

(2004) 09 JH CK 0073

In the Jharkhand High Court

Case No : L.P.A. No's. 707 and 800 of 2003

Akhileshwar Singh and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Citation : (2005) 104 FLR 261 : (2004) 4 JCR 582

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : P.K. Verma, in LPA 707/2003, Delip Jerath, Manoj Tandon, S.N. Prasad and Rajesh Kumar, in LPA 800/2003, for the Appellant; A.K. Sinha, AG in LPA 707/2003, B.S. Lal, A.A.G. and D.K. Maltiyar, J.C. to A.A.G. in LPA 800/2003, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. In both the appeals, as common judgment is under challenge, they were heard together and are being disposed of by this common order.

2. The appellants applied for appointment against Class-III posts under the Godda Judgeship in the year 1990. but no appointment was made out of the said 1990 Panel for one or other reason. Six persons who were already working on ad hoc basis in the Judgeship of Godda, so before Issuance of individual letter of appointment, the District Judge, Godda vide his letter dated 14th May, 1991 sought for certain clarification from the High Court relating to those persons. Thereafter, when the matter remained pending, new rule for appointment known as Bihar Civil Court Staff, (Class III and Class IV) Rules, 1992" came into force on 3rd October, 1992. In such a situation, without acting upon the panel prepared in pursuance of 1990 advertisement, a fresh advertisement was published in the year 1993 for appointment against Class-III posts in the Godda Judgeship. The appellants and others then moved before the Patna High Court in

CWJC No. 891 of 1993 and challenged the 1993 advertisement. The said writ petition was allowed by the Patna High Court by its judgment and order dated 9th February, 1994 with the following observations ;

"For the reasons aforesaid I am of the considered opinion that in this case the selection process was concluded with the issuance- of the notice, dated 9.5.1991, containing the select list. The subsequent order, dated 3.6.1991, had no application to it and the select list also remains unaffected by the new rules coming into force on 3.10.1992. The candidates included in the select list cannot be denied appointment on any of these grounds and the action of the respondents in not issuing appointment letters to the selected candidates is unreasonable and arbitrary and warrants interference by this Court.

I, accordingly, direct the authorities to give effect to the select list, dated 9.5.1991, and to make appointments from the list in accordance with law. It will be open to the second respondent to seek any clarifications in this regard from the High Court shall issue clarifications regarding appointment of Class III employees in the judgeship of Godda without in a manner impeding to give effect, to the select list, dated 9.5.1991.

In the result, this application is allowed. There will be no orders as to costs,"

3. Thereafter, a contempt petition being M.J.C. No. 1296 of 1994 was preferred by Sachindra Kumar and others. In the said case, a letter dated 17th November, 1994 written by the District and Sessions Judge, Godda addressed to the Registrar, , (Establishment) of Patna High Court was brought to the notice of the Court, wherein it was intimated that in compliance of the Court's direction, 23 persons were appointed out of whom 22 persons had joined. One person of S.T. category had not joined. Having noticed the aforesaid fact, the Patna High Court vide its order dated 12th December, 1994 dismissed the contempt petition. Those who were working on ad hoc basis, their services were subsequently terminated . Subsequently, appellant Sachindra Kumar and others of L.P.A. No. 800 of 2003 preferred a writ petition, C.W.J.C. No. 863 of 1995 (R) before the Ranchi Bench of Patna High Court seeking directions upon the Respondents to consider their cases for appointment against the resultant Class- III vacancies caused due to removal of 4th to 8th Respondents of the said case from the Judgeship of Godda. Those 4th to 8th Respondents are appellants of L.P.A, No. 707 of 2003. They preferred a separate writ petition C.W.J.C. No. 6254 of 1994 (R) before the Ranchi Bench of Patna High Court challenging an order dated 7th August, 1995 passed by the District Judge, Godda whereby they were discharged from service. They were appointed on ad hoc basis in the year 1988 to perform Class-III work. In regard to those ad hoc employees, the District Judge, Godda sought for clarification in the year 1991. After advertisement published in the year 1990, panel was prepared in the year 1991, so the Court directed to make appointment out of the panel, therefore, the ad hoc appointees were retrenched, having not selected in pursuance of 1990 advertisement. Learned single Judge having noticed the aforesaid facts, dismissed both the writ petitions, vide impugned

common judgment and order dated 15th September, 2003 passed in CWJC No. 863 of 1995 (R) with CWJC No. 6254 of 1995 (R).

4. Admittedly, the panel in pursuance of 1990 advertisement was prepared on 9th May, 1991. It lost its force after two years. Out of the said panel, 22 persons had already been appointed. After five years of the advertisement and four years from the date of preparation of panel, the authorities cannot make appointment out of such stale panel.

5. In such a situation, learned single Judge having rejected the prayer of appellants to consider their cases for appointment against resultant vacancies, it requires no interference. So far as the appellants who were engaged on ad hoc basis and after regular appointment were disengaged, they had no right to continue in the service. Admittedly, the total sanctioned strength of 59 Class III posts were filled-up by appointments and thereby there was no post vacant to accommodate them.

6. It is not the case of the appellants that any person below the select list have been appointed by the respondents. In such circumstances, and as inclusion of name in the select list does not give any indefeasible right of appointment and the persons whose names appeared in the select list cannot, as a matter of right, claim to be appointed on the post. The prayer of the appellants cannot be allowed.

7. There being no merit, both the appeals stand dismissed. However, there shall be no order, as to costs.

N.N. Tiwari, J.

8. I agree.