
(2009) 08 JH CK 0093
In the Jharkhand High Court

Bhupendra Nath Mistry

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Citation : (2009) 08 JH CK 0093

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred mainly for the reason that petitioner has been given a compassionate appointment on 15th of February, 2006 as Class IV employee whereas the recommendation of the Compassionate Appointment Committee was for the appointment of the present petitioner on Class III post. The said recommendation is dated 30th of November, 2004 (Annexure-1 to the memo of petition). Despite this recommendation for the reasons best known to the respondents, the respondents have appointed the present petitioner on Class-IV post on the ground that there is a ban of appointment of Class-III posts and, therefore, a letter was taken: from the petitioner that as there is a ban of appointment upon Class III post, petitioner is ready to be appointed on Class -IV post.

2. Learned Counsel appearing on behalf of the respondents has submitted that there are two affidavits filed on behalf of respondents, one affidavit says that there was no vacancy of Class-III post and, therefore, present petitioner was appointed as a Class-IV employee. The said affidavit has been filed by Karma Minj, S/o Late Madi Minj, Resident of Latehar, District Superintendent of Education, Latehar. Para-10 of the said affidavit reads as under:

That with regard to the statement made in Paragraph-10 and 11 of the writ application the deponent humbly states thit decision taken by the District Compassionate Committee dt.30.11.2004 forwarded for appointment of the

petitioner as Clerk but at this time no one post of Clerk vacant in office of the District Superintendent of Education, Latehar, therefore, petitioner appointment on Class IV Post.

Second Affidavit has been filed by one Shri Shekhar Kumar, S/o Late K.L. Das Verma, Resident of Doranda, Ranchi, posted as Under Secretary, Human Resource Development Department, Ranchi. In Paragraph-8, he has stated as follows:

That it has also been mentioned in the letter dated 22.07.2009 of R.D.D.E., Palamau, that though vacancies of Class-3 were available after 30.11.2004 but recruitment on the same was banned by Director, Secondary Education vide his letter No. 1078 dated 27.04.2005 as such no appointment in Class III post was made.

3. That there was a ban for the appointment of Class-III posts and, therefore, the petitioner was appointed as a Class IV employee. Moreover, there is a letter written by the present petitioner dated 16th January, 2006, that he has no objection if he is given appointment on Class-IV employee and, therefore, petitioner is estopped, from claiming Class-III post.

4. Having heard learned Counsels for both the sides and looking to the facts & circumstances of the case, it appears that:

(i) The father of the present petitioner was working with the respondents. He expired on 31st October, 2002 and, therefore, the petitioner was entitled for compassionate appointment as per the scheme floated by the Respondent State: Authorities. The petitioner applied for compassionate appointment being son of the deceased employee.

(ii) It appears that as per the provisions of the scheme the Compassionate Appointment Committee was constituted and petitioner was recommended for Class-III post, looking to the educational qualification etc. of the present petitioner. The said recommendation is dated 30th of November, 2004 (Annexure-I to the memo of petition). Thus, the Compassionate Appointment Committee has already recommended for the appointment of the petitioner on Class-III post. For no justifiable reasons and for no valid reasons the present petitioner was appointed on a Class-IV post whereas other similarly situated persons like petitioner have been appointed as Class-III employee. There are as many as 11 such candidates who have been appointed on Class-III post. The said list is annexed at Annexure-A to the Counter-affidavit filed by the Respondents (Under Secretary, Human Resource Development Department, Ranchi).

(iii) Initially when the affidavit was filed by district Education Officer, these details were deliberately not given to the Court and absolutely wrong reason was given in the earlier affidavit. The earlier affidavit filed on behalf of Respondent-State mentions that there was no vacancy of Class-III post and, therefore, petitioner was appointed on Class-IV post. This fact is clear from Paragraph-10 of the

counter-affidavit filed by the District Superintendent Education, Latehar, which has been quoted hereinabove.

(iv) Thereafter, it appears that, the learned Counsel for the petitioner vehemently pointed out that there are similarly situated petitioners/candidates Who have been appointed as Class-III employees just, within a period of one month, and, therefore, the reason given in Paragraph No. 10 in the aforesaid affidavit is absolutely false reasoning and this Court directed the Government to file their affidavit vide order dated 29th July, 2009.

Because of the aforesaid order there was no option with the respondents, but, to file clear and exact affidavit. Now whole list of candidates has been given in an affidavit filed by Under Secretary, Human Resource Development Department, Ranchi and there are several persons who have been appointed as Class-III employees. The said list along with appointment letter numbers and dates of the appointment district-wise reads as under:

Sr. Letter No./Dated Name District No.

01 328/18.3.2006 Imtiaz Ali Palamau 02 329/18.3.2006 Sri Iswari Kumar Singh Palamau 03 330/18.3.2006 Sri Anil Kumar Deputy Inspector of School, Latehar 04 332/18.3.2006 Sri Pradip Ram Palamau 05 417/04.04.2006 Sri Sasikant Pandey Palamau 06 574/17.05.2006 Sri Bipin Bihari Palamau 07 1131/21.09.2006 Sri Sitlesh Kumar Palamau Singh

Sr. No. Letter/Dated Name District

01 561/08.07.2008 Sri Ranjit Kumar Latehar Singh 02 562/08.07.2008 Sri Sanjay Makari Latehar 03 563/08.07.2008 Sri Suresh Singh Palamau 04 648/19.07.2008 Sri Indra Dev Uraon Latehar

5. These aforesaid eleven candidates have been appointed on Class-III. Now in second affidavit, a new reasoning has been given in Paragraph No. 8 of affidavit filed by Under Secretary, Human Resource Development Department, Ranchi, that there was a ban and, therefore, present petitioner could not be appointed on Class-III post. If there is a ban and petitioner was appointed as Class-IV employee in February, 2006 then on , 18th of March, 2006, how more than half dozen candidates could be appointed on Class-III posts. There were no justifiable reasons with the respondents to discriminate the present petitioner. No reasons have been given why the petitioner should not be appointed as Class-III employee. A letter written by the employee i.e. by the present petitioner dated 16th of January, 2006, which is annexed as Annexure-A / 3 to the counter-affidavit filed by Under Secretary, Human Resource Development Department, Ranchi, can not be treated as relinquishment deed-type document. A right of the petitioner to be appointed as Class-III employee has not been relinquished permanently. Respondents might have stated false facts before the petitioner "that there is a ban upon the appointment as a Class-3 employee and, therefore, a letter must have been written by the present petitioner that if there is a ban for

the appointment as a Class-III employee, petitioner is accepting class-IV post otherwise how a new comer who has never joined office can know that whether there is a ban on the appointment or not. The said letter at Annexure-3 can never be interpreted as a waiver of the right. On the contrary Annexure-3, letter written by the present petitioner, is because of a difference of high degrees or bargaining power.

6. Because of these facts as stated here-in-above, the reasons given by the respondents in earlier affidavit that there was no vacancy and, therefore, the petitioner has not been appointed as Class-III employee is far away from the truth. Similarly, in the second affidavit the reasons which are given are also not tenable in law. As stated here-in-above, there are several candidates who have been appointed as Class-III employees, just within one month, from the appointment of the present petitioner as Class-IV employee. False excuses have been given by the respondents for discriminating the present petitioner. It is true that if the respondents want to appoint, they can appoint as many persons as they can appoint on the posts of Class-III, but, within one month from the date of appointment of the present petitioner as Class IV employee, if several persons have been appointed as Class-III employees, it is apparent that the affidavit filed by Superintendent of Education, Latehar, is also stating false reason and false facts before this Court. If there was no vacancy or ban and, therefore, the petitioner could not be appointed as Class-III employee, they could not have appointed other persons on Class-III posts just within a month from an appointment of the petitioner on Class-IV post.

7. In view of these facts and looking to the aforesaid two affidavits filed on behalf of respondent, I hereby, direct the concerned respondent-authorities to consider the case of the present petitioner for Class-III post, ignoring the reasons given in the counter-affidavits and considering the recommendations of the Compassionate Appointment Committee (Annexure-10 to the memo of petition). A decision will be taken by Secretary, Human Resources Development Department, State of Jharkhand, Ranchi, within a period of 12 weeks from the date of receipt of a copy of the order of this Court, after giving an adequate opportunity of being heard to the present petitioner or to his representative and, in accordance with law, rules, regulations and policy and Government enforceable orders.

8. This Writ Petition is allowed to the aforesaid extent with the aforesaid directions.