Supreme Court of India
State Of Bihar vs Kaushal Kishore Singh & Ors on 10 April, 1997
Bench: K. Ramaswamy, D.P. Wadhwa

PETITIONER:
STATE OF BIHAR

Vs.

RESPONDENT:
KAUSHAL KISHORE SINGH & ORS.

DATE OF JUDGMENT: 10/04/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R O R D E R Impleadment application is dismissed.

This appeal by special leave arises from the judgment of a learned single Judge of the Patna High Court made on February 17, 1986.

A few admitted facts are sufficient for disposal of this appeal. Recruitment to the Class III posts in several categories in the State of Bihar was advertised by the Bihar State Selection Service Board. Large number of candidates applied for selection. There were 1005 posts in all, initially 978 and subsequently 127 posts were included. For 7 categories of posts, special educational qualification of graduation with Commerce, Science, Economics and Mathematics has been prescribed. For 3 categories of posts only general educational qualifications have been prescribed, All are required to have graduation degree as a minimum educational qualification. before selection of the candidates, the pay structure of some of the posts underwent drastical change. Some of the posts carrying higher pay scale, prior to the advertisement, were lower grades with lesser scale of pay while some of the posts due to Pay Commission recommendations were increased. Be that as it may, when the selection was made and appointments were sought to be made of the selected candidates as per the affidavit filed in this regard, on a direction given on July 30, 1987, the Government claimed that "the Board considered candidates for various posts as per availability at the time and recommended candidates strictly on the basis of pay scale, academic qualifications of job requirements. The High

Court proceeded on the premise that no merit list was prepared and the candidates who had aptitude certain job or entitlement are required to be considered for appointment. Options had not been called for. Therefore, the selection and appointment of the candidates without preparing merit list and without calling for the option is arbitrary, violating Article 14 of the Constitution.

The question, therefore, is: whether the view taken by the High Court is correct in law? When we asked the learned counsel for the appellant to place before us the merit list substantiate the stand taken in the affidavit filed in that behalf, the learned counsel is unable to place before us the merit list except the publication in the newspaper that candidates were selected on the basis of the merit. In view of the finding recorded by the High Court that no merit list was prepared and in spite of the opportunity having been given, the Government failed to substantiate that the merit list was in fact prepared, we find it difficult to accept the averments made in the affidavit. Under these circumstances, we proceed on the premise that the merit list has not been prepared and the selection to be made on the basis of educational qualification, required for the job and in some Departments on the basis of pay scales available at that time. In this scenario, the question arises: whether appointment of the candidates is valid in, law? When the Service Commission or the Board selects the candidates, the normal criteria required of is to prepare of the list of the candidates selected in the order of their merit and then recommends to the Government for appointment to the post advertised for. In that behalf, it is always upon to the executive to allot the selected candidates in the particular categories of services in the order Of merit prepared and recommended as per the procedure and application of poster and reservation and on the basis thereof appointments be made to the respective Departments. Of course, it would be subject to the fulfilment of the qualifications prescribed for the post. Since the Government has not satisfied us as to have adopted this rationale, the appointment of selected candidates by pick and choose is an arbitrary exercise of the power Under these circumstances, the arbitrariness is writ large.

Accordingly the recommendation in respect of the allotment and appointment of selected candidates is per se illegal. It is true that the High Court has pointed out that options are to be called for and the selection is to be made on the basis of the options given. We do not find that the criteria laid down by the High court is correct in law. Even if options were called for and given, it is not mandatory for the option of candidates is only a discretionary matter and the Government is not bound to select the candidates on the basis thereof. Under these circumstances, the candidates is who applied for, though opted for, have no acquired rights, much less indefeasible and absolute right for selection or appointment to a particular post. As stated earlier, the Government have to prescribe an objective and rational method or manner of allotment of the candidates selected to the Departments , depending upon their job necessity and requirement. Since the objective and rational criteria was not followed, we decline to interfere with the impugned order Passed by the High court .

The Government is directed to act in the light of the law laid down in this order. This direction would apply only to those cases where the appointments have not become final and the pending matters would be disposed of in the light of this direction.

The appeal is disposed of accordingly but without any order as to costs.