State of Bihar and Others

Vs

Ramjee Prasad and Others

Civil Appeal No. 1837 of 1990

(A. M. Ahmadi, Smt. M. S. Fathima Beevi JJ)

11.04.1990

JUDGMENT

AHMADI, J. -

1. Delay condoned. Special leave granted.

2. This appeal arises out of the decision of the Patna High Court whereby it struck down the selection made for appointments in the junior teaching posts in medical colleges in the State and directed a fresh selection list to be prepared after shifting the last date for receipt of applications to June 30, 1988. The facts giving rise to this appeal, briefly stated, are as under.

3. The State of Bihar published an advertisement inviting applications for appointment to the posts of (i) Assistant Professor (clinical subject), (ii) Registrar, (iii) Assistant Clinical Pathologist, (iv) Anaesthetist, (v) Resident Medical Officer, and (vi) Demonstrator (Tutor) in non-clinical subject for different Medical Colleges and Medical College Hospitals in the State of Bihar. For the post of Assistant Professor only such officers who had worked as Resident or Registrar in Medical Hospitals recognised for imparting MBBS studies by the Medical Council of India and having three years experience of such post were considered eligible. The last date for receipt of the application was fixed as January 31, 1988. Pursuant to the said advertisement applications were received from eligible candidates and the select list or panel was prepared for appointments to the respective posts. The respondents and some intervenors who held appointments as junior teachers in one or the other Medical Colleges in the State questioned the validity of the State's action of inviting applications for preparation of a list for appointments to the advertised posts mainly on the ground that the last date for receipt of applications fixed as January 31, 1988 (hereinafter called the 'cut-of date') deprived them of the opportunity to compete for the posts as they did not complete the requisite experience criterion of three years by that time. It was contended that this cut-off date was arbitrarily fixed and was, therefore, violative of Article 14 of the Constitution. The High Court took the view that the State Government had deviated from its usual practice of fixing the cut-off date as June 30 of the relevant year. This is clear from the following observation made by the High Court :

> "..... advertisement in the past including one in the year 1983 (Annexure 1) always fixed June 31 as the date ....."

The use of the word 'always' indicates that the High Court was under the impression that in the past the cut-off date was always fixed as June 31 (it should be June 30) for the preparation of the panel for appointments to the posts in question. Elsewhere also in the judgment there are observations which disclose that the High Court laboured under the belief that the cut-off date was always fixed

as June 30, of the relevant year. This becomes obvious from the following criticism also :

> "If the State is determined to achieve such a goal and is ready to make its activity predictable it is a welcome sign but such desired predictability can equally be achieved by adhering to the schedule of the past and maintaining June 30 of the years as the last date for the application. If they had not followed any rule in the past and they propose to follow a rule in this regard in future, they can do so without causing any violation to any legal right of any incumbent by at least showing adherence to the reckoning date which until now had been the last date of the month of June of the year."

On this line of reasoning the High Court came to the conclusion that the State Government had acted arbitrary in fixing the last date for receipt of applications as January 31, 1988 under the advertisement published on December 29, 1987. The High Court while upholding the contention based on Article 14 further observed "we would have ignored the arbitrariness in taking January 31 of the year as the reckoning date had we not taken notice of recalcitrance of the respondents in taking no step in the years intervening the selection in the year 1983 and the present selection". The High Court, therefore, felt satisfied that there was no rationale in departing from the past practice and selecting January 31, 1988 as the last date. It felt that in all fairness June 30 of the year would be 'the preferable date' for reckoning the eligibility of the candidates. The State Government was, therefore, directed to shift the last date for receipt of the applications from January 31, 1988 to June 30, 1988 and to prepare fresh panel thereafter and make appointments to the posts in question therefrom.

4. The State of Bihar feeling aggrieved by this order has approached this Court by special leave. The learned counsel for the State submitted that the decision of the High Court was based on an erroneous premise that the cut-off date for eligibility purposes was 'always' fixed as June 30 of the relevant year in the past. In order to dispel this assumption made by the High Court without examining the past advertisements the State Government has placed before us the advertisements issued from 1974 to 1980 which show that different cut-off dates were fixed under these different advertisements and at no time in the past between 1974 and 1980 was June 30 fixed as the relevant date. It is true that the High Court did not have the benefit of the earlier advertisements but it is equally true that there was no material on the record of the High Court concluding that in the past the cut-off date was 'always' fixed as June 30 of the relevant year. From the copies of the advertisements from 1974 to 1980 it transpires that generally the cut-off date was fixed between one to one and a half months after the date of issuance of the advertisement. In the year 1983 for the first time the cut-off date was fixed as June 30, 1983. On some occasions in the past the cut-off date was extended, depending on the facts and circumstances obtaining at the relevant point of time. It, therefore, becomes obvious from this documentary evidence that the factual premise on which the High Court has based its judgment is clearly erroneous. The High Court was in error in thinking that in the past the cut-off date was always fixed as June 30 of the relevant year. In fact except for a solitary occasion in 1983 when the cut-off date was fixed as June 30, 1983, at no other time in the past was that date fixed as the last date for receipt of the applications. No advertisements were admittedly issued after 1983 and before the advertisement in question. The present advertisement was published on December 29, 1987 and the last date for receipt of applications was fixed thereunder as January 31, 1988 leaving a time gap of a little over a month. As pointed out earlier, on a perusal of the advertisements issued from 1974 to 1980 it becomes obvious that normally the cut-off date was fixed one or one and a half months after the date of advertisement. It was, therefore, not the uniform practice of the State Government to fix the cut-off date for eligibility purposes as

June 30 of the relevant year as was assumed by the High Court. Once it is found that the High Court has based its decision on an erroneous assumption of fact, the decision cannot be allowed to stand.

5. It was, however, argued by the learned counsel for the respondents that the State Government should not be permitted to introduce new facts in the from of advertisements issued from 1974 to 1980. We do not think that such a technical approach would be justified for the simple reason that the assumption of fact made by the High Court is not borne out from record. No material was placed before the High Court to justify the conclusion that June 30 of the relevant year was 'always' fixed as the cut-off date in the past. The High Court's assumption of fact is, therefore, based on no evidence at all. We have, therefore, thought it fit to permit the State Government to place material on record to justify its contention that the High Court had committed a grave error in assuming that in the past the cut-off date was always fixed as June 30 of the relevant year.

6. It was next contended that this Court should not interfere in exercise of its extraordinary jurisdiction under Article 136 of the Constitution. In support of this contention reliance was placed on the observations of this Court in Municipal Board, Pratabgarh v. Mahendra Singh Chawala ((1982) 3 SCC 331 : 1983 SCC (L&S) 19) wherein this Court while correcting an error of law refused to interfere with the decision of the High Court directing reinstatement of the workman on the finding that the termination order was invalid. That was, however, a case where the court came to the conclusion that the employee was a capable hand and his services were actually needed by the appellant-Municipal Board. It was in those special circumstances that this Court while correcting the error refused to interfere with the order of reinstatement. The decision, therefore, turned on the special facts of that case.

7. The appellant invited our attention to two decisions of this Court, namely, Union of India v. Parameswaran Match Works ((1975) 1 SCC 305) and Uttar Pradesh Mahavidyalaya Tadarth Shikshak Niyamitikaran Abhiyan Samiti, Varansi v. State of U. P. ((1987) 2 SCC 453 : (1987) 3 ATC 557) in support of its contention that the High Court was in error in holding that the State had acted arbitarily in fixing the cut-off date. In the first mentioned case by Notification No. 162 dated July 21, 1967, which superseded the earlier notifications, provisions was made that if a manufacturer gave a declaration that the total clearance from the factory will not exceed 75 million matches during a financial year, he would be entitled to a concessional rate of duty. This notification was amended by Notification No. 205 dated September 4, 1967, clause (b) whereof confined the concession, inter alia to factories whose total clearance of matches during the financial year 1967-68, as per declaration made by the manufacturer before September 4, 1967, was not estimated to exceed 75 million matches. Thus, the concessional rate of duty could be availed of only by those who made the declaration before September 4, 1967. The respondent was not a manufacturer before September 4, 1967 as he had sought for a licence on September 5, 1967 and was therefore, in no position to make the declaration before September 4, 1967. The respondent, therefore, challenged the cut-off date of September 4, 1967 as arbitrary. Dealing with the contention, this Court observed as under : (SCC p. 310 para 10)

> "In the matter of granting concession or exemption from tax, the government has a wide latitude of discretion. If need not give exemption or concession to everyone in order that it may grant the same to some. As we said, the object of granting the concessional rate of duty was to protect the smaller units in the industry from the competition by the larger ones and that object would have been frustrated, if by adopting the device of fragmentation, the larger units could become the ultimate beneficiaries of the bounty."

While pointing out that a classification could be founded on a particular date and yet be reasonable, this Court observed that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless the circumstances show it to be capricious or whimsical. When it is necessary for the legislature or the authorities to fix a line or a date and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or authority must be accepted unless it is shown to be capricious or whimsical or wide off the reasonable mark. In the second mentioned case this Court, while upholding the constitutional validity of Section 31-B of the U.P. Higher Educational services Commission Act, 1980, answered two contentions, namely, (i) adoption of the cut-off date in the said section as January 3, 1984 for the purposes of regularisation of the services of ad-hoc teachers appointed by the management of the affiliated colleges was arbitrary and irrational and violative of Article 14 inasmuch as equals were treated as unequals, and (ii) the legislature could not arbitrary adopt January 3, 1984 as the cut-off date for regularisation of the services of ad-hoc teachers merely because that was the date on which the 1983 order expired. Agreeing with the High Court that the fixation of the date for the purposes of regularisation was not arbitrary or irrational, this Court observed that the object of Section 31-B was to regularise the services of ad-hoc teachers appointed under the 1983 order till January 3, 1984. Ad-hoc teachers who had been appointed prior to that date had legal sanction and therefore they constituted a distinct class. This Court, therefore, felt that the legislature could not have adopted any other basis for purposes of regulations and refused to interfere with the High Court's order.

8. In the present case as pointed out earlier the past practice was to fix the last date for receipt of applications a month or one and a half months after the date of actual publication of the advertisement. Following the past practice the State Government fixed the last date for receipt of applications as January 31, 1988. Those who had completed the required experience of three years by that date were, therefore, eligible to apply for the posts in question. The respondents and some of the intervenors who were not completing the required experience by that date, therefore, challenged the fixation of the last date as arbitrary and violative of Article 14 of the Constitution. It is obvious that in fixing the last date as January 31, 1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc. It is not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from January 31, 1988 to June 30, 1988 is no reason for dubbing the earlier date as arbitrary or irrational. We are, therefore, of the opinion that the High Court was clearly in error in striking down the government's action of fixing the last date for receipt of applications as January 31, 1988 as arbitrary.

9. It was lastly contended that the State Government had given an undertaking to the High Court that 'no appointment shall be made from any previous panel and that, as decided by this Court, if the panel, which is likely to be prepared pursuant to the advertisement in question, is allowed, appointments shall be made form the same panel or if that panel is not allowed and a new panel is required to be prepared, as directed by this Court, appointments shall be made from the same panel.'

This undertaking, in our opinion, cannot preclude the State from challenging the decision of the High Court.

10. In the result, this appeal succeeds. The impugned decision of the High Court is set aside and the writ petition which has given rise to this appeal will stand dismissed with no order as to costs throughout.

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