
(2017) 04 JH CK 0029
In the Jharkhand High Court
Case No : 4880 of 2013

Bhuneshwar Mandal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

[Bihar Reorganization Act, 2000](#), Section 72, Section 72(3)

Citation : (2017) 04 JH CK 0029

Hon'ble Judges : Ananda Sen

Bench : SINGLE BENCH

Advocate : Sudhir Kumar Sharma, Awnish Shankar, Divyam, J.C., Sanjay
Piperwal, Shadab Bin Haque

Final Decision : Disposed

Judgement

1. Petitioner in this writ application has prayed for a direction upon the respondents to recommend his name for his appointment to the post of Deputy Collector, pursuant to the Limited Deputy Collectors Recruitment Examination-2013, in place of respondent no.4.

2. An advertisement was published on 08.10.2010 in the local newspaper for appointment, on the post of Deputy Collector, under Jharkhand Administrative Service cadre by limited examination. The said examination was for the 2nd, 3rd and 4th Limited Deputy Collectors Recruitment Examination- 2013. Since the petitioner had all requisite qualifications to appear in the said examination, he appeared in the said examination as B.C.I candidate.

3. It is pertinent to mention here that the petitioner was already appointed on the post of typist on 08.08.1997 in the erstwhile Government of Bihar. After bifurcation of the State of Bihar, the petitioner was allotted the Jharkhand cadre and was posted as a typist in the Department of Co-operative, under the Government of Jharkhand.

4. The petitioner appeared in the aforesaid examination but his name did not

find place in the merit list. He enquired about the reasons and came to know that he obtained 137.70 marks out of 200, whereas another candidate, namely, Ajoy Kumar Verma, who is also a B.C.I candidate, obtained 137.82 marks out of 200. As Ajoy Kumar Verma obtained 0.12 marks more than the petitioner, Ajoy Kumar Verma was recommended for appointment.

5. The contention of the petitioner is that there is no provision of awarding marks in decimal fraction. It is submitted that in a given circumstance when marks allotted to both the candidates is equal, the person, who is older in age has to be recommended. Since admittedly the petitioner is older in age than that of respondent no.4, he should have been recommended for appointment. His further claim is that Ajoy Kumar Verma, who was recommended against B.C.I category, was later on recommended as B.C.-II candidate and since the post of B.C.-I, fell vacant and the petitioner is the next candidate, is entitled to get the benefit under B.C.I category. He claims that his condition of service is protected by virtue of Section 72(3) of the Bihar Reorganization Act, 2000, and the State must consider him as B.C.I candidate.

6. State appeared and filed their counter affidavit stating therein that the petitioner is not entitled to get the benefit of section 72(3) of the Bihar Reorganization Act, 2000, as the appointment to the post of Deputy Collector, pursuant to the limited examination is a fresh appointment. Thus, section 72 of the Bihar Reorganization Act, 2000, cannot be applied in the case of the present petitioner. It has further been mentioned that the petitioner is a permanent resident of Bihar and thus, he shall not be provided reservation of Backward Class-I by the State of Jharkhand. It has been lastly submitted that the petitioner is not entitled to get any benefit. The State in their counter affidavit do not deny the fact that the respondent no.4, Ajoy Kumar Verma, who was earlier recommended as B.C.I candidate, has been reconsidered as B.C.II candidate and one post in B.C.I category fell vacant.

7. I have heard learned counsel for the parties and gone through the records.

8. Admittedly, the petitioner and the respondent no.4 appeared in the limited examination as B.C.-I candidates. It is also admitted that the petitioner has obtained 0.12 marks less than that of respondent no.4. The petitioner's argument that marks cannot be awarded in decimal fraction is not acceptable. As per the petitioner himself the nature of examination was subjective but general study was objective. Nothing has been brought on record to suggest that there was an embargo in awarding marks in decimal fraction. Since there was no restriction in awarding marks in decimal fraction, I find that no illegality has been committed by the respondents in awarding marks in decimal fraction. Further in subjective answers marks can be awarded in decimal fraction. When admittedly the petitioner has obtained 0.12 marks lesser than that of respondent no.4 then the petitioner cannot get any priority or privilege over respondent no.4. The petitioner for all purpose is to be considered below the respondent no.4 in the merit list. Thus, on this count, I find that the claim of the petitioner cannot be

considered.

9. So far case of the petitioner that respondent no.4 later on being appointed as B.C.-II candidate and the petitioner being the B.C.-I candidate and was just next to the respondent no.4 in terms of merit, on facts. I think that his case needs to be reconsidered.

10. The petitioner admittedly is a B.C.-I candidate and was working in the State of Jharkhand, after bifurcation of the state of Bihar. The prayer of the petitioner to be considered as B.C.-I, was denied by the respondents on the ground that by virtue of limited examination, the petitioner will be appointed afresh in the State of Jharkhand and his cast is not included in the schedule as B.C.-I, thus the petitioner cannot be treated as B.C.I candidate. The respondents in their counter affidavit in paragraph 8 has given reference of two resolutions i.e. 4722 dated 14.08.2008 and 5448 dated 12.09.2011. It is necessary to quote para 8 of the counter affidavit.

"Para-8:- It is pertinent to mention that the department/State has issued two Resolutions regarding issuance of Caste Certificate, which are as follows: (i) One is Resolution No. 4722 dated 14.08.2008, which provides-" The government servants who are appointed in the reserve category before the creation of the State and on the basis of cadre Division have been posted in Jharkhand State and are resident of Bihar State, "their reservation category shall remain unaffected and they shall be treated as government employee of reserved category". Please ensure action in accordance with the provisions aforementioned in promotion to the posts of State Service/Cadres." (ii) The second resolution is Resolution No. 5448 dated 12.09.2011, which provides-"For appointment and admission in educational institute of State, privilege of reservation in Scheduled Caste/Scheduled Tribe/ other Backward Class category shall be provided if the candidate is classified in the State list of Scheduled Caste/ Scheduled Tribe/ other Backward Class and the domicile of the State."

11. Thus, as per the respondents since the appointment of the petitioner in the post of Deputy Collector is a fresh appointment, the resolution of 2011, will be made applicable and the petitioner is not entitled to get any benefit as he is not a person under B.C.I category. I find no merit in such submission of the State. The appointment to the post of Deputy collector may be a fresh appointment, but the process of the said appointment has to be seen. This appointment is not an open appointment for persons in general. This appointment is by way of limited examination, in which only employees, who are already in services of the State, are allowed to appear. Thus, the persons who are not employed under the State of Jharkhand, are not entitled to appear in the said examination. That means only a Government employee is entitled to appear in the said examination. The said employee, if succeeds in the examination and is appointed on the post of Deputy Collector, his past services with the State are also counted for his benefit. Thus, it is in continuation of his earlier service.

12. In the case in hand, the petitioner was already working in the Department as B.C.-I candidate and thereafter by virtue of his employment in the Co-operative Department under the State of Jharkhand, he qualified to appear in the limited examination. Admittedly he is a B.C.-I candidate and after bifurcation of the State he was allotted the Jharkhand cadre. He carried his B.C.I category with him after bifurcation also. Thus, the Resolution number 4722 dated 14.08.2008 applies to the petitioner. The State acknowledges the petitioner as B.C.I category while he is working in Co-operative Department under the Sate, but will not treat him as B.C.I for the purpose of limited examination, this is inconceivable. Strictly speaking this appointment so far as the petitioner is concerned, cannot be said to be a fresh appointment. The petitioner, after reorganization of the State, was allotted the Jharkhand state cadre as a B.C.-I candidate. Thus, his status as B.C.-I candidate for the purpose of service has to be maintained. Thus, the claim of the respondents that the petitioner cannot be treated as a B.C.-I candidate is erroneous. In the opinion of this Court the petitioner has to be treated as a B.C.-I candidate.

13. In view of the aforesaid findings, the case of the petitioner is remitted to the respondent no.3 to take appropriate decision, in view of the findings made above and to consider the case of the petitioner for appointment on the post of Deputy Collector, pursuant to the combined examination-2013, as B.C.-I candidate only if the petitioner qualifies and comes within the zone of consideration taking into consideration the marks obtained by him. His case should be considered and an appropriate an order should be passed within a period of 3 (three) months from the date of receipt-/production of a copy of this order.

14. With these observations, this writ application stands disposed of.