

(2000) 04 PAT CK 0124

Patna High Court

Case No: C.W.J.C. No. 9819 of 1998

Triloki Nath Upadhyia

APPELLANT

Vs

The Chairman, Bihar College
Service Commission and Others

RESPONDENT

Date of Decision: April 5, 2000

Acts Referred:

- Bihar College Service Commission Act, 1976 - Section 2

Citation: (2000) 4 PLJR 353

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: Awadhesh Kr. Mishra and Raj Kr. Pd, for the Appellant; Yugal Kishore, B.N. Sharma, G.P. Sinha and Choudhary S.B., for the Respondent

Final Decision: Allowed

Judgement

S.J. Mukhopadhaya, J.

The case relates to appointment to the post of Lecturer in an affiliated College, under J.P. University, namely, Dr. P.N. Singh Degree College, Chapra. The admitted facts show that the College made requisition to fill up three posts of Lecturer (History), in pursuance of which the Bihar College Service Commission (Commission for short) issued Advertisement No. 598/94 in newspapers "AAJ" & "HINDUSTAN". The petitioner along with others, including 5th Respondent, Abha Singh and 6th Respondent. Rajendra Kishore Gokul applied in pursuance of said advertisement. The petitioner received interview letter dated 9th August, 1996 and appeared in interview on 18th September, 1996. On such interview and selection, the Commission made recommendation, vide letter no. 1406 dated 20th November, 1997. Against the first post, one Dr. Gajendra Prasad Singh recommended as first nominee and petitioner-Triloki Nath Upadhyia, recommended as 2nd nominee. Against the 2nd post, the petitioner recommended as first nominee and 5th Respondent, Abha Singh as 2nd nominee. For the third post, the 5th Respondent,

Abha Singh recommended as first nominee and the 6th Respondent, Rajendra Kishore Gokul as second. Thereafter, while the petitioner reported the College for acceptance of appointment, no formal order having issued in his favour and joining having not accepted, the present writ petition was preferred.

2. The main plea taken by the petitioner is that his name having recommended as first nominee for (he 2nd post, the other Respondent could not have been appointed, giving preference over the petitioner. It was accepted by the parties that the name of the petitioner was placed above 5th and 6th Respondent in the merit list prepared by the Selection Committee, which was the basis for recommendation made by the Commission.

3. On notice, the 5th and 6th Respondent appeared, as also the Commission and the University.

The Governing Body of the College, which was impleaded as party- respondent through the Convenor/Secretary, as 3rd Respondent, did not choose to appear in spite of notice.

In fact, the Commission and the University are the formal parties, as the appointment orders in pursuance of recommendation made by the Governing Body of the College in favour of 5th and 6th Respondents against the 2nd and 3rd posts.

4. According to the 5th Respondent, she was appointed as temporary Lecturer on 10th March, 1991 by the Convenor of the College. Since then, she is continuing. For regular appointment, advertisement having issued in 1994, she applied and being eligible and having recommended, she has been provided with regular order of appointment by the Governing Body, in its meeting dated 7th December, 1997, as approved by the University, vide letter no. 33 dated 21st January, 1999.

5. Similar plea has been taken by the 6th Respondent. According to him, he was appointed as temporary Lecturer in the College on 23rd December, 1985 in pursuance of advertisement published in the newspaper "THE INDIAN NATION" dated 27th September, 1984. Such temporary appointment was made on the recommendation of a Selection Committee and since December, 1985 he is continuing. For the said reason, the Governing Body decided to provide regular appointment/ regularise the services of 6th Respondent, as approved by the University, vide letter dated 20th January, 1999.

6. The counsel for the Respondents mainly placed reliance on sub-sections (9) and (10) to section 2 of the Bihar College Service Commission Act, 1976 (Bihar Act 26 of 1976).

In support of action taken by the Governing Body in preferring 5th and 6th Respondents in the matter of regular appointment as Lecturers of the College, it was submitted that the Commission was to recommend the names of two persons for every post, but it is for the Governing Body to accept one of them. The only

requirement, on such appointment, was required to obtain approval of the University, which has been obtained in the present case.

It was also submitted that the 6th Respondent being a member of Backward Category (Annexure-II), one post is to be reserved against which the petitioner cannot be appointed.

7. The question arises as to whether the Governing Body of an affiliated College can make appointment of the 2nd nominee, in spite of the preference shown by the Commission on the basis of best qualification of a candidate. If so, whether it should be based on some reasonable criteria or not.

8. There is no provision laid down for appointment as Lecturer on temporary basis, except an appointment by way of ad hoc arrangement for six months. u/s 57 of Bihar State Universities Act, 1976, such appointment of teachers in affiliated College is to be made on the recommendation of the Commission and power delegated to the Governing Body u/s 57A of the said Act.

9. The Commission is required to make recommendations of two persons for every post arranged in order of preference, out of which the Governing Body is to make appointment and no person whose name not recommended by Commission can be appointed by the Governing Body. This will be evident from sub-sections (9) and (10) of section 2 of Bihar College Service Commission Act, 1976, as quoted hereunder:

(9) The Commission shall recommend for appointment to every post of teacher names of two persons arranged in order of preference and considered by the Commission to be the best qualified therefore. The recommendation shall be valid for one year from the date of the recommendation by the Commission.

(10) In making any such appointment the Governing Body of the college shall, within three months from the date of the receipt of the recommendation under sub-section (9), make its selection out of the names recommended by the Commission, and in no cases shall Governing Body appoint a person who is not recommended by the Commission.

10. The question as to whether a person selected by Commission has a right to be appointed, fell for consideration before the Supreme Court in [Jatinder Kumar and Others Vs. State of Punjab and Others](#), . Therein, the Supreme Court held that a person whose name is recommended, cannot claim appointment as a matter of right, but it further held that the appointment is to be made strictly adhering to the order of merit, as recommended by the Commission.

11. In the case of [State of Bihar Vs. Kaushal Kishore Singh and others](#), , the Supreme Court held that when a Commissioner Board selects the candidates, the normal procedure is to prepare list of candidates selected in the order of their merit.

In the case of *Chancellor v. Shankar Rao and Ors.*, (1999) 6 SCC 255 , the Supreme Court held that the Chancellor even cannot reevaluate the merits of candidates and on that basis cannot reject the candidates selected by the Board of Appointment, except in a case where recommendation made in violation of provisions of Act or Statute.

12. The question as to how far the recommendation of Commission is binding on Government, fell for consideration before the Full Bench of Madhya Pradesh High Court in [Omprakash Vs. The State of Madhya Pradesh and Another](#), . In the said case, the Full Bench of the said Court held that the vacancies if filled up on the basis of recommendation of Commission, it must be strictly in accordance with the list sent by the Commission and the authority cannot act the order of merit. It cannot appoint No. 2, ignoring No. 1, unless for other good reasons No. 1 is found unsuitable for appointment, for instance, bad character or conduct.

13. It will be evident from sub-sections (9) and (10) of section 2 of Bihar College Service Commission Act. 1976 that two names for one post the Commission is liable to send, in order of merit, giving preference to the meritorious one. It is not in dispute that the name of petitioner was preferred over Respondents 5 and 6 and reflected in the panel prepared by the Commission.

14. In the aforesaid circumstances, the Governing Body had no option, but to appoint the candidate on the basis of preference, as recommended by the Commission and had no right to choose the second candidate preferring over the first.

15. There is nothing on the record to suggest that the petitioner was preferred over 5th and 6th Respondents in the matter of appointment by the Commission, is not eligible nor such plea taken by the Respondents. It is not the case that recommendation so made by the Commission is against any Act/Law or Statute. Nothing alleged against the past conduct of the petitioner and thereby no reason shown by the Governing Body in preferring the 5th and 6th Respondents over the petitioner in the matter of appointment.

16. The only plea taken by the Respondents is that they were working in the College as temporary Lecturers since before, so they were preferred, but such plea cannot be accepted, as the 5th and 6th Respondents had not accrued any right for regularisation under the Statute against their respective posts.

17. If the aforesaid submission is accepted, it will frustrate the selection, as not only the less meritorious persons will be preferred over more meritorious, but will also debar outsiders from appointment, though there is no preference shown in favour of any one or other temporary employees in the matter of appointment, except, who has a right to be absorbed under regularisation Statute.

18. The relevant provisions of Bihar State Universities Act fell for consideration before Division Bench of this Court in Sri Chandra Bhushan Prasad Singh vs. Chancellor, Bihar University, reported in (1979) B.B.CJ. 384.

In the said case, the matter of appointment of Lecturer by Governing Body or Syndicate on the recommendation of Commission, the Court held that the appointment has to be made in order of recommendation. Such appointment has to be also approved by the Chancellor.

19. In the aforesaid circumstances, the Governing Body of the College had no jurisdiction to over-look the recommendation made by the Commission by superseding more meritorious candidate i.e. the petitioner, giving preference to the lesser one i.e. the 5th and 6th Respondents.

For the said reason, one of the 5th or 6th Respondent is to make room for appointment of petitioner. Normally, on the basis of recommendation, the 6th Respondent, Rajendra Kishore Gokul is to make room to accommodate 5th Respondent in his place and thereby to accommodate the petitioner in place of 5th Respondent. No benefit of reservation can be allowed in favour of 6th Respondent, the 3rd post having not shown to be reserved for B.C. (Annexure-II), but seems to be unreserved, as name of 5th Respondent has also been recommended as first nominee for the said post.

20. In the result, I declare the decision of the Governing Body dated 9th December, 1997, so far as 5th and 6th Respondents are concerned, as illegal and set aside the approval as given by the University in their favour, vide impugned letter no. 33 dated 21st January, 1999.

The case is remitted to the Respondents, including the Governing Body of the College to provide appointment against 2nd post of Lecturer (History) in favour of petitioner and thereby to appoint the 5th Respondent against the 3rd post of Lecturer (History) to be made within two months from the date of receipt/production of a copy of this order.

21. The University is to ensure compliance of this order, failing which it may take appropriate action against the College Body, including de-affiliation of the College. The writ petition is allowed with the aforesaid observations and directions.