

Seema Pandit Vs Bihar College Service Commission and Others

Court: Jharkhand High Court

Date of Decision: Dec. 15, 2009

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Judgement

Amareshwar Sahay, J.
Heard the parties.

2. The prayer of the petitioner in this writ petition is to direct the respondents to consider her case for appointment on the second post or on third

post of Lecturer in the Department of Zoology as recommended by the Bihar Public Service Commission in Bokaro Mahila College, Bokaro, an

affiliated College (now under Vinoba Bhawe University). Further prayer of the petitioner is that if she is appointed on the post of Lecturer in

Zoology, she may be treated senior to the respondent No. 3 namely Usha Rani.

3. The petitioner's case is that she is a holder of first class Post Graduate Degree i.e. M.Sc. (Zoology) and she is also having Degree of B.Ed.. In

the year 1994, Bihar College Service Commission published an advertisement inviting applications for appointment to various posts including three

posts of Lecturer in Zoology in Bokaro Mahila College. Pursuant thereto, the petitioner applied having requisite qualification for appointment as a

Lecturer in Department of Zoology.

4. The petitioner was interviewed by the Bihar College Service Commission and thereafter, her name was recommended as a second name against

the second post and as first name against the third post. The grievance of the petitioner is that despite all the above facts, the Governing Body of

Bokaro Mahila College did not appoint her either on the second or third post. One Smt. Achala Barla, whose name was recommended as first

name against the second post, though was appointed but she did not join. Her further grievance is that one Ms. Usha Rani, who was below in

panel against the third post, was appointed by the Governing Body ignoring the case of the petitioner as she was placed at Serial No. 1 in the panel

for the third post. The claim of the petitioner is that the Governing Body of the College was bound to accept the recommendation of the Bihar

College Service Commission in order of preference. Without appointing the petitioner who was placed at Serial No. 1 in panel, in order of

preference, Ms. Usha Rani could not have been appointed against the third post since she was below in panel.

5. Though the petitioner made representation but nothing was made in the matter and thereafter, she also filed a representation before the

Chancellor of the University but no order has been passed. She further alleges that one Sanjiv Kumar - Respondent No. 4, who was appointed

purely on temporary basis as a Lecturer in Zoology on temporary post, though neither his name was recommended by Bihar College Service

Commission nor he was having the requisite qualification. According to her, a temporary appointment can be made only for a period six months

but wrongly and illegally, the Respondent No. 4 - Sanjiv Kumar is still continuing in service.

6. The Respondent No. 2 - Bokaro Mahila College has filed a counter affidavit which has been duly sworn by the Principal of the College and it

has been stated that since representation of the petitioner before the Chancellor is still pending and, therefore, this writ petition is not maintainable.

Further, it has been stated that after creation of the new State of Jharkhand in the year 2000, the recommendation of the Bihar College Service

Commission is not binding and further that the recommendation of the College Service Commission is directory and not mandatory. The Governing

Body of the College resolved to appoint the Respondent No. 2 against the third post as he was already working in College.

7. Regarding appointment of Respondent No. 4 - Sanjeev Kumar, it is stated that his appointment was made purely on temporary basis by the

Governing Body after following Selection Process prescribed under the Statute and Rules. The advertisement was published in the year 1999 for

appointment of Lecturer on temporary basis and accordingly, the Respondent No. 4 was appointed on 12.12.1999.

8. Lastly it is stated that the panel on the basis of which the petitioner is basing her claim for appointment was prepared in the year 1997 by Bihar

College Service Commission and now the same has lost its force since it lapsed after one year. Now the same cannot be given effect to at this

belated stage.

9. The University i.e. the Respondent No. 6 has also filed counter affidavit and has stated that in the matter of appointment in an affiliated College

like the present Bokaro Mahila College, the University has no direct role to play. It is for the Governing Body of the College to make appointment

on the basis of recommendations made by the College Service Commission. The University has also stated in the counter affidavit that

recommendation for appointment sent prior to reorganisation of the State of Jharkhand is neither binding on the newly created State of Jharkhand

nor on the University or on the concerned College.

About the appointment of Respondent No. 4 - Sanjeev Kumar, it is stated in the counter affidavit of the University that while passing speaking

order in pursuance to the direction of this Court in C.W.J.C No. 2744/1999 (R) Anand Mohan v. Vinoba Bhawe University and Ors. the Vice

Chancellor has been pleased to give specific direction to the College to immediately terminate the services of all those teachers who have not been

appointed on the recommendation of the College Service Commission and reminders to that effect has also been given to the College vide letter

dated 07.06.2004.

10. The Respondent No. 3, though has appeared through her counsel and filed counter affidavit, but when the present case was taken up, Mr.

R.C.P. Sah, learned Counsel appearing on her behalf stated that he has no instructions in the matter and, therefore, he is not appearing for the

Respondent No. 3.

From the counter affidavit filed by the Respondent No. 3, it appears that she has stated therein that she was validly appointed on 15.11.1997 and

from that day, she is continuing as a Lecturer in Bokaro Mahila College and, therefore, at this belated stage, the validity of her appointment cannot

be questioned by the petitioner. It is further stated in the counter affidavit that since the representation of the petitioner is still pending before

Chancellor of the University and, therefore, this writ petition is not maintainable.

11. The Respondent No. 4 has also filed counter affidavit and his stand is in the same line to that the Respondent No. 3.

12. Learned Counsel appearing for the petitioner cited the decision of the learned Single Judge of this Court in the case of Lal Bahadur Prasad v.

Bihar College Service Commission and Ors. reported in 2001 (2) JCR 230 From perusal of the aforesaid Judgment, it appears that the said case

was also relating to appointment of Lecturer in Bokaro Mahila College and in that case also, the appointment made by the Governing Body of the

College of a candidate whose name was empanelled at Sl. No. 2 and ignoring the case of the candidate who was placed at Sl. No. 1 in the panel,

the person placed at Sl. No. 2 was appointed, which was challenged before this Court. This Court, by Judgment referred to above, after relying

the decision of the Patna High Court in the case of Trilokinath Upadhyaya v. Chairman Bihar College Service Commission and Ors. C.W.J.C. No.

9819 of 1998, held that the appointment of the second candidate on the post of Lecturer in the College ignoring the recommendation of the

Commission is bad in law. This Court held that the Governing Body of the College has acted illegally and arbitrarily and his action is malafide in

appointing the persons below in panel ignoring the case of the candidates whose names appear at top of the panel.

13. From Annexure-2 to the writ petition, it appears that Bihar College Service Commission recommended the names of the candidates for filling

up the two posts of Lecturer in the Department of Zoology in the following manner in order of preference.

1st Post:

(i) Delip Kumar - 1st Preference.

(ii) Smt. Achala Barla (Kujur) - 2nd Preference.

2nd Post:

(i) Smt. Achala Barla (Kujur) - 1st Preference.

(ii) Smt. Seema Pandit - 2nd Preference.

3rd Post:

(i) Smt. Seema Pandit - 1st Preference.

(ii) Smt. Usha Rani : - 2nd Preference.

14. This recommendation by Bihar College Service Commission, Patna was made on 12th March, 1997 and the Respondent No. 3 - Usha Rani

was appointed on 15.11.1997 by Notification as contained in Annexure-E to the Counter Affidavit filed by the Respondent No. 3. From perusal

of which, it appears that against the first post, one Shri Dilip Kumar was appointed whereas, against the second post, Smt. Achala Barla (Kujur)

was appointed. Admittedly, Achala Barla (Kujur) did not join the post.

15. From the pleadings of the parties, it does not appear that anybody was appointed against the second post i.e. in place of Smt. Achala Barla.

Nothing has been stated either in the counter affidavit of the Respondent No. 2 - Bokaro Mahila College or in the counter affidavit of the

respondent Nos. 3 and 6 i.e. the University that as to why and for what reason, the case of the petitioner was not considered for appointment

either against the second post or against the third post. The stand of the Bokaro Mahila College in the counter affidavit is that the recommendations

made by the College Service Commission is not mandatory rather it is directory.

16. This stand of the College is totally illegal. The case of Lal Bahadur Prasad (Supra) relates to this very Bokaro Mahila College, where this

Court has already held after relying on the decision of the Supreme Court as well as of the Patna High Court that the Governing Body has to make

appointment as per recommendations of the Commission. When the Commission or the Board selects a candidate in order of merit then the

appointment has to be made strictly in order of merit or as recommended by the Commission. The authority cannot alter the order of merit except

for valid reason. The learned Single Judge relied on the decision of the Supreme Court in the case reported in Jatinder Kumar and Others Vs.

State of Punjab and Others,

17. In view of the decision of this Court, the plea taken by the Bokaro Mahila College that the recommendations of the Commission is directory

and not mandatory, is not only illegal but is contemptuous also.

18. The plea of Bokaro Mahila College that the recommendation made by Bihar College Service Commission is not binding on it after coming into

force of Bihar Reorganisation Act, 2000 because the College in question is situated in the State of Jharkhand.

This plea is liable to be outrightly rejected on the ground that the order for appointment of the respondent No. 3, which was made in the year

1997, i.e. prior to coming into force of Bihar Reorganisation Act, 2000. If the recommendation of Bihar College Service Commission would have

been made after 15th November, 2000 i.e. the date on which the State of Jharkhand was created, then the respondents could have raised this

point but as it appears, the recommendation of Bihar College Service Commission was made in the year 1997 and appointment was also made in

the year 1997 and therefore, it cannot be said that the said recommendation was not binding on the College or the University.

19. The appointment of respondent No. 3 was contrary to the recommendation made by the Bihar College Service Commission and, therefore,

the same is held to be illegal in view of the reasons already stated hereinabove.

20. I find that respondent No. 4 was appointed temporarily for a period of six months. The University has already asked the College in question to

terminate all those teachers who are continuing beyond the period of six months in case they have not been appointed on regular basis against the

sanctioned post. In such a situation, if the Respondent No. 4 is still continuing in service in Bokaro Mahila College without being appointed on

regular basis against the vacant sanctioned post as per the provisions of the University Act, as alleged by the petitioner, then her continuance is also

illegal and invalid. The Governing Body of the College must take immediate action by issuing consequential orders.

21. So far the prayer of the petitioner that she be considered for appointment as a Lecturer in Zoology in the College concerned, in my view, such

relief cannot be granted at this stage after a lapse of about 12 years.

22. In view of the reasons stated above, the appointment of Respondent No. 3 - Usha Rani as a Lecturer in Bokaro Mahila College is hereby

quashed. The Governing Body of Bokaro Mahila College is hereby further directed to take appropriate steps in accordance with law for filling up

the post of Lecturers in the Department of Zoology so that the students may not suffer.

23. With this observations and directions this writ petition stands allowed to the extent indicated above. However, in the facts and circumstances

there shall be no order as to costs.