

STATE OF BIHAR  
v.  
KAUSHAL KISHORE SINGH AND ORS.

APRIL 10, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

*Service Law :*

*Recruitment—Class III posts—Bihar State Selection Service Board—No merit list prepared—Selection made on the basis of educational qualifications required for the job and in some cases the payscales available at that time—Held : Recommendations in respect of allotment and appointment of selected candidates per se illegal—Not mandatory for the Government to accept options of candidates and make appointment to the post—Asking for option is discretionary and Government not bound to select candidates on that basis—The direction would apply only to those cases where appointments have not become final.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1607 of 1987.

From the Judgment and Order dated 17.2.86 of the Patna High Court in C.W.J.C. No. 686 of 1984.

Akhilesh Pandey for R.P. Singh for the Appellant.

T.C. Ray and Deba Prasad Mukherjee for the Respondents.

Ms. Abha Jain (NP) A. Sharan for Impleading party.

The following Order of the Court was delivered :

Impleadment application is dismissed.

This appeal by special leave arises from the judgment of a learned single Judge of the Patna High Court, made on February 17, 1986.

A few admitted facts are sufficient for disposal of this appeal. Recruitment to the Class III posts in several categories in the State of Bihar was advertised by the Bihar State Selection Service Board, Large number of candidates applied for selection. There were 1005 posts in all; initially,

A 978 and subsequently 127 posts were included. For 7 categories of posts, special educational qualification of graduation with Commerce, Science, Economics and Mathematics has been prescribed. For 3 categories of posts, only general educational qualifications have been prescribed. All are required to have graduation degree as a minimum educational qualification. Before selection of the candidates, the pay structure of some of the posts underwent drastical change. Some of the posts carrying higher pay scale, prior to the advertisement, were of a lower grade with lesser scale of pay while some of the posts due to Pay Commission recommendations were increased. Be that as it may, when the selection was made and appointments were sought to be made of the selected candidates, as per the affidavit filed in this regard, on a direction given on July 30, 1987, the Government claimed that "the Board considered candidates for various posts as per availability at the time and recommended candidates strictly on the basis of pay scale and academic qualifications of job requirements." The High Court proceeded on the premise that no merit lists was prepared and the candidates who had aptitude for certain job or entitlement are required to be considered for appointment. Options had not been called for. Therefore, the selection and appointment of the candidates without preparing merit list and without calling for the option is arbitrary, violating Article 14 of the Constitution.

E The question, therefore, is : whether the view taken by the High Court is correct in law? When we asked the learned counsel for the appellant to place before us the merit list to substantiate the stand taken in the affidavit filed in that behalf, the learned counsel was unable to place before us the merit list except the publication in the newspaper that candidates were selected on the basis of the merit. In view of the finding recorded by the High Court that no merit list was prepared and in spite of the opportunity having been given, the Government failed to substantiate that the merit list was in fact prepared, we find it difficult to accept the averments made in the affidavit. Under these circumstances, we proceed on the premise that the merit list has not been prepared and the selection came to be made on the basis of educational qualifications required for the job and in some Departments on the basis of pay scales available at that time. In this scenario, the question arises : whether appointment of the candidates is valid in law? When the Service Commission or the Board selects the candidates, the normal criteria required preparation of a list of candidates selected in the order of their merit and then recommend to

the Government for appointment to the post advertised for. In that behalf, it is always open to the executive to allot the selected candidates, in the particular categories of services in the order of merit prepared and recommended as per the procedure and application of roster and reservation and on the basis thereof appointments be made to the respective Departments. Of course, it would be subject to the fulfilment of the qualifications prescribed for the post. Since the Government has not satisfied us as to how it adopted this rationale, the appointment of selected candidates by pick and choose is an arbitrary exercise of the power. Under these circumstances, the arbitrariness is writ large.

Accordingly, the recommendations in respect of the allotment and appointment of selected candidates is *per se* illegal. It is true that the High Court has pointed out that options are to be called for and the selection is to be made on the basis of the options given. We do not find that the criteria laid down by the High Court is correct in law. Even if options were called for and given, it is not mandatory for the Government to accept options of the candidates and make appointment to the posts. Asking for option of candidates is only a discretionary matter and the Government is not bound to select the candidates on the basis thereof. Under these circumstances, the candidates who applied for, though opted for, have no acquired rights, much less indefeasible and absolute right for selection or appointment to a particular post. As stated earlier, the Government have to prescribe an objective and rational method or manner of allotment of the candidates selected to the Department, depending upon their job necessity and requirement. Since the objective and rational criterion was not followed, we decline to interfere with the impugned order passed by the High Court.

The Government is directed to act in the light of the law laid down in this order. This direction would apply only to those cases where the appointments have not become final and the pending matters would be disposed of in the light of this direction.

The appeal is disposed of accordingly but without any order as to costs.

G.N.

Appeal disposed of.