

State of Bihar and Others

Vs

Bihar Rajya Sahkarita Prabandhak Seva Sangh, Patna and Others

Civil Appeal No. 7357 of 1996

(K. Venkataswami, S. R. Babu JJ)

20.08.1998

JUDGMENT

K. VENKATASWAMI, J.

Aggrieved by the direction given by the High Court in CWJC No. 2312 of 1991 directing the State Government to absorb Cooperative Managers against the equivalent posts in any other departments of the State Government in terms of the State Government's decision dated 6-9-1986, this appeal by special leave has been preferred.

2. This Court, after hearing learned Senior Counsel appearing for the appellants for some time, passed an order on 4-3-1998 for the consideration of the Government in the light of the human problem that arose out of the a judgment under appeal, which reads as follows :

"IA No. 5 for intervention is allowed.

We have heard Mr. S. B. Sanyal, learned Senior Counsel for the appellants, for some time.

Having regard to the fact that the respondents in whose favour the judgment under appeal has been given directing the absorption of persons appointed in the year 1973 and also having regard to the fact that some persons similarly situated having been absorbed pursuant to orders of the Court, we think that the Government can consider a via media in the following lines :

(1) Those who are in actual service as Paid Managers will be continued till they are absorbed in accordance with law as and when vacancies arise in various government departments and wherever necessary, relaxing the age to the extent possible. Wherever the age relaxation is not possible, for example, if the candidate is above 50, such candidates will be allowed to continue as Paid Managers till they reach the age of superannuation on the same terms and conditions on which they are now continuing.

(2) Those who appeared in the examination but could not succeed or could not get selected, they will also be continued as Paid Managers on the same terms and conditions and such candidates can also be permitted to sit for the subsequent examinations.

The State Government will also produce the recommendation, in particular, the list of names sent for absorption in various departments which is referred to in the earlier Division Bench judgment in para 38.

To consider the suggestion and comply with the direction, learned counsel wants some time to get instructions.

List on 22-4-1998 as part-heard."

3. Mr. Sanyal, learned Senior Counsel appearing for the appellants, informed the Court on the next date of hearing that the Government have accepted the suggestions given by this Court in its order dated 4-3-1998 and accepting the said suggestions, an additional affidavit was also filed on 17-4-1998. In the additional affidavit, it is stated as follows :

"1. That I am working as Deputy Registrar in the Department of Cooperative, Government of Bihar, Patna, and I am dealing with the above-mentioned case in my official capacity and as such, I am well acquainted with the facts and circumstances of the case. I have been authorised by the Secretary, Department of Cooperative, Government of Bihar, to swear an affidavit on behalf of the State.

2. That this affidavit is filed in compliance with the order dated 4-3-1998, the Hon'ble Supreme Court desiring via media to resolve the differences.

3. That irrespective of the change in policy decision with the Government dated 17-7-1991 as per letter of the Deputy Secretary to the Government, Department of Personnel and Administrative Reforms, to the Secretary, Cooperative Department (p. 86 of the SLP paper-book) the Paid Managers of the Society, being not government servants, their direct appointment as government employees by excluding the eligible candidates of the said appointment is not possible in view of Articles 14 and 16 of the Constitution and statutory rules and regulations relating to recruitment in government employment.

4. That this Hon'ble Court taking a humane approach desired :

(a) the Paid Managers will be continued till their absorption in accordance with the law as and when vacancies arise in various government departments by relaxing the age to the extent possible.

(b) wherever the age relaxation is not possible, they will continue as Paid Managers till the age of superannuation on the same terms and conditions on which they are now continuing.

(c) the Paid Managers who failed to pass the examination of recruitment as required to be held by the Public Service Commission, they will be given an opportunity to sit for the subsequent examination and till they pass the examination, they will continue as Paid Managers on the same terms and conditions.

5. That the State Government has considered the desire of this Hon'ble Court's order dated 4-3-1998 and is agreeable to resolve the dispute as suggested by the Court.

6. That the State Government is prepared to relax the age for appearing in the General Competitive Examination conducted by the Bihar Public Service Commission for filling up the vacancies of Class III posts up to the age of 50 years.

7. They will be able to avail three such examinations to make them eligible for appointment. This decision has been communicated by the Personnel and Administrative Reforms Department who are in charge of the recruitment to the government employment to Bihar Public Service Commission by Letter No. 3918, dated 11-4-1998. That Letter No. 3918, dated 11-4-1998 is annexed herewith and marked as Annexure A to this affidavit.

8. That the Paid Managers, who do not qualify for recruitment in government employment in accordance with law, their service as Paid Managers will continue on the same terms and conditions as is now prevailing. The same will be the fate of the Paid Managers who failed in all the three examinations referred above.

9. That the recommendation referred to in para 38 of the Division Bench judgment finds place at p. 83 of the SLP paper-book. The alleged decision of the Chief Minister referred to in the letter dated 6-9-1986 (p. 83 of the SLP paper-book) is in reality in a negotiation and discussion with the union of the Paid Managers, and the English translation of the minutes of the discussion is annexed herewith and marked as Annexure B to this affidavit.

10. That the list of the Paid Managers which was forwarded on 6-9-1986 for adjustment (recruitment) as per rules of the Government is annexed herewith and marked as Annexure C to this affidavit.

11. That in short, the Government is agreeable to give effect to the suggestion contained in the order dated 4-3-1998 passed by this Hon'ble Court."

4. Though the learned counsel appearing for the respondents, in particular Mr. Rakesh Dwivedi, learned Senior Advocate, after some arguments, substantially agreed with the concession shown by the State Government in the additional affidavit, pointed out that the respondents, who have been functioning as Paid Managers of various cooperative societies from 1974 onwards, cannot be asked to sit for examination in competition with young, new entrants for the purpose of absorption. In other words, the respondents having regard to their age and other family problems, may not be in a position to compete with the youngsters/new entrants. Therefore, it was submitted on behalf of the respondents that they must be treated as a separate category and if at all, a separate examination must be held for them to find out their suitability for absorption.

5. Mr. Sanyal, learned Senior Counsel for the appellants, submitted that any such further concession should not prejudice the interest of the new entrants as otherwise it will amount to violation of Articles 14 and 16 of the Constitution.

6. The submissions made on behalf of the appellants and the respondents deserve consideration, but some solution must be found out.

7. On the peculiar facts of this case, we are of the view that the following addition to the acceptance of the State Government as expressed in the additional counter-affidavit filed on 17-4-1998 would meet the ends of justice.

8. A reasonable number of posts available - including even those in the process of recruitment - be set apart for being filled up by the respondents. A separate recruitment test/examination be held. They cannot be asked to take the same examination prescribed for fresh candidates for entering the government service. The question paper(s) for the eligible respondents must be so prepared bearing in mind the conditions of the respondents such as age, past service, etc. After taking such examination(s), the eligible respondents may be absorbed subject to reasonable conditions as to their past service, seniority and pension.

9. In the result, we dispose of this appeal accepting the additional affidavit filed by the appellants with the addition or modification as mentioned above. We hope that the appellants would take steps as early as possible in the light of this judgment to absorb the respondents. No costs.