

(2017) 02 JH CK 0092
In the Jharkhand High Court
Case No : W.P. (S) No. 19 of 2016

Binod Kumar Yadav

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 AIRJharR 339 : (2017) 1 JBCJ 640

Hon'ble Judges : Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Rajiv Ranjan, Sr. Advocate Mr. Baleshwar Yadav, Advocate, for the Petitioner in W.P.(S) No. 19 of 2016; Ms. Ruchi Rampuria, JC to Senior SCI, for the Respondents in W.P.(S) No. 19 of 2016; Mr. Baleshwar Yadav, Advocate, for the Petitioner in W.P.(S) No. 32 of 2016; Mr. Shahid Khan, SC (Mines), for the Respondents in W.P.(S) No. 32 of 2016; Mr. Lalit Kumar Singh, Advocate, for the Petitioner in W.P.(S) No.146 of 2016; Mr. Rajiv Anand, G.A. IV, for the Respondents in W.P.(S) No.146 of 2016; Mr. Mahesh Tewari and Ms. Kumari Shikha, Advocate, for the Petitioner in W.P.(S) No.334 of 2016; Ms. Richa Sanchita, Advocate, for the Respondents in W.P.(S) No.334 of 2016

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J.—A common question of law "whether appointment against the advertised vacancies can be denied arbitrarily" is involved in this batch of writ petitions. The learned counsel appearing for the petitioners contended that the decision not to conduct further counselling as a consequence of which the petitioners have been denied appointment is arbitrary. The learned State counsel, however, contended that in view of the time-schedule fixed by the Department vide letter dated 03.07.2015 where-under selection process was to be completed by 18.09.2015, further counselling has been stopped in all the districts.

2. In W.P.(S) No. 19 of 2016, Sri Rajiv Ranjan, the learned Senior counsel appears for the petitioners. In W.P.(S) No. 32 of 2016, Mr. Baleshwar Yadav, the

learned counsel appears for the petitioner and in W.P.(S) No. 334 of 2016, Mr. Mahesh Tewari, the learned counsel appears for the petitioner. The petitioners in these writ petitions were applicants for the post of Assistant Teacher (for Class-I to V). In W.P.(S) No. 146 of 2016, Mr. Lalit Kumar Singh, the learned counsel appears for the petitioner who was a candidate for appointment as Graduate-trained Teacher (Class VI to VIII). All these petitioners were candidates under Para-teachers" category.

3. With the consent of the learned counsel for the parties these petitions are disposed of finally at this stage itself.

4. The learned counsel appearing for the petitioners and the respondent-State, both have relied on a decision in "Shankarsan Dash v. Union of India" reported in [(1991) 3 SCC 47].

5. These writ petitions were filed with different and diverse prayers, however, during the course of hearing the learned counsel for the petitioners confined their argument only to the legality of respondents" decision to stop the counselling, midway. A separate detailed examination of each case, on facts, is thus, not required. In the present proceeding, several affidavits have been filed and now it is an admitted position that against the total number of advertised vacancies in all the districts, that is, 10202, as many as 3336 posts of Intermediate-trained Teachers (Class I to V) and 496 posts of Graduate-trained Teachers are still vacant. The affidavit filed in W.P.(S) No. 334 of 2016 by the respondent-State discloses the following vacancy-position:

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6. In the rejoinder-affidavit dated 06.10.2016 filed by the petitioners in W.P.(S) No. 334 of 2016, they have asserted that as many as 10 counsellings were conducted in few districts whereas, in some of the districts it was stopped after 6th counselling. This is an admitted position. In the supplementary counter-affidavit dated 12.01.2017 filed by the respondent-State, it has been admitted that in most of the districts counselling continued till December, 2015, however, in the districts of Ramgarh, Sahebganj and Pakur, counselling was held in the month of January, 2016 also.

7. These writ petitions were filed in the month of January, 2016.

8. In the Advertisements issued for different districts, breakup of total number of posts under different caste and category has been given. Out of the total posts, 50% posts are to be filled-up by parateachers working in the government schools whereas, 50% seats are to be filledup from non parateacher candidates. The Jharkhand Elementary School Teachers Appointment Rules, 2012 governs the field for the appointment of Intermediate-trained as well as Graduate-trained Teachers. It is not in dispute that the writ petitioners submitted their applications within the stipulated time. They claim that they were shortlisted as eligible candidates and they have been included in the panel of eligible candidates.

9. In Shankarsan case, in the Combined Civil Services Examination there were 70 vacancies in the Indian Police Service (IPS); 54 under general category and remaining 16 were reserved for SC/ST candidates. The applicant in the said case was placed low in the merit list and accordingly, he was offered Delhi, Andaman and Nicobar Police Service in Group-B which he duly accepted. Subsequently, 14 vacancies in Indian Police Services arose on account of the selected candidates not joining the service. The applicant made a representation for his appointment on such a vacant post which was turned down by the respondent-Union of India. The Supreme Court while dealing with the rival claim for appointment vis-a-vis whether it can be legitimately denied, held as under:

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. Subash Chander Marwaha*, *Neelima Shangla v. State of Haryana*, or *Jatinder Kumar v. State of Punjab*".

10. The learned counsel for the petitioners referring to different affidavits filed by the respondent-State has contended that the decision to stop counselling midway is arbitrary.

11. In the counter-affidavit filed in W.P.(S) No. 334 of 2016, the respondent-State has taken a plea that in view of letter dated 03.07.2015 of the Secretary, Department of Human Resources Development, counselling was stopped. However, in W.P.(S) No.146 of 2016 the respondent-State has placed reliance on a letter dated 16.11.2015 to contend that after 4 stages of counselling on the request from the districts for conducting two more stages of counselling, they were permitted to conduct further counselling. This letter, however, does not restrict the next stage of counselling to only two, rather, it is an admitted position that as many as 10 counsellings were conducted in few districts. No other reason has been disclosed by the respondent State for not conducting further counselling in all the districts. No doubt, the appointment process cannot continue for an indefinite period and it must stop somewhere; the question is when it must stop. Before proceeding further it would be apt to read letter dated 03.07.2015 which is extracted below:

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English Translation:

Letter No.8/ No. 207/ 20131531?/

Government of Jharkhand

Department of Human Resources Development (Directorate of Primary Education)

From,

Aradhna Patnaik, I.A.S.,

Secretary to the Government

To,

All the Deputy Commissioners,

Jharkhand,

Ranchi, Dated 03.07.2015

Subject:Regarding appointment against the vacant post of Inter trained teachers in the Government Primary and Middle Schools.

Sir,

Please refer to the departmental letter no.1180 dated 29.05.15 with respect to the above subject. By the aforesaid letter the detailed guidelines for the appointment of Inter trained teachers (including Urdu teacher) have been issued. In the meantime, Jharkhand Primary School Teachers Appointment (first amendment) Rules, 2014 was amended vide notification no.1388 dated 22.06.15 for the 2nd appointment exercise against the post of Inter trained teachers, candidates belonging to all categories have been given seven years" relaxation in the maximum age prescribed by the Department of Personnel. Jharkhand Primary School Teachers Appointment (second amendment) Rules, 2015 is effective from 22.06.15.

Consequent upon the amendment in the appointment rules, the appointment process initiated pursuant to departmental letter no.1180 dated 29.05.15 stands cancelled and the appointment process should be initiated according to notification no.1388 dated 22.06.15. Keeping in view requirement of inviting fresh applications, various steps with respect to appointment shall be completed according to the modified program, which are as follows

(i)

Publication of Advertisement

08.07.2015

(ii)

Last date of receipt of application

07.08.2015

(iii)

Uploading in the website after preparation of the database and inviting objections

10.08.2015

(iv)

Rectification of objections

17.08.2015

(v)

Uploading in the website after preparation of first merit list draft and inviting objections

22.08.2015

(vi)

Rectification of objections and invitation for the first stage counselling

27.08.2015

(vii)

Organizing first stage counselling

01.09.2015

(viii)

Publication of second merit list draft and inviting objections (if necessary)

04.09.2015

(ix)

Rectification of objections and invitation for the second stage counselling

08.09.2015

(x)

Organizing counselling for the second stage

12.09.2015

(xi)

Meeting of the District Education Establishment Committee

15.09.2015

(xii)

Distribution of appointment letter

18.09.2015 or prior to it

Accordingly, guidelines issued vide departmental letter no.1180, dated 29.05.15 should be deemed modified to this extent only.

Yours faithfully

Sd/

(Aradhna Patnaik)

Secretary to the Government

Memo No.8/ No207/ 20131531

Ranchi, Dated 03.07.15

Copy forwarded to All Regional Deputy Director of Educations, Jharkhand/all District Superintendent of Education, Jharkhand for information and necessary action.

Sd/

(Aradhna Patnaik)

Secretary to the Government

12. After reading letter dated 03.07.2015, it has to be concluded that it was issued in a different context, that is, due to amendment in the Jharkhand Elementary School Teachers Appointment Rules, 2012. In the first place the advertisements issued were neither cancelled nor modified. Directions contained in letter dated 03.07.2015 were not followed by the Department itself. The advertisements which have been brought on record reveal that these advertisements were issued much before 03.07.2015. In fact, last date for submission of application was 04.07.2015. Reliance placed on letter dated

03.07.2015 to justify termination of the counselling process, thus, turns out to be untenable. The pretension of adherence to time-schedule is exposed by the respondents' own permission granted for further counselling. Letter dated 16.11.2015 would disclose that the Secretary, Department of School Education and Literacy (Directorate of Elementary School) permitted counselling in different districts beyond 4th stage of counselling. Except these two letters, no order of the government has been produced in the present proceeding to say that a conscious decision was taken by the government to terminate the appointment process. In Shankarsan case, the Supreme Court has held that the right of the government not to make appointment on an available vacancy would not mean that the State has the license to act in an arbitrary manner. The decision in "State of Haryana v. Subash Chander Marwaha" [(1974) 3 SCC 220] also proceeds on similar lines. It has been observed that, the selection cannot arbitrarily be restricted to a few candidates notwithstanding, the number of vacancies and the availability of the qualified candidates. The Court has held thus; "There must be a conscious application of mind by the government and the High Court before the number of persons selected for appointment is restricted".

13. Obviously, denial of appointment to the eligible candidates against the remaining unfilled vacancies is illegal and not justified. The vacancy-position disclosed by the State reveals that about 3832 posts under different category have remained unfilled. This is a whopping one-third of total number of vacancies advertised. It is admitted on record that no uniform pattern was adopted for conducting counselling in different districts. The number of counselling in different districts varies from 6 to 10 and there are large number of unfilled posts in each district. The number of candidates called for counselling in each stage has not been revealed in the affidavits filed by the State. No cutoff marks has been fixed, still eligible candidates have not been selected. Apparently, the respondents have acted in an arbitrary manner and without having an informed uniform decision, terminated the selection process. A decision to stop counselling has been taken at the district-level and in absence of a clear guidelines by the Department, they acted differently. This has brought a chaotic situation, giving rise to a cause of action to the candidates who have been left out. Their grievance seems to be genuine. Another reason why this situation has arisen, is that, a candidate was eligible for applying in all the districts. Obviously, many a candidate did not join the post, if he/she was selected, in the meantime, in another more convenient district.

The proper course would have been to indicate the number of counselling in the advertisement itself. This would have made a candidate make his/her final choice before the last counselling. Leaving aside these aspects, the question which must be answered is, is it in the public interest to leave such a large number of vacancies unfilled and deprive appointment to the eligible candidates. The answer seems to be an emphatic "no".

14. Mrs. Richa Sanchita, the learned State counsel has, however, submitted that

a 2nd Teachers Eligibility Test has been conducted on 20.11.2016 and therefore, no further direction for appointment on remaining unfilled vacancies may be issued. I am unable to accept this submission. It is admitted at Bar that Teachers Eligibility Test is only an eligibility condition for appointment of teachers. Only on the ground that another Teachers Eligibility Test has been conducted, the eligible shortlisted candidates cannot be denied appointment against the advertised vacancies. The learned State counsel has also relied on the decision in "Kulwinder Pal Singh and Anr. v. State of Punjab and Ors." [(2016) 6 SCC 532]. A bare reading of the judgment in Kulwinder Pal Singh would reveal that there were 27 posts advertised, on which all 27 candidates had joined. Three vacancies arose subsequently on which the applicant laid a claim. In that context, the Supreme Court held that merely because the name of a candidate finds place in the select/merit list, it does not give him an indefeasible right to get appointment.

15. Another ground taken by the respondent State is that in terms of Rule 23 of 2012 Rules there shall not be any appointment on the vacancies arising out of non-joining of a candidate. Admittedly, this is not a case in which the petitioners are claiming appointment on account of vacancies occurring due to non-joining of other candidates. The learned counsel for the respondent State has also contended that no panel has been prepared from which appointment on remaining vacancies can be made. This plea is also untenable. If no panel has been prepared, it is more so a reason to make appointment according to merit of the candidates on all the unfilled advertised vacancies.

16. In the aforesaid facts, I am of the opinion that the situation can be remedied if one more counselling is conducted for appointment on the remaining advertised vacancies.

17. In W.P.(S) No.19 of 2016, a plea was raised that candidates lower in the meritlist have been appointed but the petitioners have been left out. This plea was taken on the basis of the pleading in paragraph no.16(iii) in the counter-affidavit. Pursuant to the order passed on 11.01.2017, a supplementary counter-affidavit has been filed in which the respondents have clarified that the minimum cutoff marks reflected therein is for the female candidates. This is corroborated by the chart produced along with the counter-affidavit. In view of the common order passed in the present proceeding, no further enquiry on the aforesaid plea is required.

18. Now, a question arises, whether the order in these petitions shall remain confined to the petitioners only or the benefit shall be extended to other eligible candidates also. In "State of U.P. v. Arvind Kumar Srivastava" [(2015) 1 SCC 347], the Supreme Court has observed that, "the normal rule is that when a particular set of employees is given relief by Court, all other identically situated persons need to be treated alike by extending that benefit". In the matters of appointment, the necessity to extend similar benefits to other eligible candidates is greater. It is necessary also for the reason to avoid potential future litigations claiming similar benefits by other eligible candidates who may be higher in the

merit list than the present petitioners.

19. In the light of the foregoing discussions, the following directions are issued

(i) A public notice, indicating that counselling for all unfilled advertised vacancies in all the districts shall be conducted in the 3rd/4th week of March, 2017. It shall be published in two daily newspapers on or before 23.02.2017. The public notice shall also indicate that no further opportunity to produce original certificate would be granted to the candidates. The counselling may continue for more than one day.

(ii) An exercise to shortlist eligible candidates viz-a-viz vacancy position in each category shall be undertaken and candidates twice the number of total vacancies, meritwise, after the last selected candidate shall be put on the website, preferably by the 3rd week of March, 2017. However, it may not be necessary to call all shortlisted candidates for counselling.

(iii) The name of candidates falling under the "zone of consideration" as indicated in clause (ii) above shall be put on the website, at least one week prior to the date of counselling.

(iv) The entire exercise must be concluded by 31.03.2017.

20. It is further made clear that there shall be only one counselling in all the districts of the State and counselling shall be conducted simultaneously in all the districts. The candidates who were earlier called for counselling shall not be permitted to participate in the counselling except, those permitted by an order of the Court.

21. The writ petitions are allowed, in the above terms.

22. Let a copy of the order be communicated to the Secretary, Department of School Education and Literacy Development and the Director, Primary Education, Government of Jharkhand, for compliance of this order.