

(2018) 08 JH CK 0050
In the Jharkhand High Court
Case No : Writ Petition (S).No. 2130 of 2016

Anand Mohan Ghosh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Citation : (2018) 08 JH CK 0050

Hon'ble Judges : DR. S.N.PATHAK, J

Bench : Single Bench

Advocate : Rajiv N. Prasad, Chandra Prabha, Vishal Kumar Rai

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Petitioner has approached this Court with a prayer for issuance of writ in the nature of mandamus to consider his case for re-appointment to the

post of Technical Assistant in Frozen Semen Bank Project of the Animal Husbandry Department after giving weightage of 90 marks for the past

service rendered by him as has been granted to other similarly situated persons and consequently, issue appointment letter in favour of the petitioner

and also for grant of other consequential benefits for which the petitioner is entitled in accordance with law.Â

3. The factual exposition as has been delineated in the writ petition is that a scheme was floated by the State of Bihar known as â??Semen Bank

Projectâ?? and 400 posts of Technical Assistant were created in the year 1980 out of which 100 posts were allocated for the Dumka region. Under

the said scheme, the Director, Animal Husbandry was competent authority to

make appointment on these posts. Considering the urgency for appointment, the State Govt. permitted the Regional Directors to make appointments against the post of Technical Assistant. Accordingly, the petitioner was appointed as Technical Assistant by the Regional Director, Animal Husbandry, Santhal Pargana Range on temporary basis against sanctioned post vide memo No. 2853 dated 13.12.1990 after being selected by a duly constituted selection committee. In pursuance whereof, the petitioner joined the service and started discharging the duty to the utter satisfaction of their superior authorities. Subsequently, the services of the petitioner was extended from time to time. After joining the post, petitioner was sent for training and after completion of the technical training, he was posted at Frozen Semen Sub-Centre, Sahara in Jarmundi Block of Dumka district against sanctioned post. Accordingly, his service book was duly opened and all benefits of regular employment was extended to him and deductions towards GPF and Group Insurance were also made from his salary. The petitioner also passed Hindi Noting and Drafting Examination. It is the case of the petitioner that after working satisfactory for a considerable long time, one fine morning Govt. of Bihar, Department of Animal Husbandry issued letter No. 5530 dated 23.10.1998, holding inter alia that appointments of such Technical Assistants made by Regional Officers were invalid and were to be terminated after issuance of showcause notice. The Govt. however directed that all such persons would be given weightage at the time when regular appointments takes place and their applications would not be rejected on grounds of age.Â

4. Aggrieved by the said notification dated 23.10.1998, several writ petitions were preferred in the Honâ??ble Patna High Court for quashing the said notification. One of such cases was titled as â??Uma Kant Sinha & Ors. Vs. State of Bihar (C.W.J.C. No. 3503 of 1998)â?, in which the Honâ??ble Patna High Court has passed an interim order restraining the respondents from removing the petitioners of that case from their services. After creation of Jharkhand State, the cases relating to Dumka District were transferred to the Honâ??ble Jharkhand High Court. The said C.W.J.C. No. 3503 of 1998 and other analogous cases were dismissed by this Honâ??ble Court vide its judgment and order dated 18.07.2001, although it was observed that Regional Director had power to make appointment

to the post of Technical Assistants till 21.02.1992. Aggrieved by the order passed in those writ petitions, the petitioners of those cases had preferred L.P.A. which was also dismissed on 07.08.2001 and thereafter, the writ petitioners of Uma Kant Sinha's cases preferred S.L.P. (C). No. 16598-16599 of 2001 and the Hon'ble Apex Court was pleased to pass an interim status quo vide its order dated 08.10.2001. The said S.L.P. was disposed of vide order dated 23.07.2003 with a direction to the respondents to either reappointment or regularize the appellants therein.Â

Â The relevant portion of the order dated 23.07.2003, passed in the aforesaid S.L.P. by the Hon'ble Apex Court is reproduced herein below:-

â??In view of the matter, we direct the State of Jharkhand to consider at the earliest for recruiting Technical Assistants for Semen Bank Project and to fill-up the existing vacancies within a period of three months from today.

(ii) The appellants whose services are terminated may apply to the Secretary of the Animal Husbandry Department within a period of one month for being re-appointed or for regularization of their services. The Committee shall consider the eligibility, suitability, past record as well as educational qualifications of the appellants as per the rules as on today.

(iii) The Committee shall give relaxation of age and weightage over outsiders as directed by the High Court. However, if the appellants are found unsuitable for some reasons, it would be open to the Committee to reject their applications.Â Appropriate authority shall issue orders for appointment after considering the roster and the merit list, on available vacancies.â??

5. It is the specific case petitioner that his service was also terminated vide order dated 28.06.2003, while he was posted at Animal Hospital, Khajuri in the district of Jamtara. Against the said order the petitioner along with others filed W.P.(S). No. 4562 of 2003 (Mukesh Kumar & Ors. Vs. State of Jharkhand & Ors.), which was dismissed by this Hon'ble Court vide its Judgment and Order dated 28.10.2005. However, the Hon'ble Court observed that the petitioners of these cases are also covered by the judgment passed in the case of Uma Kant Sinha. Thereafter, in pursuance to the judgment of the Hon'ble Apex Court, the respondent came out with an advertisement on 28.08.2004 inviting applications from all concerned including the persons whose services had been terminated with the specific stipulation that relaxation of age and also weightage would be given to the

persons whose services had been terminated. The petitioner whose services were also terminated, had applied in pursuance to the aforesaid

advertisement and accordingly, an Admit Card was issued to him to appear in the examination scheduled to be held on 09.01.2005. It is the further

case of the petitioner that though he appeared in the said examination but his results was not published as the weightage of 90 marks as has been

given to the similarly situated persons, who were parties before the Honâ??ble Apex Court in Civil Appeal No. 5342-5343 of 2003, were not given to

the present petitioner. Other similarly situated persons also moved before the Honâ??ble Supreme Court vide SLP (C). No. 23221-23222 of 2005

and the Honâ??ble Supreme Court disposed of the case vide its order dated 10.04.2006 with certain directions including that â??all other conditions

to the order dated 23.07.2003 shall be operative as far as the procedure to be followed by the selection committee to be set-up pursuant to this order is

concernedâ??.

Â In pursuance to the aforesaid judgment, the respondent-authority again started recruitment process for the post of Technical Assistant under Frozen

Semen Project in which the petitioner again applied for appointment to the said post and accordingly, admit card was issued to appear in the

examination scheduled to be held on 07.10.2007 but this time also his result was not published, as the weightage of 90 marks for past service were not

granted to the petitioner on the ground that petitioner was not a party before the Honâ??ble Supreme Court. Aggrieved by the said decision of the

respondent-authorities, the petitioner has approached this Honâ??ble Court by filing the instant writ application.Â

6. Mr. Rajiv Nandan Prasad, learned counsel appearing for the petitioner strenuously urges that respondents have illegally and arbitrarily not

considered the case of the petitioner for giving weightage of 90 marks though in the case of other similarly situated persons, weightage has been given

by the Honâ??ble Apex Court. Mr. Prasad further argues that Division Bench of this Honâ??ble Court in case of Md. Irfan Gani & Ors. Vs. State

of Jharkhand & Ors., reported in 2015 (4) JLJR 253 has held that, â??the action of the respondents in not giving same weightage to the appellants of

the case is not only arbitrary but also discriminatory and accordingly, directed the respondent-authority to consider the case of the appellants of that

case in light of the orderâ?. Learned counsel further argues that in view of the aforesaid order, the weightage of 90 marks has to be given in the case

of petitioner also. It has further been argued that the attitude of the respondent-authorities is totally discriminatory as similarly situated persons were

considered and granted weightage of 90 marks but the petitioner has been denied the same.Â

7. Per contra, counter-affidavit has been filed by the respondents. Mr. Vishal Kumar Rai, learned counsel for the respondents draws the attention of

the Court towards para-6 and 7 of the counter-affidavit and submits that petitioner had obtained 104.375 marks whereas, the last selected candidate

has obtained 133.75 marks without weightage. On the basis of the direction of the Honâ??ble Supreme Court, the Departmental Selection Committee

had decided to give weightage of 90 marks to the appellants of Civil Appeal Nos. 5342-5343 of 2003 and as such, the case of the petitioner was not

considered. Justifying the stand of the respondents, learned counsel submits that there is no illegality or any infirmity in non-consideration of the case

of the petitioner.

8. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered opinion that the case of the petitioner

needs consideration. The issue involved in this writ petition has already been settled by the Division Bench in case of Md. Irfan Gani & Ors. Vs. State

of Â Jharkhand & Ors. (supra) and the same has been upheld by the Honâ??ble Apex Court vide its order dated 14.12.2017. As such, the stand

taken by the respondents is totally misconceived. The petitioner has to be considered for granting weightage of 90 marks in view of order passed by

the Division Bench of this Honâ??ble Court and that of the Honâ??ble Apex Court.Â

9. Accordingly, I hereby direct the respondent No. 3, Director, Animal Husbandry, Govt. of Jharkhand, Ranchi to reconsider the case of the petitioner

for his appointment and publish the results by giving weightage of 90 marks to the petitioner. Needless to say that if after giving the weightage of 90

marks, if the case of the petitioner falls within the ambit of consideration, the same shall be considered and letter of appointment shall be issued in his

favour. The entire exercise shall be completed within a period of six weeks from the date of receipt/ production of a copy of this order.

10. With the aforesaid observations and directions, the writ petition stands allowed.