
(2013) 07 JH CK 0047
In the Jharkhand High Court
Case No : LPA No. 444 of 2012

Bir Bhawani and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 4 AJR 316 : (2013) 3 JLJR 727

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Ananda Sen, Nagmani Tiwari and Rohil Roy, for the Appellant; Ajit Kumar, for the Respondent

Judgement

1. Heard learned counsel for the parties. In L.P.A. No. 444 of 2012 the appellants have challenged the judgment dated 2nd August, 2012 passed in W.P.(S) No. 5900 of 2011 whereas in L.P.A. No. 82 of 2013 the appellants have challenged the order dated 19.12.2012 passed in W.P.(S) No. 7140 of 2012 which has been passed relying upon the judgment rendered in W.P.(S) No. 5900 of 2011 and W.P.(S) No. 5981 of 2011 dated 2nd August, 2012.

2. In L.P.A. No. 444 of 2012, challenging the judgment delivered in W.P.(S) No. 5900 of 2011, it has been submitted by learned counsel for the appellants that the post of Company Commander, Sub-Inspector and Sargent were advertised on 1st March, 2008 indicating that for all these posts there are 384 vacancies, bifurcation of which is given separately, and applications were invited to fill up 384 posts. It was made clear in the advertisement itself that the respondents may increase or decrease the posts from 384. The petitioners"/appellants" contention is that they came to know that total vacant posts lying with the respondents were 1590. It is true that petitioners were much below the last selected candidate but there was no reason for respondents not to fill up more posts in a fact situation that in the State of Jharkhand there were huge vacancy and admittedly the vacancies were 1590.

3. Learned Single Judge has considered the issue in detail and rendered a very detailed judgment. However, we are of the considered opinion that the petitioners petition could have been dismissed merely on the ground that in spite of the fact that there were 1590 vacancies the respondents decided to indicate that presently they are intending to fill up 384 posts, however, with clear indication that posts may be increased or decreased. Admittedly, no decision has been taken by the Government to increase the posts for filling up under the same process of selection i.e. under the advertisement dated 1st March, 2008. Therefore, without there being any decision to increase, the post under the advertisement dated 1st March, 2008 from 384 to more, the petitioners got no right to seek any appointment on the post for which the Government has not taken any decision to fill up the posts under the same process of selection. It is the prerogative of the employer to not only fill up the posts but also there is discretion of the employer to decide how many posts, out of the vacant posts, they want to fill up. The advertisement as well as the facts of the case clearly indicate that, the State-Council decision was to fill up 384 posts and, therefore, subsequent to that, unless there was a decision to increase the posts, the posts could not have been filled up. The petitioners were not even in select list but they were below the list of the total number of posts, therefore, they were not entitled for the post in any manner.

4. Therefore, in L.P.A. No. 444 of 2012, we do not find any merit and we are in full agreement with the reasons given by the learned Single Judge in addition to the above reasons which we have indicated.

5. Learned counsel for the appellants in L.P.A. No. 82 of 2013 submitted that when the advertisement was issued, the eligible age for incumbent was 19 years to 25 years. Thereafter, a writ petition was filed and an order was passed by the Single Bench of this Court wherein direction was issued to the respondent-State to reconsider whether the prescribed outer age of 25 years is required to be increased. In pursuance of the said direction. State took a decision to increase the outer age of the incumbent from 25 years to 30 years. In that changed situation, the State decided to re-advertise and invite fresh applications.

6. The grievance of the appellants/petitioners in L.P.A. No. 82 of 2013 is that the persons who have already applied and selected under the earlier advertisement, their selection could not have been disturbed because of increase in the age.

7. We are of the considered opinion that the ground taken by the petitioners has no leg to stand in the eye of law because of the reason that after deciding an important condition of eligibility, the State, if has invited fresh applications instead of completing the process of selection under the old advertisement, then the State has given a fair treatment to all candidate so as to compete and get selected. In view of the above reasons as well as the reasons given in the judgment dated 2nd August, 2012, we do not find any merit in the L.P.A. No. 82 of 2013 also. Hence, both LP.As. are dismissed.