
(2016) 01 JH CK 0023
In the Jharkhand High Court
Case No : WP(S) No. 1075 of 2007

Chandana Gorai and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JCR 94 : (2016) 2 JLJR 498

Hon'ble Judges : Aparesh Kr. Singh, J.

Bench : Single Bench

Advocate : Mr. Durga Charan Mishra, Advocate, for the Appellant; Mrs. Chandra Prabha and Mr. Rohit, Advocates and Mr. Rajesh Kumar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the parties.
2. These two petitioners were also candidates along with nine others for appointment as Para Teacher of Middle School, Gandrapur under Shikaripara Block of District-Dumka. Petitioners, herein, were selected and appointed as Para Teacher of the School on 20th December, 2003.
3. The private respondents herein challenged the appointment of these petitioners as Para Teacher in W.P.(S) No. 2407 of 2006. Considering the fact that they had not enclosed any copy of letters of appointment of the private respondents therein i.e., two of the present petitioners, learned Single Judge vide order dated 1st July, 2006 gave liberty to them to approach the Deputy Commissioner, Dumka with a fresh representation as they had questioned the appointment of these petitioners in violation of guidelines issued by Deputy Commissioner, Dumka itself. The Deputy Commissioner, Dumka was directed to inquire into the matter through all records relating to their appointment and pass orders after notice to the private respondents therein that included two of the

present writ petitioners. It appears that the writ petition was disposed of without considering the necessity of issuing notices upon the private respondents therein in view of the fact that no copy of letters of appointment of such respondents were enclosed to the writ petition.

4. The Deputy Commissioner considered the matter and took a decision contained in Memo No. 841 dated 15th November, 2006 (Annexure-3) to revoke the appointment of these two petitioners and another person, Dilip Kumar Mallik while at the same time direct appointment of three persons who are private respondents herein as Para Teacher of the Middle School in question, reason being that selection of the petitioners herein were found to be in violation of the prescribed guidelines as there were higher qualified persons in consideration before Selection Committee.

5. From the Chart furnished in Annexure-3, it is apparent that all candidates belong to OBC Category and there were no Scheduled Caste and Scheduled Tribe candidates from the said village. All candidates accepted their place of residence as Viliage-Gandrakpur. In matters of inter see qualification, respondent nos. 5 and 6 were graduate with Hons, and Post Graduate while the petitioners herein were having the qualification of Intermediate in Arts. Respondent No. 7 whose appointment was also questioned by the petitioner was also a Post Graduate but he was the sole male candidate who was appointed after termination of the appointment of the present two petitioners belonging to female candidates. Incidentally, respondent no. 7 has resigned from the job and has sought deletion of his name through I.A. No. 345 of 2016. The name of respondent no. 7 is accordingly allowed to be deleted. The decision of the Deputy Commissioner, Dumka led to a formal order of cancellation of appointment of the petitioners and one other person, Dilip Kumar Mallik and in the appointment of three private respondents vide office order bearing Memo No. 871 dated 20th November, 2006 (Annexure-5) issued by respondent no. 3, District Superintendent of Education-cum-District Programme Officer, Dumka which is also impugned herein apart from Annexure-3. Challenge to the appointment of private respondents were based on the grounds that due preference has not been granted to the claim of the petitioners belonging to female category. The private respondents did not belong to the village to which middle school, caters. An application said to have been made by Village Education Committee is enclosed as Annexure-4 in support of the said contention.

6. Counsel for the Respondent-State and private respondents have pointed out that the guidelines laid down by Deputy Commissioner-cum-Chairman, Jharkhand Education Project, Dumka enclosed as Annexures-R5 & 6/1 dated 7th November, 2003 bearing Memo No. 692 show that the minimum educational qualification required for appointment in a middle school was graduation with preference to Science Graduate. Matriculation was the minimum required qualification for appointment as Para Teacher in Primary Schools. The order of preference amongst female and male categories provided therein would not

make any difference as per learned counsel for the respondents in view of the fact that the private respondent nos. 5 and 6 are also female and belonging to the same OBC Caste like the present petitioners. It is also pointed out that in the hearing before Deputy Commissioner, Dumka, none of the candidates including the petitioners objected to the fact that all the candidates are the residents of Gandrakpur village. Learned counsel for the respondents submits that there are no tenable grounds in law or on facts to assail the appointment of the private respondents now specifically respondent nos. 5 and 6 after respondent no. 7 has already resigned.

7. Counsel for the petitioners submits that respondent no. 7 had occupied the third post of Para Teacher in the School which could have been given to either of these two petitioners who were female.

8. This contention of the petitioners does not merit acceptance, as they do not fulfil the minimum educational qualification of graduation required for being appointed as Para Teacher of a Middle School i.e., present one in question. Counsel for the petitioner has however lastly submitted that the petitioners worked as Para Teacher for considerable period till cancellation of their appointment by the order dated 28th November, 2006 (Annexure-5). The honorarium of these two petitioners for the period March, 2004 to November, 2006 is still due.

9. Having regard to the relevant facts pleaded and the submissions of the parties, petitioners have failed to make out any sustainable grounds to question the appointment of the private respondents. Petitioners are definitely not holding the educational qualification required for appointment as Para Teacher of a Middle School. Petitioners like the private respondent nos. 5 and 6 all belong to the female category and of the same village. The contention of the petitioners that the private respondents did not belong to the same village is not made out from perusal of the reasoned order passed by Deputy Commissioner, Dumka also apart from the fact that no such certificate of residence of the private respondents of any other place is also enclosed to the writ petition. Challenge to the appointment of the private respondent nos. 5 and 6 therefore has to fail. If any post has (sic) fell vacant on resignation of respondent no. 7 at this length of time, it is open for the respondent authorities to undertake fresh exercise amongst all eligible candidates.

10. However, petitioners are given liberty to make a representation before respondent no. 3, District Superintendent of Education-cum-District Programme Officer, Dumka for redressal of their grievances relating to claim of honorarium for the period March, 2004 to November, 2006 with all supporting facts and documents. Respondent No. 3 on due inquiries relating to discharge of their duties and on consideration of all relevant facts would arrive at a considered decision in respect of said claim in accordance with law within a reasonable time preferably 12 weeks from the date of receipt/production of a copy of this order along with their representations. It goes without saying that if the claim of

honorarium is found to be admissible, the amount due be paid in favour of the petitioner within a reasonable time thereafter.

11. According the writ petition is disposed of with the aforesaid observation, however, without interfering in the impugned orders. Pending I.A. also stands disposed of.