Supreme Court of India
Ranjan Kumar vs State Of Bihar & Ors on 16 April, 1947
Author: .....J.
Bench: Dipak Misra, M.Y. Eqbal

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 4455-4458 OF 2009

Ranjan Kumar etc. etc. ... Appellants

Versus

State of Bihar & Ors. ...Respondents

WITH

CIVIL APPEAL NOS. 4459-4462, 4463-4466, 4471-4474, 4467-4470, 4477-4480 AND 4475-4476 OF 2009

J U D G M E N T

Dipak Misra, J.

In these appeals, assail is to the judgment and order dated 19.9.2003 passed by the High Court of Judicature at Patna in a batch of letters patent appeals whereby the Division Bench has concurred with the opinion expressed by the learned Single Judge wherein he had quashed the appointment of a number of appointees in respect of the post, namely, Medical Laboratory Technician (MLT) on the ground that the procedure adopted for selection was vitiated as the candidates were selected only by interview without holding any written test though the past practice was to conduct an examination and thereafter hold interview for selection; that the interview was held in a hurried manner; and that the posts being technical in nature, holding of an examination was warranted.

2. We need not state the facts in detail. Suffice it to say that in pursuance of an advertisement issued by the concerned department of the State Government, 182 persons were appointed on the post of MLT. The writ petitioners who participated in the interview could not be selected as they obtained lesser marks than the successful candidates. Their failure necessitated them to knock at the doors of the High Court and the learned Single Judge, as has been stated hereinbefore, accepting the grounds put forth, quashed the selection.

4. Learned counsel for the appellants have raised two principal contentions, first, most of the appellants herein were not impleaded as respondents before the High Court and without taking note of the said aspect the High Court has invalidated the selection and nullified their appointments which is violative of the principles of natural justice; and second, all the private respondents who were writ petitioners before the High Court having participated in the interview which was the procedure adopted, could not have challenged the said process in a court of law because of their failure, for the same is not permissible in law.

4. On a perusal of the orders impugned, we find that only 40 persons were made respondents before the High Court and hardly a few appointees filed applications for intervention. It is well settled in law that no adverse order can be passed against persons who were not made parties to the litigation. In this context, we may refer with profit to the authority in Prabodh Verma and others v. State of Uttar Pradesh and others[1], wherein a three-Judge Bench was dealing with the constitutional validity of two Uttar Pradesh Ordinances which had been struck down by the Division Bench of the Allahabad High Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India. In that context, a question arose whether the termination of the services of the appellants and the petitioners therein as secondary school teachers and intermediate college lecturers following upon the High Court judgment was valid without making the said appointees as parties. Learned Judges observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects; the core defect was that of non- joinder of necessary parties, for respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers and those who were vitally concerned, namely, the reserve pool teachers, were not made parties — not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. Thereafter the Court ruled thus: -

> "The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

5. In the case at hand neither any rule nor regulation was challenged. In fact, we have been apprised that at the time of selection and appointment there was no rule or regulation. A procedure used to be adopted by the administrative instructions. That apart, it was not a large body of appointees but only 182 appointees. Quite apart from that the persons who were impleaded, were not treated to be in the representative capacity. In this regard, it is profitable to refer to some authorities. In Indu Shekhar Singh and others v. State of U.P. and others[2] it has been held thus: -

> "There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority."

6. In Km. Rashmi Mishra v. M.P. Public Service Commission and others[3], after referring to Prabodh Verma (supra) and Indu Shekhar Singh (supra), the Court took note of the fact that when no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.

7. In Tridip Kumar Dingal and others v. State of West Bengal and others[4], this Court approved the view expressed by the tribunal which had opined that for absence of selected and appointed candidates and without affording an opportunity of hearing to them, the selection could not be set aside.

8. In Public Service Commission, Uttaranchal v. Mamta Bisht and others[5] this Court, while dealing with the concept of necessary parties and the effect of non-implementation of such a party in the matter when the selection process is assailed, observed thus: -

> "....in Udit Narain Singh Malpaharia v. Board of Revenue[6], wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'Code of Civil Procedure') provides that non- joinder of necessary party be fatal. Undoubtedly, provisions of Code of Civil Procedure are not applicable in writ jurisdiction by virtue of the provision of Section 141 Code of Civil Procedure but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat[7], Babubhai Muljibhai Patel v. Nandlal Khodidas Barot[8] and Sarguja Transport Service v. STAT[9])"

9. In J.S. Yadav v. State of Uttar Pradesh and another[10] it has been held that no order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. It was further held that the litigant has to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity.

10. In Vijay Kumar Kaul and Ors. v. Union of India and Ors.[11] it has been ruled thus:

> "Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the Appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant."

11. Recently in State of Rajasthan v. Ucchab Lal Chhanwal[12], it has been opined that: -

> "Despite the indefatigable effort, we are not persuaded to accept the aforesaid preponement, for once the Respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice."

12. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners.

13. The next submission which has been presented before us is that when the respondents had appeared in the interview knowing fully well the process, they could not have resiled later on or taken a somersault saying that the procedure as adopted by the department was vitiated. In this connection, it is apt to refer to the principle stated in Om Prakash Shukla v. Akhilesh Kumar Shukla and others[13], in the said case a three-Judge Bench, taking note of the fact that the petitioner in the writ petition had appeared for the examination without protest and filed the petition only after he realized that he would not succeed in the examination, held that the writ petitioner should not have been granted any relief by the High Court.

14. In this context, we may quote a passage from Madan Lal v. State of J & K[14] with profit: -

> "It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

15. In Chandra Prakash Tiwari and others v. Shakuntala Shukla and others[15], the Court observed as follows: -

> "34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

16. In Union of India & Ors. v. S. Vinod Kumar & Ors.[16], the Court reiterated the principle that it is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.

17. Thus, the twin contentions proponed by the learned counsel for the appellant deserve acceptation and, accordingly, we allow the appeals and, ex consequenti, the judgment and order passed by the Division Bench in the batch of appeals and the judgment and order passed by the learned Single Judge in C.W.J.C. No. 2130 of 1999 are set aside. There shall be no order as to costs.

.....J.

[Dipak Misra] .....J.

[M.Y. Eqbal] New Delhi;

April 16, 2014.

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[1] (1984) 4 SCC 251
[2] (2006) 8 SCC 129
[3] (2006) 12 SCC 724
[4] (2009) 1 SCC 768
[5] (2010) 12 SCC 204
[6] AIR 1963 SC 786
[7] AIR 1965 SC 1153
[8] (1974) 2 SCC 706
[9] (1987) 1 SCC 5
[10] (2011) 6 SCC 570
[11] (2012) 7 SCC 610
[12] (2014) 1 SCC 144
[13] 1986 (Supp) SCC 285
[14] (1995) 3 SCC 486
[15] (2002) 6 SCC 127
[16] AIR 2008 SC 5

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