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(2019) 01 JH CK 0061

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1844, 1894 Of 2010

Abhishek Bharti And Ors — APPELLANT

Vs

State Of Jharkhand And Ors — RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:
Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2019) 01 JH CK 0061

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Manoj Tandon, Rajesh Kumar, Apoorva Singh, Gaurav Raj, Shivshanker Kumar, Binod Singh, Jagdeesh

Final Decision : Allowed

Judgement

Pramath Patnaik, J

1. With the consent of the respective counsels, both the writ petitions have been heard together and are being disposed of by this common order.

2. In the captioned writ applications, the prayer has been made by the petitioners for direction upon the respondents to upgrade the appointment of the petitioners on Class-III post since they have been appointed on Class-IV post on compassionate ground contrary to the recommendation made by the District Compassionate Appointment Committee.

3. Indisputably, the petitioner having requisite qualification staked their claim on compassionate ground on the ground that mother and father died in harness. The respective case of the petitioners were placed before the District Compassionate Appointment Committee constituted under the Chairmanship of Deputy Commissioner, Ranchi and the recommendation was made by the said committee for appointment on Class-III post and the decision taken thereof was communicated by the District Establishment Deputy Collector to the Regional Deputy Director of Education, South Chotanagpur Division, Ranchi. It has been

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averred in the writ application that the District Compassionate Appointment Committee recommended the names for compassionate appointment against the existing vacancies to the respective department but to the utter surprise and consternation notwithstanding the vacancies available, the petitioners were offered appointment on Class-IV post solely on the ground that there was no vacancies in Class-III post. The offer of appointment to the petitioners though were contrary to the recommendation made by the District Compassionate Appointment Committee but due to precarious financial position and having no other option the petitioners accepted appointment in Class-IV post. Immediately after joining Class-IV post, the petitioners filed representation ventilating their grievance for appointment in the Class-III post. The genuine grievances of the petitioners fell on the deaf ears and due to inaction on the part of the respondents having no other alternative, the petitioners have been constrained to approach this Court under Article 226 of the Constitution of India for redressal of their grievances.

4. Learned counsel for the petitioners has drawn attention of the Court to the case of one similarly placed employee namely Bhupendra Nath Mistry who approached this Court in W.P.(S) No.6295 of 2008, has been appointed in Class-III post, though the cases of the petitioners stand on same footing but they have been subjected to hostile discrimination being violative of Article 14 and 16 of the Constitution of India. Learned counsel for the petitioners further submits that one similar issue came up before this Court reported in [2012 (2) JCR 30 (Jhr)] (Anil Kumar vs. State of Jharkhand & Ors.) for consideration and the Hon'ble Court has been pleased to direct the respondents for appointment in Class-III post. Learned counsel for the petitioners submits that the case of the petitioners is squarely covered by the aforesaid decision. Though the claim of the petitioners in the said case were stoutly resisted by the State by referring the Apex Court judgment reported in (1994) 6 SCC 560 (State of Rajasthan vs. Umrao Singh). The Hon'ble Court after perusing different judgments and ratio of the said judgments has been pleased to hold that there has been clear violation of Article 14 of the Constitution of India and therefore, the petitioners' case ought to be considered for appointment in Class-III post.

5. A supplementary counter affidavit dated 14.01.2019 has been filed wherein information has been given by the Regional Deputy Director of Education, South Chotanagpur Division, Ranchi to Under Secretary, Secondary Education Department, Jharkhand, Ranchi wherein it has been mentioned that till 08.12.2018 total 146 employees has been working and rest 6 are lying vacant.

6. Controverting the averments made in the writ application, a counter affidavit has been filed on behalf of the respondent-State, wherein it has been submitted that the petitioners have already availed the benefit of the compassionate appointment, therefore, the present writ petition is not maintainable. It has further been submitted that the petitioners have availed the appointment in the year 2003 and they have moved this Court after lapse of 7 years, therefore, the

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writ petition is liable to be dismissed due to delay and laches. It has further been submitted that since no vacancy was there, the petitioners were appointed against Class-IV post, therefore, the claim of the petitioners for appointment against Class-III post after availing the compassionate appointment in Class-IV cannot be acceded to.

7. A supplementary counter affidavit dated 16.01.2019 has also been filed by the respondents, wherein it has been submitted that the Regional Deputy Director of Education, South Chotanagpur Division, Ranchi vide its letter dated 07.01.2019 admitted that there is no vacant post of Class-III as per Annexure-A to the said affidavit.

8. Learned counsel for the State submits that once compassion has already been shown to the petitioners they are not entitled for the same benefit again.

9. Having heard learned counsel for the respective parties and on perusal of the record, this Court is of the considered view that there is no indefeasible right for appointment on compassionate ground. But in the instant case, the petitioners having requisite qualification have been recommended by the District Compassionate Appointment Committee for appointment in Class-III post and it is also not in dispute that some of the similarly circumstanced persons have been recommended for Class-III posts and they were also appointed on Class-III post. It is also not in dispute that State being in a very dominant position and the petitioners having no other alternative had to accept the Class-IV post, thereby their right for appointment on Class-III have not got extinguished.

10. The decision of this Court reported in [2012 (2) JCR 30 (Jhr)] (Anil Kumar vs. State of Jharkhand & Ors.) wherein the Division Bench of this Court after having examined the cases in detail came to a conclusion that once recommendation is made for Class-III post and there is not vacancy it would not lie in the mouth of the State to deny the appointment in Class-III post. It is true that this Court cannot be oblivious of the fact that in case of compassionate appointment once appointment is made on compassionate ground, further consideration may result in endless compassion but the decision taken on giving appointment on compassion should not be actuated by capricious and whimsical decision but must be in consonance with Article 14 and 16 of the Constitution of India. The view of this Court gets fortified by the decision of the aforesaid Division Bench decision.

11. In that view of the matter the aforesaid writ petitions are disposed of with direction to the respondent no.3 to consider the case of the petitioners afresh for appointment on Class-III against the sanctioned post, keeping in view the ratio of the judgment reported in [2012 (2) JCR 30 (Jhr)] (Anil Kumar vs. State of Jharkhand & Ors.) as expeditiously as possible, preferably within a period of two months from the date of receipt/communication of the copy of the order and decision taken thereof be communicated to the petitioner within four weeks thereafter.

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12. With the aforesaid direction, aforesaid writ petitions stand allowed.

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