

22/5/13

114

In the High Court of Judicature at Patna

The 10th day of May 2007

The Hon'ble Mr Justice Barin Ghosh Present:

AND

The Hon'ble Mr. Justice Navarati Prasad Singh of the Judges of this Court

Appeal from

Civil Review

arising out of Suit No. 299/99

Appeal

dt. 3/5/2000

L.P.A. No. 936 of 2000

200 of the Court of the

Hon'ble High Court Patna

29.7
13/6

Bihar State Subordinate Service Selection Board Examinee Contention through its President

Versus

The State of Bihar & ors.

Respondent

True copy of Court's order dt. 10/5/07 is enclosed herewith along with a dec dt. 3/5/00 passed in C. Rev. no. 299/99.

(Sd.)

Memo No. 2014.

Date: 01/6/07

(Sd.)

True Copy of Court's order dt. 10/5/07 is forwarded to the Secretary, Deptt. of Personnel & Administrative Reforms, Govt. of Bihar, old Secretariat, Patna for information and necessary action along with order dt. 3/5/2000 passed in Civil Review no. 299/99.

Deputy Registrar

Satyaprints-10,000

Sd/- K. K. Singh
28/5/07

B. Singh
30/5/07
M.A. D. (C)

1781
14.6.07
12.6.07

LPA NO. 936 of 2000

Against the judgment and order dated 03.05.2000 passed in Civil Review no. 299 of 1999.

Bihar State Subordinate Service....Appellant
Selection Board Examinees
Confederation.

Vrs.

The State Of Bihar & Ore.....Respondents

For the Appellant : M/s Basant Kumar Chaudhary
& Vikash Kumar

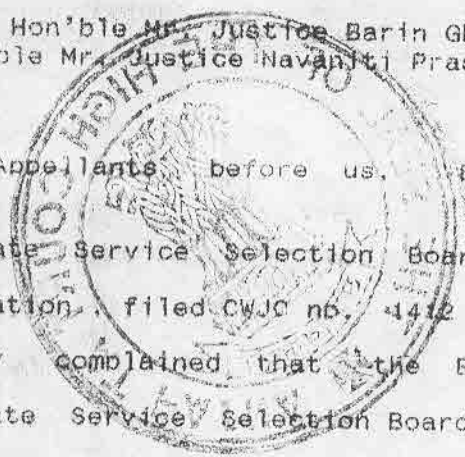
For the Respondents : Mr. Md. Nadim Serai

P R E S E N T

The Hon'ble Mr. Justice Barin Ghosh
The Hon'ble Mr. Justice Navaniti Prasad Singh

Barin Ghosh &
Navaniti Pd.Singh.JJ. Appellants, before us, Bihar State

Subordinate Service Selection Board Examinees
Confederation, filed CWJC no. 4412 of 1992. In
that they complained that the Bihar State
Subordinate Service Selection Board has issued
several advertisements inviting applications for
filling up vacant Class-III posts. It was stated
that after selection was completed, upon holding
written examination and interview, lists have
been prepared and when the listed candidates were
waiting for appointments, the Government of
Bihar, by a resolution taken on 22nd October,
1991, decide to abolish the Bihar State
Subordinate Service Selection Board and entrusted



the job of the said Board to the Bihar Public Service Commission. The appellants, therefore, contended that their fate is uncertain.

2. It would be seen from the said resolution dated 22nd October, 1991 that while the Bihar State Subordinate Service Selection Board was abolished by the said resolution, it directed that the result of the examinations conducted by the Board will be published on 27th February, 1992 and thereafter all personnel and assets of the Board shall be deemed to have been transferred to the Bihar Public Service Commission.

3. Taking note of the said resolution and considering the fact that a few more lists are on the pipe line, but have not yet been published, a Division Bench, after hearing the parties and at their suggestion, while disposing of CWJC no. 1412 of 1992, directed the Government to notify vacancy by 30th October, 1992 with a further direction upon the Bihar Public Service Commission to recommend, on the basis of the results of the examinations published prior to 22nd October, 1991. It is, thus, clear that whatever lists have already been published prior to 22nd October, 1991 those will be the lists, which shall be taken note of, and candidates from those lists shall be appointed to

fill up the vacancies to be notified by the State Government to Bihar Public Service Commission by 30th October, 1992.

4. MJC no. 242 of 1993 was filed contending that the said order of this court dated 30th September, 1992 passed in CWJC no.1412 of 1992 has not been obeyed. While considering the said contempt application, this court appointed Sri S.N. Biswas, the then Commissioner and Secretary to the Government, Department of Personnel and Administrative Reforms, to enquire into the correctness of the allegations made pertaining to examinations conducted by the Bihar State Subordinate Service Selection Board. Sri Biswas then submitted a report. In the report it was disclosed that the Bihar State Subordinate Service Selection Board illegally made selections.

5. Be that as it may, while the contempt application was pending, various examinees, who were represented by the appellants in CWJC no. 1412 of 1992, individually approached this Court by filing individual writ petitions and on those writ petitions various orders were passed. Some of which directed giving of appointments and some of which rejected the writ petitions. Many people got appointment. In relation to one of these matters, a special leave petition was filed before the Hon'ble Supreme Court. On 05th September, 1994 the said special leave petition

was dismissed. Later on in another writ petition, where the petitioner sought to be appointed as Assistant Jailor, the petitioner obtained a positive direction from this court to appoint him. At the instance of the Bihar Public Service Commission, the matter went before the Hon'ble Supreme Court, when the Hon'ble Supreme Court considered the report of Sri Biswas and directed that Bihar Public Service Commission shall not take any further action upon the lists prepared by Bihar State Subordinate Service Selection Board, nor recommend any name on different posts of Class-III from three lists. ^{From} a reading of the judgment of the Hon'ble Supreme Court rendered in the said case, i.e., the Bihar Public Service Commission Vrs. State of Bihar & Ors.; reported in 1997 (2) PLJR (10) SC, it would be evident that in the said case the Hon'ble Supreme Court was dealing with the lists prepared for appointment of Assistant Jailors and not of other lists.

6. When the said content application was taken up for hearing by a learned single Judge, His Lordships had occasion to deal with a writ petition registered as CWJC no. 5009 of 1993 filed at the instance of Union of Junior Field Investigator examinee batch of Bihar Public Service Commission.

7. While the court, by its judgment and order rendered on 30th March, 1999 dealt with CWJC no.5009 of 1993, it had also dealt with MJC no. 242 of 1993. A reading of this judgment would show that the court gave elaborate reasons for not upholding the contention of the union of Junior Field Investigator examinee batch of Bihar Public Service Commission and also refused to proceed further to enforce the order passed on 30th September, 1992 in CWJC no.1412 of 1992 principally on the ground that the Hon'ble Supreme Court in the case of Bihar Public Service Commission Vrs. State of Bihar & Ors. (Supra) directed Bihar Public Service Commission not to take any further action upon the lists prepared by the Bihar State Subordinate Service Selection Board. A reading of the judgment would show that the learned Judge felt that in view of such pronouncement by the Hon'ble Supreme Court, if the alleged contemners do not make recommendations on the basis of the lists prepared by the Bihar State Subordinate Service Selection Board, it cannot be said that the alleged contemners deliberately violated the order of the court and, accordingly, refused to punish the alleged contemners.

8. The present letters patent appeal against that order, according to us, is not maintainable. By the order, we do not think that the principal order passed in CWJC no.1412 of 1992 was altered or revised by the learned Judge.

By the impugned order, nothing was added or subtracted from the principal order. There is nothing in the impugned order by reason whereof the writ petitioners in CWJC no. 1412 of 1992 can be aggrieved. As a result we do not think that the present appeal is maintainable. It is our duty to point out that after the said order was passed, a special leave appeal was filed before the Supreme court when the Hon'ble Supreme Court permitted the petitioners to seek review of that order. Petitioners sought review of that order and the learned Judge by an order dated 03rd May, 2000 refused to review the order. Against that order also the present appeal has been filed. In as much as the appeal against the original order is not maintainable. We also feel that the appeal against the order refusing to review the original order is also not maintainable. In the review order the learned Judge indicated the reasons for not reviewing the order. The learned Judge has indicated that whatever point had been urged, those had all been decided in the earlier order. As aforesaid, the earlier order was passed while disposing of the contempt application as well as a writ petition. Accordingly, reasons given by the learned Judge for not entertaining the writ petition were sought to be canvassed as reasons for interfering with the principal order passed in CWJC no. 1412 of 1992, but as we have understood in the principal order as also the order passed, while rejecting the review application, the learned

Judge simply held that in view of the order of the Hon'ble Supreme court if the Bihar Public Service Commission does not make any further recommendation, not making of such recommendation cannot be treated as wilful or deliberate refusal to discharge obligations under the order dated 30th September, 1992 passed in CWJC no. 1412 of 1992.

9. The appeal, accordingly, fails and the same is dismissed.

Sd/-

(Barin Ghosh, J.)

Sd/-

(Navaniti Prasad Singh, J.)

Patna High Court.
The 10th May, 2007.
AAhmad/(NAFR).

True Copy

Ahmad

18.5.07

Sr. Secy