

State of Bihar and others

Vs

Samsuz Zoha

Civil Appeals Nos. 7086-87 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

22.03.1996

JUDGMENT

1. Leave granted in SLP (C) Nos. 2383-2384 of 1996.
2. We have heard learned counsel on both sides.
3. A rather unfortunate situation has been created by the orders of the High Court in interfering with the appointments made on compassionate ground by the Government. These appeals by special leave arise from different orders of the High Court of Patna. The first batch taken up is of appeals arising out of SLP (C) Nos. 2383-84/96. In this case the Government had resolved to appoint on compassionate ground the dependent son or daughter of the deceased employee who died in harness. A long list of persons awaiting such appointments was prepared by the Co-operative Department. The Department recommended candidates for certain posts depending upon the qualifications etc. A committee was constituted by the Government consisting of the Secretary, Co-operative Department, Additional Secretary and the Registrar of the Co-operative Department. The Committee had first identified the vacant posts and then decided to make recommendations of the candidates. At that time since more than 40 posts of Class IV was available, the committee had recommended appointment of all the candidates as Class IV employees. It is also seen that 12 posts in Class III were available but they kept reserved for promotion from existing Class IV employees. The candidates who were appointed as Class IV approached the High Court by way of writ petition the first of which is CWJC No. 739/1991 titled Ghidharya Devi v. State of Bihar. The High Court by order dated August 26, 1991 directed the respondents to consider afresh their appointments to any one of the Class III posts either by promotion or fresh appointment whichever was possible in accordance with the rules and regulations. Feeling aggrieved, the respondents filed a Review Petition. After considerable delay, the Review Petition came to be dismissed and appointments were directed to be made by April 30, 1992. Consequently, the appellant did not come in appeal to this Court against that order which thus has become final. Following the above order directions have been given in respect of different persons who had filed separate writ petitions. In some of the cases the appeals have now come to be filed before us.
4. The question that arises for consideration is whether the High Court is right in giving directions to appoint them afresh or give them promotion? It is not in dispute that there is no right vested in the candidates for particular appointment on compassionate grounds. The State had taken policy decision to appoint all the candidates irrespective of the qualifications as Class IV post and, therefore, the committee consisting of the Secretary, Addl. Secretary and the Registrar met and decided the principle that all the available posts in Class IV should be made available to the candidates in the awaiting list for appointment on compassionate grounds. 12 posts available in

Class III were reserved for appointment by promotion to the Class IV candidates who were entitled thereto as per the rules. The principle adopted by the Government cannot be said to be unjustified or illegal. Undoubtedly, some candidates had gone to the Court and obtained orders and in compliance thereof, at pain of contempt petition, the Government, instead of appointing them to Class IV posts since by them the Class III posts were not available, upgraded Class IV posts as Class III posts and confirmed them as Class III employees. That order which was wrongly made by the High Court cannot be a base to issue directions. In other words, if the directions are complied with all the Class IV posts would be converted into Class III posts which is against discipline of the service. The High Court, therefore, was not justified in issuing directions in all the cases for appointment to Class III posts.

5. Appeals are accordingly allowed but in the circumstances without costs. It is needless to mention that their cases would be considered and appointment made against the available vacancy in the order of seniority to the Class IV posts.

6. Special Leave Petition is dismissed. Order accordingly.