
(2021) 10 JH CK 0006

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3915 Of 2014

Amit Kumar And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 07-10-2021

Acts Referred:

Citation : (2021) 10 JH CK 0006

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Anil Kumar, A. K. Choudhary, Darshana Poddar, Radha Krishna Gupta

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties through V.C.
2. The present writ application has been preferred by the petitioners for the following reliefs:-
 - (i) For quashing of the letter No.4254 dated 04.10.2013 issued by the respondent No.2, whereby the Deputy Commissioners of all the districts of Jharkhand were directed to start fresh process for appointment from the same panel.
 - (ii) For quashing of the order dated 12.06.2014 as contained in Memo No.256 issued from the office of the respondent No.5 whereby cancelled the appointment of the petitioners and others to the post of Village Level Worker (Jan Sevak).
 - (iii) For direction upon the respondents to appoint the petitioners on the aforesaid post as the entire process has already been completed and any delay in the appointment was due to laches and negligence of the respondent authorities.
 - (iv) For direction upon the respondents not to start the fresh process for appointment to the post of Village Level Worker within district Deoghar during the pendency of the present writ application.

3. The brief facts of the case is that a general notification was published by the Department of Agriculture and Sugarcane Development, Government of Jharkhand for appointment of Village Level Worker (VLW)/Jan Sevak vide advertisement No.45918 dated 18.10.2011 (Annexure-1). According to the aforesaid advertisement the total numbers of vacancies were 110; out of which 55 was unreserved while 14 vacancies were reserved for Schedule Caste, 14 for Schedule Tribe, 11 for Backward Class and 16 for Extremely Backward classes.

The petitioners along with others have applied for the said post for the District of Deoghar. Pursuant thereto; the examination was conducted on 08.01.2012 at different centre in the State of Jharkhand. Thereafter, names of 110 successful candidates were published in the newspaper on 27.04.2012; however, the names of these petitioners did not find place in the merit list.

Consequently on 07.05.2012, educational and others certificates of 110 successful candidates were scrutinized and on 19.06.2012, a meeting of District Selection Committee was held under the Chairmanship of Deputy Commissioner, Deoghar and a decision was taken that 106 candidates will be appointed against the total 110 vacant post. Subsequently, out of 106 selected candidates, only 101 joined and subsequently; 4 VLW also tender their resignation. Thus, out of 110 vacancies; 97 post were filled up.

Subsequently, on 01.02.2013 the District Selection Committee, Deoghar held a meeting and recommended the names of 13 candidates including these petitioners for appointment and for that letter dated 09.02.2013 were issued to the petitioners along with other to produce their original educational certificates and documents for verification. Pursuant thereto; all 13 candidates submitted their original certificate for verification and the same was sent for verification to the competent authority. However, the verification of certificates could be done only on 15.07.2013 and till that time one year lapsed on 27.04.2013 since the names of 110 successful candidates were published in the newspaper on 27.04.2012.

Thereafter, on 03.10.2013 in view of Memo No.2922 dated 13.09.2013 of Agriculture and Sugarcane Development Department, Jharkhand, the matter regarding appointment of those 13 candidates including these petitioners was put up for consideration and it was made clear that pursuant to transfer of power in respect to appointment of VLW to District Board Zila Prishad; now the Deputy Commissioner is not the competent appointing authority. Finally on 04.10.2013, impugned order as contained in letter No.4254 dated 04.10.2013 was issued by the Agriculture Department; whereby it was clarified that in the light of resolution No.3562 dated 07.12.2012, validity of merit list/panel was fixed for one year and thus the case of all 13 candidates including these petitioners for appointment as VLW was rejected on the ground of lapse of panel.

4. Mr. Anil Kumar, learned senior counsel appearing for the petitioners submits that when only 97 candidates joined as VLW (Jan Sevak), the District Selection

Committee decided to recruit candidates for remaining 13 posts from the merit list on 01.02.2013 that was well within the life of panel, if calculating from the date of first result of 110 candidates. Thereafter, 27.02.2013 was the date fixed for scrutiny of original certificates of all 13 candidates including these petitioners and pursuant to the aforesaid decision of District Selection Committee; the Deputy Commissioner, Deoghar directed to conclude the entire process within one month and all 13 candidates including these petitioners were directed to deposit bank draft as verification fee; however, the verification was delayed and finally it reached on 15.07.2013.

Thus, it is not the fault of the petitioners that the life of panel expired. Even the respondents have charged money by way of Bank Draft in the name of verification fee and finally they rejected the claim for appointment. He further submits that since the delay was not committed by the petitioners; the rejection for appointment as VLW on the ground of lapse of panel cannot be attributed to the petitioners; rather the respondents are duty bound to consider the case of the petitioners.

Mr. Kumar further contended that reliance of the resolution dated 07.12.2012, whereby it has been stated that the life of panel will be one year cannot apply in the instant case, inasmuch as, the result of this panel was published on 27.04.2012 itself which is much prior to issuance of this resolution and retrospective effect cannot be given to the said resolution. Since in the original notification there was no mention of life of the panel; as such, the resolution dated 07.12.2012 cannot be given effect in the instant case.

Learned senior counsel further submits that even assuming for the sake of argument that the resolution dated 07.12.2012 whereby it has been clarified that the life of panel should be one year from the date of publication of the merit list; even then the Hon'ble Apex Court in the case of Sheo Shyam & Ors. v. State of U.P & Ors. reported in (2005) 10 SCC 314 has categorically held that in absence of any statutory rule, period of validity is to be reckoned from the date on which last recommendation was made and in the instant case; within the life of panel i.e. on 1.2.2013; the names of these petitioners along with others were recommended by the District Selection Committee, Deoghar; as such one year should be reckoned from 01.02.2013 and not from the date of publication of merit list when it was first published on 27.04.2012.

Relevant paragraph Nos. 10, 11 & 12 of the aforesaid judgment are quoted as under:-

"10. In the aforesaid background, in a case of this nature and in view of the peculiar nature of the fact situation noted above, it would be inequitable and unjust to compute the one-year period from the date when the first recommendation was made by the Commission. Undisputedly, appointments were made till the end of 2001. Therefore, it would be proper to reckon the period from the last date when the recommendation was made. But another

situation has developed subsequently. The State Government itself had requisitioned for fifty-six posts including the unfilled posts of the previous selection and examinations are stated to have been already held. The fate of the present eleven appellants has suffered a setback on account of the action of both the Commission and the State Government. If the Commission's stand is that the validity period of the waiting list is one year, it should have sought for clarification from the State Government as to why unfilled posts were included in the requisition, when its specific stand in the office memorandums referred to above was to the contrary. At the same time, the State Government having taken a positive stand all through that the date of reckoning would be the last date on which the recommendation was made, it should not have included the unfilled posts in its requisition. The career of eleven candidates cannot be jeopardised in this battle of inconsistent and varying stands taken and moves adopted by the State Government and the Commission at different stages for different purposes.

11. Had the Commission on receipt of the office memorandum dated 14-1-1999 pointed out to the State Government that its view was not in line with the Commission's view that would have sorted out the areas of differences. Interestingly, in a particular case referred to by the appellants, the Commission accepted that the period was to be from the last date of recommendation. Though there cannot be any estoppel in law, yet a statutory body like the Commission cannot blow hot and cold in the same breath. There has to be consistency in its view. To rule out unfortunate situations like the present one being allowed to recur again, both the State Government and the Commission are required to be more vigilant and constructive in their approach. When dealing with the careers of large number of candidates, their stands have to be consistent and not varying to avoid giving room for unsavoury suspicions and ensuring the system to work more transparently to add to its reputation and strength.

12. In the peculiar circumstances noted above, we direct that the appellants shall be considered by the Commission and the State Government and they would be appointed if otherwise found suitable and eligible after verification of such credentials, documents and background as are necessary to be done for appointment."

Relying upon the aforesaid judgment he submits that the delay, if any, was not due to these petitioners; rather the record clearly transpires that these petitioners deposited the verification fees and the delay committed by the third party cannot be attributed to these petitioners; as such the action of the respondent in not appointing these petitioners on the ground of lapse of panel is non-est in the eye of law and the respondent authorities may be directed to give appointment to these petitioners.

5. Ms. Darshana Poddar, learned AAG-I submits that the name of the petitioners were considered for appointment pursuant to the meeting held on 01.02.2013 when 13 selected candidates did not join but while their certificates were under

process of verification; the life of merit list/panel which was for one year i.e. from 27.04.2012 to 27.04.2013 expired and since till that time the verification of original certificates of these petitioners could not be received, therefore, they were denied appointment.

She further submits that the allegation of the petitioners that the appointment could not take place due to laches on the part of respondents is not true because from perusal of list of dates it would transpire that petitioners' name were recommended well within time on 01.02.2013 but before the certificates could be verified; life of panel expired.

She further contended that any person whose name appears in the selected list does not acquire any indefeasible right of appointment and empanelment at best is a condition of eligibility for the purpose of appointment and by itself it does not amount to selection or create any vested right to be appointed. She further submits that now the law is no more res-integra, inasmuch as, merely because a candidate is selected or kept in waiting list; he or she does not acquire any absolute right to be appointed and it is always open to the Government to make appointment or not even if there is any vacancies and it is not incumbent upon the Government to fill up the same.

In support of her contention she relied upon the judgment passed in the case of State of Orissa & Anr. v. Rajkishore Nanda & Ors. reported in (2010) 6 SCC 777; paragraph Nos.14 to 16 are quoted hereinbelow:-

14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

15. A Constitution Bench of this Court in Shankarsan Dash v. Union of India held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of the candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination.

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage.

She further draws attention of this Court towards the resolution dated 07.12.12 and submits that this resolution wherein it has been clarified that the life of panel will be one year from the date of issuance of merit list is clarificatory in nature,

inasmuch as, this resolution has been issued taking recourse of clause-16 of Jharkhand State Jansevak (Bharti avm sewa sartein) Niyamawali, 2011 and clause-16 clearly says that if it is any confusion with regard to any clause of the rules then the Secretary of the Department's decision will be final and since there was confusion with regard to life of panel, it was clarified that life of panel would be one year from the date of publication of merit list.

She further submits that the allegation of the petitioners that in absence of any Rule the date of one year should be reckoned from the date of recommendation is also not tenable in the eye of law as it is a settled law that even when there is no rule or the rules are silent on this point; the period of panel would be one year from the date of publication of the merit list. Even otherwise, the name of the petitioners were recommended by the committee after the publication of the resolution dated 07.12.2012; as such since the certificates were not verified in accordance with law and the life of panel lapsed, as such no relief could be granted to these petitioners, inasmuch as, now it is no more res-integra that the life of panel remains valid for one year and in the instant case since the result/merit list was published on 27.04.2012, as such the life of panel ceases to exist on 27.04.2013 and admittedly; the verification of certificates reached the office only on 15.07.2013.

6. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein; it appears that on 27.04.2012; a merit list was published in the daily newspaper in which names of 110 successful candidates were published and the names of these petitioners did not find place in the said list. However, out of 110 successful candidates, only 106 candidates were selected for joining; out of which only 101 candidates joined as VLW and subsequently 4 VLW also tender their resignation. Thus, out of 110 vacancies only 97 VLW (Jan Sevak) continued in that post and 13 posts remained vacant.

Thereafter, a decision was taken by the District Selection Committee, Deoghar under the Chairmanship of Deputy Commissioner to recommend the names of 13 candidates and accordingly on 01.02.2013, names of these petitioners along with others were recommended and they were asked for submission for their original documents by 27.02.2013. Thereafter, these petitioners along with others submitted their certificates for verification, which was immediately sent for verification. However, unfortunately, the verification report could not reach the Department on or before 27.04.2013; rather it reached on 15.07.2013.

7. Thus, the only question which requires consideration is whether the case of the petitioners can be considered for appointment in the facts and circumstances of this case that the original merit list was published on 27.04.2012 and as such whether the panel lapsed after one year i.e. on 27.04.2013 or it should be reckoned from the date of recommendation of these petitioners vide resolution of the meeting dated 01.02.2013.

The law in this regard is now no more res-integra, inasmuch as, even in absence of any rule, ordinary period of validity of panel/select list would be one year.

In the case of State of Bihar & Ors. v. Amrendra Kumar Mishra reported in (2006) 12 SCC 561 the Hon'ble Apex Court has held that life of panel remains valid for one year. Relevant paragraph Nos. 9 and 13 are quoted hereinbelow:-

"9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel."

"13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period."

Reference in this regard can also be made in the case of State of Rajasthan & Ors. v. Jagdish Chopra reported in (2007) 8 SCC 161, wherein the Hon'ble Apex Court has clearly held that even when there is no rule or the rules are silent on this point; the period of panel would be one year from the date of publication of the merit list. Paragraph No.9 of the aforesaid judgment is quoted herein below:-

9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year. In State of Bihar v. Amrendra Kumar Mishra this Court opined:

"9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel."

It was further held:

"13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period."

8. Now, coming to the facts of this case, it appears that on 07.12.2012 a resolution was taken by the Agriculture and Sugarcane Development Department, Government of Jharkhand that the period of panel will be one year from the date of publication of merit list.

This Court is of the firm view that in the background of settled proposition of law; this resolution is clarificatory in nature, inasmuch as, this resolution has been taken pursuant to clause-16 of Jharkhand State Jansevak (Bharti avm sewa sartein) Niyamawali 2011, wherein it is specifically stated that in case of any confusion, the Secretary of the Department can take a final decision and certainly this issue with regard to life of panel has frequently recurred; as such in the resolution 07.12.12, it has been categorically stipulated that the period of a panel will be one year to be reckoned from the date of publication of merit list.

Even the action of the respondent/selection committee, Deoghar to recommend the names of 13 persons was with high expectations that the verification of certificates could have been completed within one month and admittedly; the Deputy Commissioner has also reminded for early verification but the fact remains that the verification of certificates reached only on 15.07.2013 i.e. much beyond the period of one year from the date of publication of merit list.

9. In the case of Jadish Chopra (supra) the Hon'ble Apex Court has categorically held that although rule does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year and vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner.

Further, in the case of Rajkishore Nanda (supra) the Hon'ble Apex Court has held that the select list cannot be treated as a reservoir for the purpose of appointments and if selection process is over and select list has expired then no relief can be granted to the candidates.

10. The judgment relied upon by the petitioners is not applicable in the instant case in view of the resolution dated 07.12.2012 which has been held to be clarificatory in nature; wherein it has been categorically stated that the period of panel will be one year to be reckoned from the date of publication of merit list.

11. At this stage it is pertinent to mention here that the Hon'ble Apex Court has gone to the extent of holding that even selected candidates did not have any legal right for appointment.

In the case of All India SC & ST Employees' Assn. & Anr. v. A. Arthur Jeen & Ors. reported in (2001) 6 SCC 380 the Hon'ble Apex Court has held in paragraph 10 as under:-

10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in Shankarsan Dash v. Union of India. Para 7 of the said judgment reads thus:

"7. It is not correct to say that if a number of vacancies are notified for

appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. SubashChanderMarwaha*, *NeelimaShangla v. State of Haryana* or *Jatinder Kumar v. State of Punjab*."

12. After going through the above referred judicial pronouncements; it is crystal clear that on the one hand, the selected candidates did not have any legal right to get appointment if they are selected and on the other hand, the life of panel is one year even in the absence of any rule.

13. In view of the aforesaid discussions; no relief can be granted to these petitioners. Consequently, the instant writ application stands dismissed on contest, however there is no order as to cost.