AARAV JAIN

v.

THE BIHAR PUBLIC SERVICE COMMISSION & ORS.

(Civil Appeal No. 4242 of 2022)

MAY 23, 2022

[S. ABDUL NAZEER AND VIKRAM NATH, JJ.]

Service Law – 30th Bihar Judicial Service Examination – Recruitment of Judicial Officers – Rejection of Candidature – Non-production of original certificates at the time of interview – Bihar Public Service Examination Commission (BPSC) issued an advertisement for conducting examination for 349 posts of Civil Judge (Junior Division) – After conducting the examination, Commission issued appointment letter to the successful candidates in order of merits – Candidature of eight candidates (Appellants) was cancelled by Commission for want of non-production of original certificates – Appellants have scored higher marks from the last selected candidates in their respective categories – Appellants approached the High Court by way of different petitions, which were dismissed – On appeal, held: It is evident that self-attested copies of the certificates required were submitted by the appellants at the time of their interview and even the originals were later on submitted within a few days – It is not the case of the respondent that any of these certificates referred to were found incorrect – It is only this technical ground of not producing the original certificate at the time of the interview that the candidature of these appellants was rejected – The rejection of the candidates was improper, unjustified and not warranted.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4242 of 2022.

From the Judgment and Order dated 04.05.2021 of the High Court of Patna in Writ Petition (Civil) C.W.J.C. No. 24282 of 2019.

With

Civil Appeal Nos. 4243, 4244, 4246, 4245 and 4247 of 2022.

R. Balasubramanian, Gopal Sankaranarayanan, Mrs. Anjana Prakash, Vijay Hansaria, Sr. Advs., Sachin Sharma, Rahul Gaur, Satyavrat

A Sharma, Anil Kumar Gulati, Ms. Pooja Dhar, Ms. Ishita Chowdhury, Varun Singh, Nitin Saluja, Abhijeet Kumar Pandey, Raman Kr. Singh, Tungesh, Saket Singh, Ms. Sangeeta Singh, Ms. Somyashree, Mrs. Niranjana Singh, Navin Prakash, Samir Ali Khan, M/s. Parekh & Co., Gaurav Agrawal, C. George Thomas, Anuj Prakash, Kumar Mihir, Shantanu Sagar, Shashank Shekhar, Anil Kumar, Gunjesh Ranjan, Advs. for the appearing parties.

The Judgment of the Court was delivered by

VIKRAM NATH, J.

1. Leave granted in all the Special Leave Petitions.

2. For recruitment of 349 posts of Civil Judge (Junior Division), the Bihar Public Service Commission issued an Advertisement No. 6 of 2018, dated 23.8.2018 for conducting 30th Bihar Judicial Services Examination. The break-up of the 349 posts is as follows:

i. General/unreserved (01) – 175 posts

ii. SC (02) – 56 posts

iii. SC (03) – 03 posts

iv. EBC (04) – 73 Posts

v. Backward Class (05) – 42 Posts

3. After conducting the Screening Test, Written Test and Interview, the Commission vide letter dated 02.12.2019 recommended names of 349 candidates in order of merit. According to the figures available, out of the 349 recommended candidates, four candidates did not turn up for counselling. As such appointment letters were issued on different dates from January, 2020 to December, 2020 to 345 candidates. Further out of these 345 candidates, three candidates did not turn up for joining. As such the candidature of seven candidates was cancelled by the State Government vide orders issued on different dates. The Appellants had admittedly secured higher marks than the last selected candidates in their respective categories but the Commission had cancelled their candidature for want of fulfilment of the conditions required as per the interview call letter.

4. One of the conditions required was to submit the originals of certificates detailed therein which included educational certificates, Caste

certificates if claiming any benefit of reservation, No Objection Certificates of previous employer, Character Certificate of the last attended College/University and other certificates of residence etc. at the time of interview. Some of the candidates could not produce the original Certificates as required, as a result of which their candidatures were cancelled by the Commission vide their meeting dated 27.11.2019. In its 102nd meeting of the Commission organised on 27.11.2019, the eligibility of the candidates on the basis of their educational certificates, mark sheets, documents etc. presented at the time of the interview which was conducted in between the dates of 21.10.2019 to 27.10.2019 under the 30th Bihar Judicial Service Examination (Advertisement No. 06/2018), the Commission examined the short comings and the non-fulfilment of the requirement of the production of the original documents/certificates at the time of the interview and after dealing with each of the candidates, found deficit in fulfilling the said requirement and cancelled the candidature of as many as 58 candidates for different reasons.

5. Some of these candidates approached the Patna High Court by way of different Writ Petitions, either singly or jointly. Division bench of the Patna High Court vide Judgment impugned did not find favour with such candidates and dismissed their petitions. Aggrieved by the Judgment of the Patna High Court, the present Special Leave Petitions have been preferred by eight candidates. It is not in issue that the ground for rejection of the candidature of these candidates was only and only non-production of the original Certificates. The Commission has admitted these eight Appellants before us have scored higher marks from the last selected candidates in their respective categories.

6. Out of these eight candidates, five namely Mayank Kumar Pandey (SLP (C) No. 15819/21), Aarav Jain (SLP (C) No. 10776/21), Ashish Chandra (SLP (C) No. 16198/21), Siddharth Sharma (SLP (C) No. 11089/21) and Sanjay Kumar Mishra (SLP (C) No. 11089/21) belong to the General/ Unserved Category. Sumit Kumar (SLP (C) No. 15809/ 21) belongs to the EBC Category, Anita Kumar (SLP (C) No. 809/22) belongs to SC Category and Anand Raj (SLP (C) No.15819/21) belongs to BC Category.

7. With respect to these 8 candidates named above, the following shortcomings/deficiencies were noticed by the Commission in its meeting dated 27.11.2019:

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i. Aarav Jain failed to produce the original character certificate from the last attended College/University (his name finds place at Sr. No. 1 in the list of decision dated 27.11.2019).

ii. Anand Raj also failed to submit the original character certificate issued from the College/University last attended (his name

B finds place at Sr. No. 10 in the list of decision dated 27.11.2019).

iii. Sumit Kumar failed to produce the original copy of degree of law (his name finds place at Sr. No. 19 in the list of decision dated 27.11.2019).

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iv. Sanjay Kumar Mishra failed to produce the original of the No Objection Certificate from his previous employer (his name finds place at Sr. No. 26 in the list of decision dated 27.11.2019).

v. Anita Kumar although had applied under the category of SC (female) but she submitted the caste certificate issued in the year 2002 which contained the name of her husband, at the

D time of the interview, however, later on she sent the caste certificate mentioning the name of her father also on 13.11.2019 (her name finds place at Sr. No. 29 in the list of decision dated 27.11.2019).

vi. Siddharth Sharma failed to produce the original certificate

E relating to affiliation of his educational institution last attended with the Bar Council of India and secondly, the original of the character certificate issued from the College/University last attended (his name finds place at Sr. No. 36 in the list of decision dated 27.11.2019).

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vii. Ashish Chandra did not submit the original character certificate and the certificate related to the affiliation of the educational institution last attended (his name finds place at Sr. No. 55 in the list of decision dated 27.11.2019).

viii. Mayank Kumar Pandey did not submit original character

G certificate and certificate of affiliation of the last attended College/University. He had, however, submitted the character certificate issued by the Additional Commissioner, Commercial Tax (his name finds place at Sr. No. 56 in the list of decision dated 27.11.2019).

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8. A perusal of the minutes of the meeting dated 27.11.2019 and the specific averments contained in the respective petitions, it is evident that self-attested copies of the certificates required were submitted by the appellants at the time of their interview and even the originals were later on submitted within a few days and in any case before the meeting of the Commission took place on 27.11.2019. These facts are not disputed or denied by the respondents.

9. It would be worthwhile to mention here that as per the conditions mentioned in the advertisement for any government employment, there is always a clause that in the certificate/testimonies, if information furnished by any candidate is found to be incorrect at a later stage, during any enquiry, the candidature for such candidates is liable to be cancelled. It is not the case of the respondent that any of these certificates referred to in the decision dated 27.11.2019 have been found to be incorrect. It is only this technical ground of not producing the original certificate at the time of the interview that the candidature of these appellants had been rejected even though they had scored higher marks in their respective category from the marks obtained by the last selected candidate.

10. We had required the Commission and the State to place on record the number of available vacancies in different categories, so as to consider in case the appellants succeed whether they could be placed in their respective categories. The information which has been placed on record by the State of Bihar reflects that there are 5 vacant posts in the General Category and that there are no vacancies in EBC, SC and BC categories as against the Advertisement No. 6 of 2018.

11. In so far as the remaining two vacances were concerned, they had been filled up by two candidates viz. Swati Chaturvedi (from the wait list) and Rakesh Kumar (who could not join within the time allowed) under orders passed by the High Court and this Court. The writ petition of Swati Chaturvedi being CWJC No.3952 of 2020 was allowed by the Division Bench of the High Court vide judgment dated 01.03.2021 and the SLP (C) No.11174 of 2021 filed by the State of Bihar was dismissed by this Court on 30.07.2021. In so far as Rakesh Kumar is concerned, his petition being CWJC No.3835 of 2021 was dismissed by the High Court on 26.10.2021. This Court, however, allowed his Civil Appeal No.1517 of 2022 vide judgment dated 18.02.2022.

A 12. The submission advanced on behalf of the appellants is that all the Appellants had supplied attested true copies of the certificates/ documents as required. However, it was only the original of the same which could not be provided in time. It is further submitted that for submission of the originals, time was sought and later on the originals have been submitted. But despite the same, the Commission proceeded B to reject their candidature.

13. Another submission advanced on the behalf of the appellants is that the requirement to submit the originals is neither related to qualification or eligibility and in any case before appointment or during the course of probation a verification and vigilance report is always C obtained by the State. Therefore, non-furnishing of the original certificate at the time of interview cannot be held to be mandatory or in other words nothing turned upon it. Even if the original certificates/documents were not submitted at the time of interview, the government would still be getting a vigilance/verification check carried out.

D 14. Upon such submissions, it has been submitted that the decision of the Commission rejecting their candidature was per se illegal, unwarranted, unreasonable and too harsh. All the eight appellants who were duly qualified and duly selected have been deprived of their appointment as Judicial Officers. Admittedly, all the Appellants had secured E more marks than the last selected candidate in their respective category. It is further submitted that even the High Court committed an error in dismissing their petitions.

15. On the other hand, it has been submitted on behalf of the BPSC and the State that they could not relax any of the condition which F were mentioned in the advertisement or their brochure or the interview call letter at different stages. Any such relaxation would amount to not following their own prescribed procedure which was not within their domain. It is also submitted that appellants knowing fully well the condition regarding submission of the original Certificates/Documents at the time of interview having failed to do so, their candidature was rightly rejected.

G 16. Considering the facts and circumstances of the case, without entering into the respective argument we are of the considered view that the rejection of the candidates was improper, unjustified and not warranted. We have also taken note of the fact that there are vacancies available, which if filled up by meritorious candidates would only be an

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asset for the institution helping in disposal of cases pending in huge numbers.

17. The next aspect which needs to be considered is with respect to the adjustment of eight appellants against the vacancies of the Advertisement No. 6 of 2018. In so far as the five candidates of the unreserved categories are concerned namely, Mayank Kumar Pandey, Aarav Jain, Ashish Chandra, Siddharth Sharma and Sanjay Kumar Mishra, (according to the state five vacancies are available), they may be adjusted against these vacancies. The issue now remains with respect to the three candidates belonging to EBC, SC and BC category. For these three candidates, in the facts and circumstances of the case the State may either adjust them against future vacancies which we are told are available at present or the State may borrow three posts from future vacancies, one each in respective categories for the Advertisement No.06 of 2018. This would amount to varying the vacancies of the said advertisement which power always vests in the employer. We further leave it to the wisdom and discretion of the State to deal with the above aspect either in the manner mentioned above or any other mode which it may deem fit in order to accommodate the three appellants belonging to the EBC, SC and BC categories.

18. In the above arrangement, we make it clear it would not affect the appointment/selection of already serving Judicial officers appointed against Advertisement No. 6 of 2018.

19. The eight appellants would be entitled to their respective seniority as per their merit; however, they would not be entitled to any arrears of salary for the intervening period, but would be entitled to the same from the date of their joining. They would be forthwith allowed to join. All incremental and other benefits of the intervening period would be notionally available to them, but no arrears would be paid.

20. The appeals are accordingly allowed as above. The impugned decision of the Commission dated 27.11.2019 qua these appellants and the impugned judgments of the High Court are set aside. There shall be no order as to costs.

21. Pending application(s), if any, shall stand disposed of.

I.A. Nos. 54711 & 54713 of 2022

22. I.A.No.54711 is allowed. The intervenor Jyoti Joshi has prayed for directions to the effect that this Court may issue appropriate directions requiring the Respondents to give effect to the appointment of the applicant in pursuance of the judgment and order dated 09.02.2022 passed by the High Court of Judicature at Patna in CWJC No. 7751 of 2020 and for further direction to clarify that the order dated 23.07.2021 passed by this Hon'ble Court in SLP (C) No. 10776 of 2021 has not interfered with the process of appointment of applicant. In order to deal with this application, some additional facts need to be noted.

23. After the appointment letters were issued and 7 vacancies having fallen vacant against the Advertisement No. 6 of 2018 for the reason that 4 candidates did not participate in the counselling and 3 candidates did not join pursuant to their appointment, the State Government had cancelled candidature of these 7 candidates. In effect, out of 349 vacancies only 342 were filled up.

24. On the one hand, some of the candidates whose candidature was cancelled by the Commission vide its resolution dated 27.11.2019 had approached the High Court of Patna by way of different petitions. At the same time, another candidate from the waiting list namely Swati Chaturvedi filed a writ petition before the Patna High Court registered as CWJC No. 3952 of 2020 praying for appointment against the vacancies which had fallen vacant she being a candidate from the unreserved category in the waiting list. The Division Bench of the High Court vide judgement dated 01.03.2021 allowed the petition of Swati Chaturvedi and directed the State Government to send requisition for one post to the BPSC for recommending her name for appointment on the post of Civil Judge (Junior Division).

25. The State of Bihar filed SLP (C) No. 11174 of 2021 against the judgment and order dated 01.03.2021 in the case of Swati Chaturvedi which was dismissed *in limine* by this Court on 30.07.2021.

26. The Division Bench of the Patna High Court in the meantime on 04.05.2021 dismissed the petition of some of the present appellants and later on following the same other petitions of the other appellants were dismissed. In the present appeals, this Court while issuing notice in the first case i.e. SLP (C) No. 10776 of 2021 filed by Aarav Jain connected with SLP (C) No. 11089 of 2021 passed an interim order dated 23.07.2021 providing that 3 posts of Civil Judge (Junior Division)

in the category to which the petitioners belong were to remain vacant till the disposal of the instant petition. Further, similar interim orders followed on 08.10.2021 in SLP (C) No. 15809 of 2021, SLP (C) No. 16198 of 2021 and SLP (C) No. 15819 of 2021 providing for keeping 4 posts of Civil Judge (Junior Division) vacant till the disposal of the matter. And lastly on 07.02.2022, similar orders were passed in SLP(C) No. 809 of 2022 filed by Anita Kumar by keeping 1 post of Civil Judge (Junior Division) vacant till the disposal of the present petition in the category in which the petitioners belong.

27. The intervenor Jyoti Joshi filed a writ petition before the Patna High Court registered as CWJC No. 7751 of 2020. This petition was finally decided vide judgement of the Division Bench dated 09.02.2022 at a time when there were interim orders already passed by this Court right from 23.07.2021 till 07.02.2022. The Division Bench of the Patna High Court vide judgment dated 09.02.2022 allowed the said writ petition and directed the State Government to send the requisition for all the posts which have remained vacant due to non-joining of the recommended candidates and the BPSC was directed to recommend the name of the candidates from the combined merit list in order of merit for appointment against Advertisement No. 6 of 2018. The operative portion of the said judgment as contained in paragraph 62 thereon is reproduced below:

> "62. In result, I direct the State Government to send the requisition for all the posts which have remained vacant due to non-joining of the recommended candidates and the Bihar Public Service Commission (3rd Respondent) and it's authorities are directed to recommend the name of the candidates from the combined merit list/select list in order of merit for appointment on the post of Civil Judge (Junior Division) against Advertisement No.06 of 2018."

28. This Judgment dated 09.02.2022 and the directions contained therein were in direct conflict to the interim orders passed by this Court on 23.07.2021, 08.10.2021 and 07.02.2022. Apparently, these orders were not placed before the Division Bench, and in ignorance of the same the directions were issued. As such the BPSC has already moved an application to modify the judgment and order dated 09.02.2022 taking into consideration the interim order passed by this court referred to above. The said modification application is still pending before the High Court.

29. Thus, the application for directions filed by Jyoti Joshi seeking the directions as such cannot be granted nor can she claim parity or any

A benefit from the judgment of Swati Chaturvedi which was passed much before the impugned judgment of the Division Bench of the Patna High Court or the interim orders passed by this Court. Accordingly, the Interlocutory Application for directions stands rejected.

Ankit Gyan Appeals allowed.
(Assisted by : Rahul Rathi, LCRA)