

(2024) 05 JH CK 0050

In the Jharkhand High Court

Case No : Latter Patent Appeals No. 360 Of 2021

Alok Banerjee And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Jharkhand Service Code, 2001 — Section 288
Primary School Teachers Appointment Rules, 2012 — Rule 12

Citation : (2024) 05 JH CK 0050

Hon'ble Judges : Sujit Narayan Prasad, J;Arun Kumar Rai, J

Bench : Division Bench

Advocate : Arpan Mishra, Mrinal Kanti Roy, Leena Mukherjee, Rupesh Kumar Singh, Raj Nandan Chatterjee

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J

Prayer

1. The instant appeal preferred under Clause 10 of the Letters Patent is directed against the order/judgment dated 28.09.2021 passed by learned Single Judge of this Court in W.P.(S) No.5968 of 2019 whereby and whereunder the writ petition has been dismissed by not interfering with the appointment of the private respondents.

Facts of the case

2. The brief facts of the case, as per the pleadings made in the writ proceeding, which are required to be enumerated, reads hereunder as :-

It is the case of the petitioners that an advertisement was published for the appointment on the post of Assistant Teachers in different districts of the State of Jharkhand. As per the advertisement it has been stated that 50% of the seats

are required to be filled by Para teachers and the rest 50 % were to be filled with Non Para Teachers categories.

3. The petitioners who were working as para teachers in different schools different district of Jharkhand and applied for selection on the vacant post under Non-Para category.

4. It is the further case of the petitioners that this Court vide its judgment dated 23rd July, 2018 in LPA No. 172 of 2018 has allowed one Letters Patent Appeal and issued directions to consider the application of candidates of para Teachers who had applied under non-para teacher category in which they applied for the aforesaid vacancies.

5. In furtherance to the above order, a merit list for all districts was published and objection was invited. Thereafter, final merit list was to be published on 30.05.2019.

6. Subsequently, the respondents published an AAM SUCHNA clarifying their stand that the counselling will not be limited to the appellants of the LPA but they will also consider all applicants as per their merit list.

7. Thereafter, the respondents issued a letter dated 17.05.2019 whereby and where under the candidature of those candidates who have obtained higher educational degree while working on regular basis i.e, class room courses while working as a para teacher was directed to be rejected from the counselling process.

8. The further case of the petitioners is that pursuant to the AAM SUCHNA a final merit list for counselling was prepared by the respondents on 30.05.2019 and on the basis of said list counselling for the post teachers of Inter Trained, where held on 03.06.2019.

9. Pursuant to the counselling, candidature of certain persons were rejected by the respondent authorities on various grounds, such as, they had obtained Inter Degrees, on (regular basis) while being posted as Para Teachers and several others reasons.

10. After completion of the counselling process and the scrutiny, final list for appointment in the post of Inter Trained Teachers was published by the respondent authorities and appointment letters were issued in favour of the petitioners in terms of which they were appointed in the Non- Para category, in the Grade Pay of Rs.4200 and were deputed in Various schools in the District of Ramgarh.

11. On the basis of appointment letters, the petitioners gave their joining in the designated schools within the time frame as stipulated by the respondent authorities and since then they were working to the satisfaction of all concerned.

12. The petitioners worked for three months after the appointment and the service book has also been opened by the respondent authorities in terms of Rule

288 of the Jharkhand Service Code.

13. On 15.10.2019, an order was issued whereby and whereunder the appointments in the Inter Trained Teachers Class- I-V, has been cancelled by the respondent authorities on the ground of anticipation of an order by the High Court so as to keep the seats vacant for appointment if such occasion arises.

14. Now appointment letters have been issued in favour of those candidates whose candidature was earlier rejected (Annexure-5), due to various anomalies in their candidature.

15. Being aggrieved by the order dated 15.10.2019 and issuance of appointment letters to those candidates whose candidature has earlier been rejected, the petitioners filed writ petition before this Court being W.P.(S) No.5968 of 2019.

16. The learned Single Judge, after hearing learned counsel for the parties, dismissed the writ petition by not interfering with the appointment of the private respondents, which is the subject matter of the instant appeal.

17. It is evident from the factual aspect as referred hereinabove that the several posts were created in different schools so as to fill up the post on the basis of Primary School Teachers Appointment Rules, 2012 which has been notified by notification 1632 dated 05.09.2012.

18. The advertisement was floated for appointment of Inter Trained teachers for Class I to V. The appointment process was started in several districts. Merit list was prepared as also the objections were invited till 22.05.2019. The final merit list was to be published on 30th May, 2019.

19. The petitioners claim that they were having requisite qualifications, applied for appointment for the post of Inter Trained Teachers. After completion of counselling process and scrutiny, final list was prepared for appointment to the post of Inter Trained Teachers. Subsequently, the appointment letters were issued in favour of these petitioners and they were appointed in non para category and also deputed in different schools in the district of Ramgarh.

20. The petitioners have also given their joining in respective designated schools and started working to the satisfaction of the respondents.

21. But after the lapse of three months from the date of their appointment when their service books have already been opened, the respondents have issued an order on 15.10.2019 cancelling the appointment of the petitioners. The writ petitioners had challenged the order of cancellation of their appointment on the ground that they have been appointed following the due procedure of law. As also no misrepresentation had been made on their behalf.

22. The further ground was taken that the violation of principle of natural justice is also there.

23. The respondents had appeared before the learned writ court and taken the

ground that the petitioners since have been found to have obtained lesser marks than the last selected candidate, cannot be allowed to continue on the post.

24. The intervener had also appeared whose appointments have been said to suffer from impropriety on whose behalf the ground was taken that the petitioners have obtained lesser marks than the last selected candidate.

25. The learned Single Judge after appreciating the aforesaid argument as also by taking into consideration the issue of violation of principle of natural justice, wherein it has come that the notices were issued to the petitioners with a direction to further objection and pleadings but no stand was taken on the behalf of the petitioners, hence, the writ petition has been dismissed against which the present appeal.

Argument advanced on behalf of the appellants

26. Mr. Arpan Mishra, learned counsel appearing on behalf of the appellants-petitioners, has taken the following grounds:

(i) It is a case where the candidature of the Intervenors/private respondents had earlier been rejected. But subsequently, their candidature has been accepted based upon the marks allotted in their favour, they have been selected.

(ii) So far as the issue of securing lesser marks in comparison to that of the appointees are concerned, when the candidature of intervenors has itself been rejected then irrespective of the marks obtained their candidature cannot be allowed to prevail upon the candidature of the petitioners. But this aspect of the matter has not been taken into consideration by the learned Single judge in right perspective.

(iii) There is violation of principle of natural justice, since, before cancelling the appointment, no show cause notice has been issued.

(iv) The learned counsel appearing for the writ petitioners-appellants has submitted that the impugned order, as such, suffers from infirmity and hence not sustainable in the eyes of law.

Argument advanced on behalf of respondent-State

27. The State has taken the following grounds:

(i) That the selection is purely based upon the consideration on merit.

(ii) It has been contended that the marks of the petitioners have been found to be lesser in comparison to that of the successful candidates, the private respondents herein, hence, if on that ground the petitioners have not been appointed, it cannot be said that the selection process suffers from an error.

(iii) So far as the contention that the candidature of the private respondents has been rejected on the ground that they were not found to be regular candidates in the intermediate class is concerned, there is no pleading to that effect.

(iv) Further, consciously the private respondents have not been impleaded as party making a specific prayer by challenging order of appointment, rather, the successful candidates, who have subsequently been appointed, had shown their appearance before the learned writ court by filing an intervention application. The learned State Counsel based upon the aforesaid ground has submitted that the order passed by the learned Single Judge, therefore, suffers from no error.

Argument advanced on behalf of private respondents.

28. The following grounds have been taken by the learned counsel appearing on behalf of the private respondents-

(i) It has been contended that the candidature of these private respondents although had been rejected on earlier occasion but they had made a representation and based upon the order passed by the Director in this regard, their candidate has again been considered since they have secured higher marks in comparison to that of the petitioners. Hence, the private respondents have been found to be more meritorious and therefore, they have been appointed.

(ii) So far as the issue of rejection of their candidature is concerned, the same had never been questioned by the petitioners by making specific prayer before the writ court.

(iii) The issue of natural justice has also been discarded by the learned Single Judge, taking into consideration the plea taken by the State that notices have been to these writ petitioners however, no stand was taken on behalf of the petitioner which shows that they were aware of the fact that they have been wrongly appointed.

(iv) The learned counsel based upon the aforesaid ground has submitted that in such circumstances, the learned Single Judge has dismissed the writ petition, the same cannot be said to be suffer from an error.

Analysis:

29. We have heard the learned counsel for the parties, gone across the findings by learned Single Judge in the impugned order.

30. This Court before entering into the legality and propriety of the impugned order, deems it proper to refer some undisputed fact in this case.

31. The petitioners vis-à-vis the interveners who subsequently have been impleaded as party respondent to the writ petition had participated in the process of selection of appointment as para teacher after creating of the post, in pursuance to the Primary School Teachers Appointment Rules, 2012. They have been subjected to the selection process. The interveners/private respondents have secured higher marks in comparison to that of the petitioners. However, at that juncture the candidature of the private respondents has been rejected as per Annexure-3 dated 17.05.2019. The concerned private respondents have made representation before the Director stating inter alia therein that their

candidature is not worth to be rejected, since, whatever detail they have furnished, the same is in pursuance to the Rule as appended to the counter-affidavit. The Rule-12 which is relevant for the purpose is being quoted hereunder as:-

32. It is evident from the directions issued by the competent authority whereby and whereunder the private respondents have been given due permission to upgrade their educational qualification and to that effect the relevant documents have been annexed. The private respondents had obtained intermediate passed certificate and based upon that they have participated in the process of selection.

33. The private respondents have made representation against the decision of the authority by which their candidature has been rejected as also preferred writ petition being W.P.(S) No.5175 of 2019.

34. But, during the pendency of the writ petition, their candidature has been accepted and they have also been allowed to participate in the process of selection in which they have performed well in comparison to that of petitioners, since, they have obtained higher marks in comparison to that of the petitioners.

35. A merit list was prepared and based upon the performance of one or the other candidates, the private respondents have been found to be more meritorious in comparison to that of the petitioners and accordingly offer of appointment had been issued in their favour.

36. The petitioners, having not been found to be under the selected candidates, had preferred Writ Petition being W.P.(S) No.5968 of 2019, praying inter alia therein that they be appointed. However, the writ petition has been dismissed by taking into consideration the fact that the private respondents have been found to be more meritorious in comparison to that of the petitioners which is the subject matter of the present appeal.

37. This Court before proceeding further, needs to refer herein the jurisdiction of High Court in exercise of power conferred under Article 226 of the Constitution of India in the matter of process of selection which is already settled whereby and whereunder, as per the ratio laid down by Hon'ble Apex Court if there is any infirmity in the process of selection then certainly, such decision of the authorities will be subject to judicial review. But, if there is no error in the decision, the same is not amenable to judicial review by the High Court in exercise of the power conferred under Article 226 of the Constitution of India. Reference in this regard is made to the judgment rendered by Hon'ble Apex Court in the case of Syed TA Naqshbandi and Ors. vs. State of J&K and Ors., [(2003) 9SCC 592], wherein the

Hon'ble Supreme Court has observed as under: ?

"Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the

Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions.....”

38. Further reference in this regard be made to the judgment rendered by Hon'ble Apex Court in *Tata Cellular v. Union of India*, [(1994) 6 SCC 651], wherein the Hon'ble Court at paragraphs 72-75 and 77 held as under:-

“72. Lord Scarman in *Nottinghamshire County Council v. Secretary of State for the Environment* [1986 AC 240, 251 : (1986) 1 All ER 199] proclaimed:

“ ‘Judicial review’ is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power.”

Commenting upon this Michael Supperstone and James Goudie in their work *Judicial Review* (1992 Edn.) at p. 16 say:

“If anyone were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent times, and therefore to be treated as an idiosyncratic aberration, it has received the endorsement of the Law Lords generally. The words of Lord Scarman were echoed by Lord Bridge of Harwich, speaking on behalf of the Board when reversing an interventionist decision of the New Zealand Court of Appeal in *Butcher v. Petrocorp Exploration Ltd.* 18-3-1991.”

73. Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141, 154] Lord Brightman said:

“Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.”

.... ..

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.

The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:-

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention". (emphasis supplied)

39. Similar principle has been laid down in the cases of *H.S. Sidhu v. Devendra Bapna & Ors*, [(2016) 1 SCC 495] and *U.V. Mahadkar v. Subhash Anand Chavan & Ors* [(2016) 1 SCC 536].

40. The reason for referring the aforesaid judgments is that the main ground taken by the petitioners that there is error in the decision making process.

41. Admittedly herein, the candidature of the private respondents on earlier occasions had been rejected on the ground that they did not get the intermediate certificate as a regular candidate. But when they have represented based upon the due permission granted by the competent authority to get the intermediate pass certificate as has been appended in the counter-affidavit filed on behalf of the private respondents as also the writ petition had been filed before this Court, then the authorities have taken a decision by accepting the candidature of the private respondents. They have been allowed to participate in the process of

selection along with the petitioners, in which, the private respondents have been found to have secured more marks in comparison to that of the petitioners.

42. It also needs to refer herein that the petitioners at the time when such decision was taken by the authority concerned accepting their candidature and allowing the private respondents to participate in the process of selection, they have not questioned such decision of the authority, rather, even at the time of the filing of the writ petition such decision had not been questioned save and except the prayer for their appointment.

43. Law in this regard is settled that once the process of selection begins and the concerned candidates had participated, they cannot be allowed to question the decision taken by the competent authority. Reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of Dr. G. Sarana Vs. University of Lucknow and Others (Supra), [(1976) 3 SCC 585] at paragraph 15, which reads as under:-

"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that, the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

"It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

44. Further, the Hon'ble Apex Court in the judgment rendered in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others [(1986) Suppl. SCC 285] has observed at paragraph 24, which reads as under :-

"24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination."

45. Likewise, in *Marripati Nagaraja and Others Vs. Government of Andhra Pradesh and Others* [(2007) 11 SCC 522] the Hon'ble Apex Court has held at paragraph 19 as under :-

"19. Appellants had appeared at the examination without any demur. They did not question the validity of the said question of fixing of the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process."

46. Here, in the given facts of the case, the petitioners ought to have questioned the acceptance of the candidature at the inception or even before this Court but as would appear from the pleading made in the writ petition as also the prayer, that their candidature had not been cancelled, since, the private respondents have not been impleaded as party. That is the reason the private respondents had entered their appearance by filing intervention application. However, the same was allowed, their impleadment as respondent nos. 4 to 10.

47. Thus, the fact suggests and clarifies that there is no challenge of the acceptance of candidature by the petitioners even before this Court by filing the writ petition and in that aspect of the matter when the candidature of the private respondents have been accepted based upon the decision taken by the authority by which it was pointed out that the private respondents have been allowed to upgrade their educational qualification and in that view of the matter if they have been allowed to participate in the process of selection in which they have secured higher marks in comparison to that of the petitioners then is it available for the petitioners now to question their non-selection and the selection of the private respondents.

48. The answer to this question is in negative due to the reason that once the candidature of the private respondents have been accepted, having not been questioned by the petitioners before any authority or any forum or any appropriate court of law and thereafter, if the private respondents have participated in the process of selection and on comparative assessment of the merit of all the candidates, if the private respondents have been found to be finally selected and engaged, the petitioners cannot be allowed to question the same without challenging the same at the appropriate stage after appointment having been made.

49. Coming back to the factual aspect herein the said aspect of the matter has been admitted by the petitioners that the private respondents have secured higher marks in comparison to that of the petitioners. Before this Court, now the ground has been taken that when their candidature had been rejected, then irrespective of the marks secured by the private respondents, the petitioners, who are to be considered as genuine candidates, are having right of appointment over and above the private respondents.

50. But such contention is not acceptable to this Court, for the reason that, once the candidature of the private respondents have been accepted, having not been

questioned by the petitioners before any authority or any forum or any appropriate court of law and thereafter, if the private respondents have participated in the process of selection and on comparative assessment of the merit of all the candidates, if the private respondents have been found to be finally selected and engaged, the petitioners cannot be allowed to question the same without challenging the same at the appropriate stage after appointment having been made.

51. The second ground has been taken of violation of principles of natural justice on the ground that the petitioners have been appointed and in course thereof their appointments have been cancelled. But as would appear from the counter-affidavit when specific stand had been taken before the learned writ court that the notices had been issued to the petitioners and they also replied. But there is no denial of the fact that private respondents have not secured higher marks.

52. The learned Single Judge has taken note of the aforesaid facts and has not accepted the ground of violation of principles of natural justice by taking into consideration the stand of the State taken in the counter-affidavit that the notice was issued before cancellation of the appointment.

Conclusion

53. This Court, after having discussed the factual aspect along with the legal proposition as above and coming back to the impugned order, is of the view that the learned Single Judge has taken into consideration both the issues, i.e., the position of the petitioner vis a vis the private respondents as also the issue of principle of natural justice, as discussed hereinabove, therefore, this Court is of the considered view that the order impugned needs no interference.

54. Accordingly, the instant appeal stands dismissed.

I agree