State Of Bihar And Ors vs Ramjee Prasad And Ors on 11 April, 1990

Equivalent citations: 1990 AIR 1300, 1990 SCR (2) 468, AIR 1990 SUPREME COURT 1300, 1990 (3) SCC 368, 1990 LAB. I. C. 1042, (1990) 1 CURLR 781, (1990) 2 UPLBEC 1075, (1991) 16 ATC 438, (1990) 60 FACLR 889, (1990) 2 PAT LJR 55, (1990) 2 SERVLR 746, 1990 ALL CJ 545, (1990) 2 LAB LN 1095, (1990) 2 BLJ 43, (1990) 2 JT 225 (SC), 1991 SCC (L&S) 51

Author: A.M. Ahmadi

Bench: A.M. Ahmadi, M. Fathima Beevi

PETITIONER:
STATE OF BIHAR AND ORS.

Vs.

RESPONDENT:
RAMJEE PRASAD AND ORS.

DATE OF JUDGMENT11/04/1990

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
FATHIMA BEEVI, M. (J)

CITATION:
1990 AIR 1300 1990 SCR (2) 468
1990 SCC (3) 368 JT 1990 (2) 225
1990 SCALE (1)742

ACT:
Constitution of India. 1950 Article 14 Last date for receipt of applications--fixation of b), the Government in the advertisement-Whether can be struck down.

HEADNOTE:
The State of Bihar published an advertisement inviting applications for appointments to the junior teaching posts in medical colleges in the State of Bihar. For the post of Assistant Professor. only such officers who had worked as Resident or Registrar in Medical Hospitals recognised for

imparting M.B.B.S. studies by the Medical Council of India and having three years experience of such post were considered eligible. The last date for receipt of applications was fixed as 31st January 1988. Pursuant to the said advertisement. applications from eligible candidates were received and a select list or panel was prepared for appointments to the respective posts. The respondents and some other intervenors who were working then in the Medical colleges as junior teachers challenged the State action in fixing the 31st of January 1988 as the cut-off date for receipt of applications for the advertised posts. as they had by then not completed three years which was prescribed as the requisite experience. It was contended by them that the cut-off date was arbitrarily fixed and was therefore violative of Article 14 of the Constitution. The High Court took the view that the State Government in fixing the 31st January 1988 as the cut-off date. had deviated from its usual practice of fixing the cut-off date as 30th of June of the relevant year. Hence this appeal by the State of Bihar by special leave.

It is contended by the State that the decision of the High Court was based on an erroneous premise that the cut-off date for eligibility purposes was 'always' fixed as 30th of June of the relevant year in the past.

Allowing the appeal, this Court.

HELD: The past practice was to fix the last date for receipt of applications a month or one and a half months after the date of actual publication of the advertisement. Following the past practice the State

469

Government fixed the last date for receipt of applications as 31st January 1988. These who had completed the required experience of three years by that date were. therefore. eligible to apply for the posts in question. [474G-H]

The choice of date cannot be dubbed as arbitrary even if no particular reason is forth-coming for the same unless it is shown to be capricious or whimsical or wide-off the reasonable mark. The choice of 'the date for advertising the post had to depend on several factors, e.g.. the number of vacancies in different disciplines. the need to fill up the posts. the availability of candidates etc., [475C-D]

Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from 31st January 1988 to 30th June 1988. is no reason for dubbing the earlier date as arbitrary or irrational. [475D]

The High Court was clearly in error in striking down the Government's action of fixing the last date for receipt of application as 31st January 1988 as arbitrary. [475E]

Municipal Board, Pratabgarh & Anr. v. Mahendra Singh Chawla & Ors., [1982] 3 S.C.C. 331; Union of India & Anr. v. M/s. Parameswaran Match Works & Ors., [1975] 1 S.C.C. 305 and Uttar Pradesh Mahavidyalaya Tadarth Shikshak Niyamitika-

ran Abhiyan Samiti, Varanasi v. State of Uttar Pradesh & Ors., [1987] 2 S.C.C. 453, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1837 of 1990.

From the Judgment and Order dated 17.1.1989 of the Patna High Court in C.W.J.C. No. 4276 of 1988, A. Sharan for the Appellants.

Pankaj Kalra and Pramod Swarup for the Respondents. The Judgment of the Court was delivered by AHMADI, J. Delay condoned. Special leave granted. This appeal arises out of the decision of the Patna High Court whereby it struck down the selection made for appointments in the junior teaching posts in medical colleges in the State and directed a fresh selection list to be prepared after shifting the last date for receipt of applications to 30th June, 1988. The facts giving rise to this appeal, briefly stated, are as under.

The State of Bihar published an advertisement inviting applications for appointment to the posts of (i) Assistant Professor (clinical subject); (ii) Registrar; (iii) Assist- ant Clinical Pathologist; (iv) Anesthetist; (v) Resident Medical Officer and (vi) Demonstrator (Tutor) in non-clini- cal subject for different Medical Colleges and Medical College Hospitals in the State of Bihar. For the post of Assistant Professor only such officers who had worked as Resident or Registrar in Medical Hospital recognised for imparting M.B.B.S. studies by the Medical Council of India and having three years experience of such post were consid- ered eligible. The last date for receipt of the application was fixed as 31st January, 1988. Pursuant to the said adver- tisement applications were received from eligible candidates and the select list or panel was prepared for appointments to the respective posts. The respondents and some interven- ors who held appointments as junior teachers in one or the other Medical Colleges in the State questioned the validity of the State's action of inviting applications for prepara- tion of a list for appointments to the advertised posts mainly on the ground that the last date for receipt of applications fixed as 31st January, 1988 (hereinafter called 'the cut-off date') deprived them of the opportunity to compete for the posts as they did not complete the requisite experience criterion of three years by that time. It was contended that this cut-off date was arbitrarily fixed and was, therefore, violative of Article 14 of the Constitution. The High Court took the view that the State Government had deviated from its usual practice of fixing the cut-off date as 30th of June of the relevant year. This is clear from the following observation made by the High Court:

> " ..... advertisement in the past including one in the year 1983 (Annexure-1) always fixed 31st June as the date "

.....

(Emphasis supplied) The use of the word 'always' indicates that the High Court was under the impression that in the past the cut-off date was always fixed as 31st June (it should be 30th June) for the preparation of the panel for appointments to the posts in question. Elsewhere also in the judgment there are obser- vations which disclose that the High Court laboured under the belief that the cut-off date was always fixed as 30th of June of the relevant year. This becomes obvious from the following criticism also:

> "If the State is determined to achieve such a goal and is ready to make its activity predictable it is a welcome sign but such desired predictability can equally be achieved by adhering to the schedule of the past and maintaining 30th June of the years as the last date for the application. If they had not followed any rule in the past and they propose to follow a rule in this regard in future, they can do so without causing any violation to any legal right of any incumbent by at least showing adherence to the reckoning date which until now had been the last date of the month of June of the year." (Emphasis supplied) On this line of reasoning the High Court came to the conclu- sion'that the State Govermnent had acted arbitrarily in fixing the last date fox receipt of applications as 31st January, 1988 under the advertisement published on 29th December, 1987. The High Court while upholding the conten- tion based on Article 14 further observed "we would have ignored the arbitrariness in taking 31st January of the year as the reckoning date had we not taken notice of recalci- trance of the, respondents in taking no step in the years intervening the selection in the year 1983 and the present selection". The High Court, therefore, felt satisfied that there was no rationale in departing from the past practice and selecting 31st January, 1988 as the last date. It is felt that in all fairness 30th of June of the year would be 'the .preferable date' for reckoning the eligibility of the candidates. The State Government was, therefore, directed to shift the last date for receipt of the applications from 3 1st January 1988 to 30th June, 1988 and to prepare a fresh panel thereafter and make appointments to the posts in question therefrom.

> The State of Bihar feeling aggrieved by this order has approached this Court by special leave. The learned counsel for the State submitted that the decision of the High Court was based on an erroneous premise that the cut-off date for eligibility purposes was 'always' fixed as 30th of June of the relevant year in the past. In order to dispel this assumption made by the High Court without examining the past advertisements the State Government has placed before us the advertisements issued from 1974 to 1980 which shows that different cut-off dates were fixed under these different advertisements and at no time in the past between 1974 and 1980 was 30th of June fixed as the relevant date. It is true that the High Court did not have the benefit of the earlier advertisements but it is equally true that there was no material on the record of the High Court for concluding that in the past the cut-off date was 'always' fixed as 30th of June of the relevant year. From the copies of the advertisements from 1974 to 1980 it tran- spires that generally the cut-off date was fixed between one to one and a half months after the date of issuance of the advertisement. In the year 1983 for the first time the cut- off date was fixed as 30th

June, 1983. On some occasions in the past the cut-off date was extended, depending on the facts and circumstances obtaining at the relevant point of time. It, therefore, becomes obvious from this documentary evidence that the factual premise on which the High Court has based its judgment is clearly erroneous. The High Court was in error in thinking that in the past the cut-off date was always fixed as 30th of June of the relevant year. In fact except for a solitary occasion in 1983 when the cut-off date was fixed as 30th June, 1983, at no other time in the past was that date fixed as the last date for receipt of the applications. No advertisements were admittedly issued after 1983 and before the advertisement in question. The present advertisement was published on 29th December, 1987 and the last date for receipt of applications was fixed thereunder as 3 ist January, 1988 leaving a time gap of a little over a month. As pointed out earlier, on a perusal of the adver- tisements issued from 1974 to 1980 it becomes obvious that normally the cut-off date was fixed one or one and a half months after the date of advertisement. It was, therefore, not the uniform practice of the State Government to fix the cut-off date for eligibility purposes as 30th of June of the relevant year as was assumed by the High Court. Once it is found that the High Court has based its decision on an erroneous assumption of fact, the decision cannot be allowed to stand.

It was, however, argued by the learned counsel for the respondents that the State Government should not be permit- ted to introduce new facts in the form of advertisements issued from 1974 to 1980. We do not think that such a tech- nical approach would be justified for the simple reason that the assumption of fact made by the High Court is not borne out from record. No material was placed before the High Court to justify the conclusion that 30th of June of the relevant year was 'always' fixed as the cut-off date in the past. The High Court's assumption of fact is, therefore, based on no evidence at all. We have, therefore, thought it fit to permit the State Government to place material on record to justify its contention that the High Court had committed a grave error in assuming that in the past the cut-off date was always fixed as 30th of June of the rele- vant year.

It was next contended that this Court should not inter- fere in exercise of its extra-ordinary Jurisdiction under Article 136 of the Constitution. In support of this conten- tion reliance was placed on the observations of this Court in Municipal Board. Pratabgarh & Anr. v. Mahendra Singh Chawla & Ors., [1982] 3 SCC 331 wherein this Court while correcting an error of law refused to interfere with the decision of the High Court directing reinstatement of the workman on the finding that the termination order was in- valid. That was, however, a case where the Court came to the conclusion that the employee was a capable hand and his services were actually needed by the appellant Municipal Board. It was in those special circumstances that this Court while correcting the error refused to interfere with the order of reinstatement. The decision, therefore, turned on the special facts of that case.

The appellant invited our attention to two decisions of this Court, namely, Union of India & Anr. v. M/s. Pararnes- waran Match Works & Ors., [1975]1 SCC 305 and Uttar Pradesh Mahavidyalaya Tadarth Shikshak Niyamitikaran Abhiyan Samiti, Varanasi v. State of U.P. & Ors. [1987] 2 SCC 453 in sup- port of its contention that the High Court was in error in holding that the State had acted arbitrarily in fixing the cut-off date. In the first mentioned case by Notification No. 162 dated 21st July, 1967, which superseded the earlier notifications, provision was made that if a manufacturer gave a declaration that the total clearance from the factory will not exceed 75 million matches during a financial year, he would be entitled to a concessional rate of duty.This Notification was amended by Notification No.205 dated 4th September, 1967, clause (b) whereof confined the concession, inter alia to factories whose total clearance of matches during the financial year 1967-68, as per declaration made by the manufacturer before 4th September, 1967, was not estimated to exceed 75 million matches. Thus, the conces- sional rate of duty could be availed of only by those who made the declaration before 4th September, 1967. The re- spondent was not a manufacturer before 4th September, 1967 as he had sought for a licence on 5th September, 1967 and was therefore, in no position to made the declaration before 4th September, 1967. The respondent, therefore, challenged the cut-off date of 4th September, 1967 as arbitrary. Deal- ing with the contention, this Court observed as under:

"In the matter of granting concession or exemption from tax, the Government has a wide latitude of discretion. 1t need not give exemption or concession to everyone in order that it may grant the same to some. As we said, the object of granting the concessional rate of duty was to protect the smaller units in the industry from the competition by the larger ones and that object would have been frustrated, if, by adopting the device of fragmentation, the larger units could become the ultimate beneficiaries of the bounty."

While pointing out that a classification could be rounded on a particular date and yet be reasonable, this Court observed that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless the circum- stances show it to be capricious or whimsical. When it is necessary for the legislature or the authorities to fix a line or a date and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or authority must be accepted unless it is shown to be capri- cious or whimsical or wide off the reasonable mark. In the second mentioned case this Court, while upholding the con- stitutional validity of section 31-B of the U.P.Higher Educational Service Commission Act, 1980, answered two contentions, namely, (1) adoption of the cut-off date in the said section as 3rd January, 1984 for the purposes of regu- larisation of the services of ad-hoc teachers appointed by the management of the affiliated colleges was arbitrary and irrational and violative of Article 14 inasmuch as equals were treated as unequals, and (ii) the Legislature could not arbitrarily adopt 3rd January, 1984 as the cut-off date for regularisation of the services of ad-hoc teachers merely because that was the date on which the 1983 order expired. Agreeing with the High Court that the fixation of the date for the purposes of regularisation was not arbitrary or irrational, this Court observed that

the object of section 3 I-B was to regularise the services of ad-hoc teachers ap- pointed under the 1983 order till 3rd January, 1984.Ad-hoc teachers who had been appointed prior to that date had legal sanction and therefore they constituted a distinct class. This Court, therefore, felt that the legislature could not have adopted any other basis for purposes of regularisation and refused to interfere with the High Court's order. In the present case as pointed out earlier the past practice was to fix the last date for receipt of applica- tions a month or one and a half months after the date of actual publication of the advertisement. Following the past practice the State Government fixed the last date for re- ceipt of applications as 31st January 1988. Those who had .... the required experience of three years by that date were, therefore, eligible to apply for the posts in question. The respondents and some of the intervenors who were not completing the required experience by that date, therefore, challenged the fixation of the last date as arbitrary and violative of Article 14 of the Constitution. It is obvious that in fixing the last date as 31st January, 1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to inter- fere since its interference is based on the erroneous belief that the past practice was to fix 30th of June of the rele- vant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g., the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc. It is not the case of any one that experienced candi- dates were not available in sufficient numbers on the cut- off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from 31st January, 1988 to 30th June, 1988 is no reason for dubbing the earlier date as arbitrary or irrational. We are, therefore, of the opinion that the High Court was clearly in error in striking down the Government's action of fixing the last date for receipt of applications as 31st January, 1988 as arbitrary. It was lastly contended that the State Government had given an undertaking to the High Court that 'no appointment shall be made from any previous panel and that, as decided by this Court, if the panel, which is likely to be prepared pursuant to the advertisement in question, is allowed, appointments shall be made from the same panel or if that panel is not allowed and a new panel is required to be prepared, as directed by this Court, appointments shall be made from the same panel'. This undertaking, in our opinion, cannot preclude the State from challenging the decision of the High Court.

In the result, this appeal succeeds. The impugned deci- sion of the High Court is set aside and the Writ Petition which has given rise to this appeal will stand dismissed with no order as to costs throughout.

Y. Lal Appeal allowed.