

(1994) 07 PAT CK 0006

Patna High Court

Case No: C.W.J. No. 7803 of 1992

Dr. Indihar Kumari

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision: July 27, 1994

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1995) 1 BLJR 150 : (1995) 1 PLJR 312

Hon'ble Judges: K. Venkataswami, C.J; B.P. Singh, J

Bench: Division Bench

Judgement

V. Vakataswami C.J.

1. The petitioner herein has filed this application under Articles 226 and 227 of the Constitution of India by way of public interest litigation to direct the respondents to hold interview for selection of Lecturers for Plus Two System (Intermediate Standard) as promised in the advertisement in accordance with the advertisement published in local newspaper of Patna on 26-1-1991.

2. It is an admitted fact that an advertisement as mentioned above was published for the appointment of Lecturers in Government High Schools for plus Two System for the subjects mentioned in the advertisement. The grievance of the petitioner is that though the advertisement was published and in respondent that thousands of candidates applied by spending not less than Rs. 120/- each, the respondents have not taken steps to conduct interviews for selecting the candidates. It is again an admitted fact that it is the second respondent who has published the advertisement in question calling for the applications.

3. The second respondent has filed a counter stating that due to the interference by the Government which has directed the second respondent Act to send any further panel until further direction, the second respondent had no other alternative

"except to stop its hands under the said direction".

4. The first respondent, however, in the counter affidavit, after noticing the statement of the second respondent in the counter affidavit as mentioned above, has explained the position by stating as follows:

That it is stated that the Director (Secondary Education) cum-Joint Secretary, Government of Bihar, Patna-vide his letter No. 12 dated 8.1.87 directed the Vidyalaya Seva Board for empanelling 184 posts of Lecturers and vide subsequent letter No. 501 dated 28.6.88 requisition for empanelling of successful candidates for 408 posts, i.e., requisition for 592 posts in all were sent. No further direction was ever issued or any requisition was made for empanelling further candidates for purposes of imparting + 2 teaching in 21 selected subjects by the State Government to the Vidyalaya Seva Board.

That it is stated that as per the requisition for preparation of the panel, the Vidyalaya Seva Board advertised the posts of Lecturers and after the conclusion of the process of preparation of the panels, four panels of successful candidates in Physics, Chemistry, Ancient History and Mathili were sent in the year 1988 and 1989. Out of these four panels, Lecturers were appointed against four sanctioned posts in 148 upgraded + 2 Schools. Due to financial stringency, no additional post of Lecturers could be sanctioned by the State Govt. during the Financial year 1990-91.

That it is stated that the Vidyalaya Seva Board without obtaining prior approval of the State Govt. read verities the posts of Lecturers in the remaining subjects vide Advertisement No. 1/91. Such publication of Advertisement by the Vidyalaya Seva Board Was made without any requisition from the State Govt. which necessitated issuance of letter No. 88 dated 18.2.91 and thereby, for want of sanction of further posts, the "Vidyalaya Seva Board was restrained from sending any further panels to the State Govt. The Board was also directed not to finalise any panel without prior permission from the State Govt.

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That it is stated that due to paucity of fund, no extra post of lecturers could be created or sanctioned by the State Govt. But after due consideration, in the interest of +2 teaching in more subjects the Government surrendered the posts of two Heads of the Department in the upgraded 148 Schools and 148 posts each in Biology and Mathematics in the 148 + 2 Schools were created-vide letter Nos. 74 and 75 dated 31.3.92. Thereby no additional financial burden was imposed on the Government.

That it is submitted that the State Government at present is not in a position to sanction posts of Lecturers in other remaining subjects due to paucity of funds, but teaching in +2 schools is being imparted with the help of qualified post graduate teachers available in Secondary Schools as was earlier decided by the Government, a

reference to which has already been made in paragraph No. 15 of this show-cause petition. The allegation of unsatisfactory teaching in the Schools as made in the petition is baseless.

5. It is now clear from the above extracts of the counter affidavit filed on behalf of the first respondent that the second respondent, without following the procedure, has released the advertisement calling for applications for appointment of Lecturers in Government High School for Plus Two System. Having regard to the averments made by the first respondent in the counter-affidavit (extracted above), this Court cannot compel the respondents to proceed further pursuant to the advertisement in question for selection of candidates. At the same time, the second respondent cannot be allowed to retain the amount collected by it by way of sale of Application Forms and application fees in the form of Bank Draft or Indian Postal Order.

6. The second respondent, in the counter affidavit filed on 3-5-1994, has stated in paragraph 8 as follows:

That all the amounts received through Bank draft and Indian Postal Orders along with the application forms were deposited in the Bank Account and General Post Office account of Vidyalaya Seva Board and thereafter no any instruction by the Government has been received in this regard.

The second respondent is not at all justified in releasing the advertisement without getting prior approval of the first respondent. The second respondent has no right to retain the amounts collected by way of sale of application forms and application fees, amounting to Rs. 120/- from each candidate. It is also clear from the counter-affidavit filed on behalf of the first respondent that there is no scope for taking further steps for conducting interview pursuant to the advertisement in question. We, therefore, direct the second respondent to refund the said amount of Rs. 120/- to all the candidates, within three months from this date and report compliance of this direction within one week thereafter. In case the money has been handed over to the first respondent during the pendency of this writ petition, the first respondent should make the refund as directed above, and report such compliance to this Court within the week therefrom.

6. This writ petition is ordered accordingly and the respondent is directed to pay the costs of this writ petition to the petitioner. Counsel's fee Rs. 1,000/-.