

# SUPREME COURT OF INDIA

Md. Muzaffar Alam

Vs.

State of Bihar

C.A. No. 6453 of 1997

(G.B. Pattanaik, S. R. Babu and B.N. Agrawal JJ.)

31.10.2000

## ORDER

1. This appeal is directed against the judgment of the Division Bench of the Patna High Court in CWJC No. 10489/94. The appellant who was a candidate for the post of Commercial Tax Officer applied to the Public Service Commission on the basis of the advertisement issued by the said Commission. He also appeared at the examination but as his results were not declared he made a request to the Public Service Commission to intimate him the marks he had secured in the said examination. Instead of intimating the marks to him, the Commission on the other hand issued a show cause notice to him indicating therein that since he had not been confirmed in the post in the Class-III on the 1st of April, 1991, he was therefore ineligible for being considered in terms of Rule 5 of the Bihar Finance Service (Appointment through Selection) Rules, 1990.

2. The appellant filed a reply to the Public Service Commission annexing the order of the State Government confirming him with effect from 1.12.1985 on expiry of two years of probation. The Commission however was of the view that this order of the State Government having been passed subsequently though having given retrospective effect the provisions of Rule 5 of the Recruitment Rules cannot be held to have been complied with and, therefore, he was ineligible for being considered for the post he applied for. The appellant thereafter approached the High Court. The High Court in the impugned judgment was of the opinion that since the appellant had not been confirmed till 1st of April, 1991, the subsequent order of confirmation giving it retrospective effect will not make him eligible for being considered for the post and therefore he was rightly not considered by the Public Service Commission. The High Court having dismissed the writ petition, the appellant is before us.

3. Mr. Dwivedi, the learned senior Counsel appearing for the appellant, contended that under the Rules, the probation period is only for two years and thereafter every employee is entitled to be confirmed, the Government itself realised this position and had passed order of confirmation though in the year 1994, but making the appellant confirmed w.e. f. the expiry of two years of the period of probation which was in December, 1985 and in this view of the matter, the Public Service Commission as well as the High Court were in error in coming to the conclusion that the appellant did not satisfy the requirement of Rule 5(iii) of the Recruitment Rules. Mr. Dwivedi also further contended that several others similarly situated have been considered by the Public Service Commission and have even been appointed and therefore the appellant should not be singled out.

4. Mr. B.B. Singh, the learned Counsel appearing for the State of Bihar, contended that no doubt the State Government has confirmed the appellant w.e. f. 1985 but, since such confirmation order had not been passed on the date required by the Public Service Commission, namely, 1.4.1991, the Commission was justified in not considering the appellant's case. Mr. V.R. Reddy, the learned senior Counsel appearing for the Public Service Commission, on the other hand, contended that the confirmation cannot be claimed as a matter of right or expiry of the period of two years and it would depend upon the factual order of confirmation and since the factual order of confirmation was not there on the cut off date, i.e., 1.4.1991, the Public Service Commission was justified in not considering the appellant eligible for the post in question. The fact remains that the statutory rule provides the period of probation for two years. It neither indicates that the period of probation can be continued nor does it indicate that confirmation is an automation after expiry of the period of probation. We are, therefore, unable to accept Mr. Dwivedi's contention that the employee is bound to be confirmed on the expiry of the period of probation. But, at the same time the State Government has confirmed the appellant w.e. f. December, 1985 and, therefore, on the cut off date i.e. 1.4.1991 if the confirmation order would have been passed the consideration of the appellant could not have been resisted. That apart, the appellant had never kept anything secret from the Public Service Commission and had clearly indicated in the application as to the correct state of affairs and that the matter of confirmation was pending before the State Government. Notwithstanding the same, the Public Service Commission did allow the appellant to appear at the interview and, therefore, when persons similarly situated have already been given the benefit of due consideration, excluding the appellant would be discriminatory and unreasonable. It is also brought to our notice that during the pendency of the writ petition in the High Court as well as the appeal in this Court a post has been kept reserved in the cadre of Commercial Tax Officer to be filled up in the event the appellant succeeds in this appeal.

5. In the aforesaid premises, exclusion of the appellant from consideration on merit cannot be sustained. We, therefore, set aside the impugned order of the High Court as well as the order of the Public Service Commission and direct that the Public Service Commission may consider the case of the appellant and declare his result within a period of two months from the date of receipt of this order, and if he is found successful, then the State Government would take steps for issuing the appropriate appointment orders within a period of two months thereafter. Be it stated that the appellant cannot claim appointment with retrospective effect in the year 1994 and it should be prospective.

6. This appeal stands disposed of accordingly.

C.A. Nos. 7386-7388 of 1997

7. In these appeals the appointment of several persons to the cadre of Commercial Tax Officer is under challenge. At the beginning of the hearing of these appeals, I.As. have been filed to implead the affected parties as parties to this proceeding. At this belated stage, we do not think it proper to allow the said applications. The I.As. accordingly stand rejected.

8. Since the affected parties are not before us, these appeals fail and we accordingly dismiss the same.

