

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10010 OF 2016
(Arising out of SLP(C) No. 32203 of 2011)

GOVERNING BODY,
L.P. SHAHI COLLEGE, PATNA AND ANR. Appellants

Versus

SMT. SEEMA MISHRA & ORS. Respondents

With

CIVIL APPEAL NO. 10011 OF 2016
(Arising out of SLP(C) No. 978 of 2012)

DR. RAMDEO PRASAD SHARMA Appellant

Versus

SMT. SEEMA MISHRA & ORS. Respondents

ORDER

R. BANUMATHI, J.

Leave granted.

2. These two appeals have been filed against the judgment of the Patna High Court dated 30.06.2011 in LPA No.364 of 2008 arising out of C.W.J.C. No.8004 of 2000 wherein Division Bench of the High

Court directed the appellant-L.P. Shahi College, Patna to appoint the first respondent in the College. One appeal is by the College and the other appeal by Dr. Ramdeo Prasad Sharma who was appointed as a Lecturer in the Department of Labour and Social Welfare of the appellant-College on temporary basis, on usual scale of pay and other allowances. These two appeals shall stand disposed by this common order. For convenience, we narrate the facts from the appeal arising out of SLP(C) No.32203 of 2011.

3. Brief facts leading to the filing of these appeals are as under: In the year 1994, the erstwhile Bihar College Service Commission [for short 'the Commission'] had issued an advertisement inviting applications for the large number of teaching posts in different colleges of undivided Bihar including two posts in the Department of Labour and Social Welfare of the appellant-College. Respondent No. 1 had submitted her application on one of the posts advertised for teaching in the Department of Labour and Social Welfare. The erstwhile Commission recommended two names viz., Dr. Siyaram Sharma and Smt. Seema Mishra against the two advertised posts of lecturers in the Labour and Social Welfare Department in the appellant-College and communicated the same *vide* letter dated 15.06.1999 to the appellant-College.

4. According to the appellants, two persons viz., Dr. Siyaram Sharma and Smt. Seema Mishra had been recommended against one post and in exercise of its right under Section 2(10) of Bihar College Service Commission Act, 1976 (for short 'the Act'), the appellant-College appointed Dr. Siyaram Sharma and respondent No.1 was denied appointment. Being aggrieved by the denial of appointment, respondent No.1 filed a Writ Petition bearing No. 8004 of 2000 before the High Court.

5. The learned Single Judge held that the Commission intended to recommend the two names against two posts, but the aforesaid letter of recommendation was inartistically worded. The learned Single Judge directed that the first respondent be appointed to the second post of Lecturer in the Department of Labour and Social Welfare with effect from the date when Dr. Siyaram Sharma had joined the post, with notional benefits. It was further directed that the first respondent shall not be entitled to the arrears of salary or any other monetary benefits till she joins the post; however she will be entitled to the raised salary with added increments which would have fallen due to her from the date Dr. Siyaram Sharma joined till the date she joins. Aggrieved by the order of the learned Single Judge, the appellant-College went before the Division Bench of the High Court

by way of intra-court appeal. The Division Bench upholding the order of the Learned Single Judge, held that the Commission had violated the provision of sub-Section (9) of Section 2 of the Act and had failed in its duty in not recommending the names of persons for the second post which was advertised and was available. The Division Bench, *inter alia*, affirmed the other directions of the Single Judge.

6. Heard learned counsel for the parties at length.

7. Learned counsel for the appellants contended that after interviewing the candidates for selection to the above posts, the Commission recommended the names of Dr. Siyaram Sharma-First and Smt. Seema Mishra-Second for the first post in the aforesaid Department of the appellant-College, and the Commission also issued a letter to this effect dated 15.06.1999 specifically mentioning that, the College shall appoint any one from the names recommended by the Commission with the condition that the said appointment shall be approved by the University. It was submitted that the Commission actually failed in its duty in not recommending the names of persons for the second post and according to the appellant, it is erroneous to construe that first respondent's name should be considered for the second available post. It was further submitted that the interpretation of the Single Judge that "it appears

that the Commission intended to recommend the two names against the two posts” was not only an error of record but was also against the Statute i.e. Section 2(9) of the Act. It was submitted that without appreciating the aforesaid position of law, the Division Bench erred in dismissing the appeal filed by the appellant-College

8. *Per contra*, the learned counsel for the first respondent submitted that as per Section 2(9) of the Act, the Commission was to give its recommendation for both the vacant posts, however, due to error of communication, the letter dated 15.06.1999 was so worded that it appeared that the two names recommended were given in order of preference for a single post. It was submitted that actually the name of the first respondent was recommended for the second permanent, vacant and advertised post and upon proper appreciation of the facts and circumstances and the submissions of the counsel for the Commission, the High Court has rightly directed the appellant-College to consider the name of the first respondent for appointment to the second post available.

9. We have carefully considered the rival contentions, and perused the impugned judgment and material on record.

10. Section 57A of the Bihar State Universities Act, 1976, provides that appointment of teachers of affiliated colleges not maintained by

the State Government, shall be made by the Governing Body on the recommendation of the College Service Commission. Admittedly, there were two vacancies in the Department of Labour and Social Welfare in the appellant-College for which advertisement was issued. First respondent was recommended only after the selection process. Second respondent-Commission had recommended two names vide its letter dated 15.06.1999 and the same reads as under:-

“...
“

Bihar College Service Commission,
Patna
Boring Canal Road, Patna-800001

Letter No.593 Confid./BCSC Patna,

Dated 15.06.1999

From

Secretary,
Bihar College Service Commission, Patna

To,

The Secretary
Governing Body,

Sub: Appointment of Lecturer in the Dept.

In reference to your letter No..... dated..... I have been directed to inform that for the post of Lecturer in Labour & Social Welfare Dept. of your college, advertisement was made by the Commission vide Advertisement No.315/94. After holding the interview of the candidates, this commission recommends the names of following candidates in the order of preference for appointment on the post of Lecturer provided affiliation for the current session is obtained.

First Post: 1. Dr. Siyaram Sharma-First
2. Smt. Seema Mishra-Second”

Contention of appellant is that as per the above communication, the Commission recommended two persons for the first post, one of them

viz., Dr. Siyaram Sharma was appointed and since there was no recommendation for the second post, no appointment was made to the second post.

11. As per the provisions of the Act, the Commission is required to make recommendations of two persons for every post, arranged in the order of preference, out of which the Governing Body of the College is to make appointments and no person whose name is not recommended by the Commission can be appointed by the Governing Body. This will be evident from sub-sections (9) and (10) of Section 2 of the Act, which read as under:-

“Section 2

.....

(9) The Commission shall recommend for appointment to every post of teacher names of two persons arranged in order of preference and considered by the Commission to be the best qualified therefor. The recommendation shall be valid for one year from the date of the recommendation by the Commission.

(10) In making any such appointment the Governing Body of the college shall, within three months from the date of the receipt of the recommendation under sub-section (9), make its selection out of the names recommended by the Commission, and in no case shall Governing Body appoint a person who is not recommended by the Commission.”

Since two posts were advertised for the appellant-College, in terms of Section 2(9) of the Act, it was mandatory on the part of the Commission to recommend two plus two candidates. But the Commission recommended only two candidates for the first post.

The second respondent-Commission has not followed the mandatory provision of Section 2(9) in recommending two plus two candidates for the two posts of lecturers advertised for the appellant-College.

12. The writ petition filed by the first respondent in the year 2000 was disposed on 02.11.2007. After referring to the Commission's communication dated 15.06.1999, the learned Single Judge observed "*the Commission's letter of recommendation was inartistically worded. It appears to me that the Commission intended to recommend the two names against the two posts*". Pointing out that the first respondent's suitability was not in doubt and that she has been deprived of her appointment for no fault of hers, the learned Single Judge allowed the writ petition, *inter alia*, issuing directions as aforesaid.

13. Before the Division Bench, Mr. Yugul Prasad, counsel appearing on behalf of the Commission submitted that an error had crept in, in the recommendation of the Commission. After referring to this submission, the Division Bench observed as under:

"...When the post is available the Commission was asked to rectify such error and in most of the cases the Commission has explained such error and made statement before this Hon'ble Court with regard to the appointment of the respondent-petitioner..."

Having said so, after referring to the communication of the Commission dated 15.06.1999, the Division Bench took the view that the name of Dr. Siyaram Sharma was recommended for the first post and the name of first respondent was recommended for the second post. The communication of the Commission dated 15.06.1999 clearly states that the first respondent's name was recommended as second preference for the first post.

14. Under Section 2(10) of the Act, the Governing Body of the College shall select for appointment from the names recommended by the Commission. Thus, the Governing Body has the right to select the candidates in the order of preference. But since two posts were available, the Commission ought to have recommended two plus two candidates. The High Court rightly observed that the Commission had violated the mandatory provision of Section 2(9). Since there was violation of the statutory provisions by the second respondent-Commission and going by the submission made on behalf of the Commission before the High Court, the name of the first respondent is to be considered for the second post available. She should not be made to suffer injustice for no fault of her own.

15. The first respondent's suitability for appointment is not in doubt; instead of recommending the first respondent to the second post, the

Commission was not justified in recommending her name as second preference for the first post and stopping at that. The reasons are not far to seek. In the second post available in the appellant-L.P. Shahi College of Labour and Social Welfare, Dr. Ramdeo Prasad Sharma (appellant in the connected matter i.e. in the appeal arising out of SLP (C) No. 978 of 2012) has already been working temporarily in the Department of Labour and Social Welfare. Even though the said Ramdeo Prasad Sharma applied for the post, his name was not recommended. Be it noted that the said Dr. Ramdeo Prasad Sharma has not challenged his non-selection by the Commission. In violation of Section 57A of the Bihar State Universities Act, appellant College continued Dr. Ramdeo Prasad Sharma in the said post which is in violation of the provisions of Bihar State Universities Act. Continuance of Ramdeo Prasad Sharma in the post was improper, arbitrary and in disregard of the statutory provisions. The appellant-Ramdeo Prasad Sharma is said to have retired at the age of superannuation in January, 2016 and that post in the Department of Labour and Social Welfare is presently vacant.

16. Since there was violation of Section 2 (9) of the Bihar College Service Commission Act, 1976 and that of Section 57A of Bihar State Universities Act, the High Court has rightly allowed the writ petition

filed by the first respondent, *inter alia*, issuing directions as stated above. We do not find any reason warranting interference with impugned judgment.

17. In the result, both the appeals are dismissed.

.....J.
[SHIVA KIRTI SINGH]

.....J.
[R. BANUMATHI]

New Delhi;
October 05, 2016



JUDGMENT