

Letters Patent Appeal No.10 OF 2000

Against the judgment and order dated 27.11.1999 passed by a Single Judge of this Court in C.W.J.C.No. 1565 of 1999.

GEETA KUMARI----- (Appellant)
Versus
SMT.MANJULA SINHA & ORS----- (Respondents)

For the appellant : Mr. Abhay Singh, Sr.Advocate, &
Mr. Sanjay Kr. Griyaghe, Adv.

For respondent no.1: Mr. Keshav Srivastava, Sr. Adv. &
Mr. Arvind Kr. Verma, Adv.

P R E S E N T

THE HON'BLE MR. JUSTICE SHIVA KIRTI SINGH
THE HON'BLE JUSTICE MRS. REKHA KUMARI

Shiva Kirti Singh &
Rekha Kumari, J.J., Heard the parties.

2. The appellant was respondent no.5 in the writ petition bearing C.W.J.C.No. 1565/1999 which has been allowed against her by the judgment and order under appeal dated 27th November, 1999. The writ petitioner (respondent no.1) had preferred the writ petition for quashing of a part of the memo dated 10.12.1998 (Annexure 1 to the writ petition) issued by the Bihar College Service Commission (hereinafter referred to as 'the Commission') by which the writ petitioner had been placed as the second nominee for the first post of lecturer in the Department of Psychology in Ran Vijay Smarak College, Chas, Bokaro in pursuance to an advertisement of 1989. The writ petitioner claimed that she should have been the first nominee in the recommendation made by the Commission in place of respondent no.5 (appellant herein) on the sole ground that respondent no.5 did not have the minimum requisite educational qualification for appointment as a lecturer in terms of the advertisement of 1989. By the order under appeal not only the claim of the writ petitioner that she should be treated as the first nominee for the first post has been accepted but she has also been declared senior to respondent no.5 as a lecturer in the Department of Psychology in the concerned college.

3. There is no controversy between the parties on the relevant facts and it is an admitted position that on the last date or the closing date for filing application i.e. on 30.1.1990, the appellant did not possess the requisite educational qualification in terms of advertisement of 1989. The defence of the appellant as a respondent in the writ petition was based upon a notice published in the newspaper on 6.11.1993, as contained in Annexure 4 to the writ application, whereby the Commission informed the concerned members of the public that all those who were unable to submit their applications pursuant to the advertisement of 1989 by the last date i.e. 30th January, 1990, they could submit their applications in the prescribed form in the office of the Commission by 16.11.1993. The notice further mentioned that all other terms and conditions shall remain the same. According to the appellant, the said notice amounted to a fresh advertisement inviting applications from the eligible applicants till 16.11.1993 and therefore, even those who had applied earlier in terms of the advertisement of 1989 but were ineligible at that time became entitled to be treated as eligible applicants if they had, like appellant, acquired the necessary educational qualification before 16.11.1993.

4. Learned counsel for the appellant has submitted that the Writ Court after going through the records of the Commission has come to the conclusion that the appellant had applied only once prior to 30th January, 1990 in terms of the advertisement of 1989. According to the learned counsel for the appellant, since the notice, contained in Annexure 4, permitted only those who had been unable to submit their applications by 30th January, 1990, therefore, the Commission had indicated that those who had already applied were not required to apply again by the extended date i.e. 16.11.1993. According to the learned counsel for the appellant, other members of the public who may have acquired necessary qualification even up to 16.11.1993 had been invited and permitted

to apply by 16.11.1993 and therefore, the notice, contained in Annexure 4, should be treated as a fresh advertisement in respect of the same first post with a rider that those who had already applied need not apply and on such interpretation of Annexure 4 the appellant got a right to be considered against the first post advertised in the year 1989 although she was not having the requisite qualification till 30th January, 1990 but acquired the same before 16.11.1993.

5. On the other hand, learned counsel for respondent no.1 (writ petitioner) has submitted that a careful reading of the notice/ press communiqué, contained in Annexure 4 to the writ application, would disclose that it was not by way of fresh advertisement but was merely a limited concession to such persons who were willing but had been unable to submit their application forms by 30th January, 1990. Only such persons were permitted to submit their applications by 16.11.1993. According to the learned counsel for respondent no.1, the notice, contained in Annexure 4, was in exceptional circumstances as explained by the respondent Commission in its counter affidavit particularly in paragraphs 15 to 20. Those paragraphs disclose that on account of advertisement of posts in the affiliated colleges there was an agitation by the Teachers Association of affiliated colleges, who did not want to face interview. They wanted withdrawal of the advertisements and because of such agitation, the State Government issued directions and the Commission had to stop accepting fees and forms of candidates even before the last date for receiving applications. This led to filing of a writ petition by one of the intending candidate for a direction to the Commission to accept the fees and forms and as a result of directions in the said writ application the Commission had to issue a notice only for extending the last date for receiving application and forms of the eligible candidates.

6. On going through the materials on record, particularly the contents of Annexure 4 and the counter affidavit of the Commission, we are of the view that Annexure 4 was not a fresh advertisement in respect of the first post in the Department of Psychology in the college concerned and therefore, the extended date for filing applications by the intending candidates could not extend the date of eligibility of the candidates in terms of the advertisement. The general rule that where date of acquiring qualification is not mentioned in the advertisement then the last date for filing applications shall be accepted to be such date has no application where there is no fresh advertisement and for some unforeseen reason through a fresh notice the last date is extended to meet extraordinary situations.

7. In view of the aforesaid discussions and finding we find no good reason to interfere with the judgment and order of the Writ Court whereby it has directed that the writ petitioner shall be considered to be the first nominee of the Commission against the first post and shall be treated to have been appointed against the first post in the Department of Psychology.

8. However, we find substance in the submission advanced on behalf of the appellant that the seniority between the writ petitioner and the appellant was not an issue raised in the writ application and hence, an observation in the last paragraph of the judgment and order under appeal regarding inter se seniority between the writ petitioner and the appellant should not be affirmed. It appears that as temporary lecturer in an affiliated college the appellant has continued in the college from before and since there was no issue raised directly in respect of inter se seniority between the contesting parties, we are of the view that the observations contained in the judgment and order under appeal in respect of seniority shall be of no consequence and if need arises the contesting parties will be at liberty to get the matter

relating to inter se seniority decided afresh in accordance with law.

9. The appeal is dismissed with the aforesaid directions and observations.

(Shiva Kirti Singh,J.)

(Rekha Kumari,J.)

PATNA HIGH COURT
Dated: 25th April,2008
Surendra/ AFR.

