between the parties on that score. In the view that we propose to take, we need not obtain ourselves to sort out that wrangle or consider the elaborate submissions made at the Bar.

8. It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary. (See *Shankarsan Dash v. Union of India* and *Babita Prasad v. State of Bihar*.)

9. We are, therefore, of the opinion that the directions given by the High court for appointment of the empanelled candidates according to their position in the merit list against the vacancies till 1991 were not proper and cannot be sustained. Since, no examination has been held since 1987, persons who became eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court should prejudicially affect them for no fault of theirs. At the same time, the callousness of the State in holding the examination in 1987 for the vacancies advertised in 1985 and declaring the result almost three years later in 1990 as caused great hardship to the successful candidates. The State was expected not to act in such a leisurely manner and treat the matter of election for appointment to services in such a casual manner. We must cord our unhappiness on this state of affairs. There is no justification for holding the examination two years after the publication of advertisement and declaring the result almost three years after the holding of the examination and not issuing any fresh advertisement between 1985 and 1991 or holding 1 (1991) 3 SCC 47: 1991 SCC (L&S) 860: (1991) 17 ATC 95 2 1993 Supp (3) SCC 268: 1993 SCC (L&S) 1076: (1993) 25 ATC 598: (1992) 3 Scale 361 examination for making selections. We expect the State Government to act in a better manner, at least, hereinafter and since Mr Rao, the learned senior counsel has shared our concern and assured us of advising the State Government accordingly, we say no more on that aspect at this stage.

10. Keeping in view the fact situation and the circumstances of the case and having been informed by Mr P.P. Rao, the learned senior counsel appearing for the State that there are a large number of vacancies which are required to be filled up, the order which commends and appears appropriate to us is to modify the judgment of the High Court dated October 11, 1991 by setting aside that part of the judgment which directs the filling up of the vacancies of 1989, 1990 and 1991 from out of the list of the candidates who had appeared in the examination held in 1987. We accordingly, set aside that portion of the judgment but uphold the judgment in all other respects including the filling up of the vacancies which existed till December 31, 1988. Further, with a view to do justice between the parties and balance the equities, we issue the following directions:

(i) That the appellant State of Bihar shall issue an advertisement inviting applications for the posts of Assistants within 4 weeks from the date of this judgment.

(ii) That the advertisement shall indicate the total number of vacancies actually existing and likely to arise in the cadre till December 31, 1993 which are required to be filled up. Thus, apart from the existing vacancies of 1989-1992 the probable vacancies till December 31, 1993, shall also be included while indicating the number of vacancies to be filled up.

(iii) That the age bar shall be relaxed in favour of candidates of the 1987 examination who had secured 40% or above marks in that examination, to enable them to appear in the fresh examination, if they so choose.

(iv) That the selection process including the holding of the examination and publication of the select list shall be completed within a period of 9 months from the date of the publication of the advertisement/notification inviting applications.

(v) That after the publication of the select list, the appointments shall be made within 4 weeks from the date of the publication of the select list.

(vi) That the rules relating to reservation etc. shall apply to the selections to be made.

11. With the above modification and directions, the appeal is disposed of. There shall be no order as to costs.