
(2014) 08 JH CK 0064
In the Jharkhand High Court
Case No : L.P.A. No. 8 of 2014

Bhimlal Chandravanshi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Citation : (2015) 1 AJR 383 : (2014) 4 JLJR 42

Hon'ble Judges : R. Banumathi, C.J.; Amitav Kumar Gupta, J

Bench : Division Bench

Advocate : Rajeev Ranjan and Shresth Gautam, Advocate for the Appellant; M. Jalisur Rahman, J.C. to G.P.-III, Advocate for the Respondent

Judgement

Amitav Kumar Gupta, J.—The instant Letters Patent Appeal is directed against the order and judgment dated 29.11.2013 passed by the learned Single Judge in W.P. (S) No. 1361 of 2013, whereby the writ application was dismissed.

2. The facts as averred in the aforesaid writ is that in terms of Advertisement No. 1 of 2010-2011 issued by the Giridih Collectorate for appointment of Class-IV employees (Annexure-1), the petitioners applied for the said post along with the requisites documents and they were issued Admit Cards (Annexure-2) for appearing in the written examination on 31.07.2011. That the petitioners appeared and they were declared successful as per Annexure-3, accordingly they were issued call letters (Annexure-4) for the interview to be conducted on 15.10.2011. That in terms of Rules as provided by the Regulation of the State Government formulated in the year 1979-1980, a panel was to be prepared regarding appointment of Class-III and IV employee. That the petitioner did not receive the appointment letters and they filed representation before the respondent-authority, but the respondent-authority in most arbitrary manner did not prepare the panel of the selected candidates and despite the assurance given that the panel would be prepared for the appointment, no appointment was made on the sanctioned vacant posts.

3. Thus, being aggrieved by the arbitrary action of the respondent, the petitioners filed the aforesaid writ which was dismissed by the impugned order.

4. Learned counsel for the appellant has submitted that the learned Single Judge has failed to appreciate that the Rules with regard to appointment of Class-III and Class-IV employees have been provided vide the Regulation of the State Government formulated in the year 1979-1980 which prescribes for preparation of a panel of the selected candidates but the respondent-authority have not created any panel whereas in other districts the panel has been prepared and appointment has been given. That till date no order has been issued for cancellation of selection process. It has been argued that in the case of Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, , the Apex Court has held that in case where it was possible to weed out the beneficiaries of irregularities or illegalities, there was no justification to deny appointment to those selected candidates whose selection was not vitiated in any manner and cancellation of the selection in entirety by the competent authority was held to be unreasonable. That the Hon''ble Supreme Court propounded the doctrine segregation and said decision was followed by a Division Bench of this Hon''ble High Court in the case of Krishnaji and Others, Brajesh Kumar Singh and Others, Dharendra Kumar Singh and Others and Jai Siya Ram Singh and Others Vs. State of Jharkhand and Others, .

5. It is urged by the learned counsel that the Division Bench of this Court has held that selection of all candidates cannot be cancelled where beneficiary candidates have been identified thus there is no justification in law to deny appointments to the other selected candidates whose selection were not found to be in any manner vitiated for one or other reasons. That the Division Bench has relied on the doctrine of proportionality as propounded by the Supreme Court in the case of Rajesh P.U. (Supra).

6. Learned counsel for the appellants has further submitted that there is no disclosure that as to the number of persons in whose case the irregularities or illegalities were detected with respect to the selected persons. That the learned Single Judge has failed to appreciate these factual aspects and the settled proposition of law.

7. On the above grounds it has been contended that the present appeal deserves to be allowed and impugned order and judgment of the learned Single Judge is fit to be set aside.

8. Learned counsel for the respondent-State has submitted that for the alleged irregularities with respect to the preparation of panel for interview and selection of the candidates, three member committee was constituted, by respondent No. 2 i.e. Deputy Commissioner, Giridih comprising of Additional Collector, Deputy Development Commissioner and the Sub-Divisional Officer, Giridih in terms of Memo No. 71/Naza dated 03.02.2003 for conducting a thorough enquiry into the alleged irregularities. That the said committee headed by the Additional Collector

made a detail enquiry and recommended for cancellation of the Advertisement No. 1 of 2010-2011. That the report of the committee is at Annexure-C to the counter affidavit filed by the respondent Nos. 1 and 2.

It is urged that on account of cancellation of the said advertisement no occasion arose to prepare panel nor the need arose for the assessment of the vacancy and the learned Single Judge has rightly held that due to gross irregularities the authorities had no other option but to cancel the entire selection process.

9. We have perused the materials on record. On perusal of Annexure-C, i.e., the report of three member Committee, it is evident that the Committee has enquired in detail regarding marks, caste, category, age as well as the weightage of marks given to the candidate peon and after detailing the facts the Committee found that gross irregularities were committed due to which the Committee recommended for the cancellation of the advertisement. On perusal of the report it is apparent that in the present case it was not possible to weed out the beneficiaries of the irregularities or illegalities, as there were wide spread infirmities which was pervasive in nature. The Committee had exhaustively scrutinized the marks obtained and other parameters like caste, category, weightage given in terms of years and other aspects. It is clear that the entire selection process was vitiated.

10. In the factual scenario of the present case the decisions relied on by the learned counsel for the appellants is not applicable to the facts of the case since it is noticed that the report shows that all the norms have been violated and the learned Single Judge has rightly relied the decision in the case Union of India and Others Vs. O. Chakradhar, , the Hon"ble Supreme Court which reads as under:-

"12. "As per the report of CBI the whole selection smacks of mala fides and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of chairman, in holding typing test, in interview and in the end while preparing the final result. In such circumstances it may not be possible to pick out or choose a few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is, could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large-scale, widespread and all-pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the

benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishan Yadav applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserves to be allowed.

11. On query, learned counsel for the appellants has not been able to state as to how many posts were advertised. However it is not disputed that no appointments were made on the vacant posts in terms of the advertisement issued by the respondents accordingly the appellants/petitioners were not discriminated against.

12. In the light of the aforementioned decision relied on by the learned Single Judge and the facts of the case at hand, we do not find any reasonable ground to interfere with the impugned judgment.

13. However it is made clear that the petitioners shall be entitled to relaxation of age from the date of the advertisement which has been cancelled to the date when the next advertisement is made in the matter of appointment/selection to Class-III and IV posts.

14. With the said direction and observation, the instant Letters Patent Appeal is hereby disposed of.