
(2006) 06 JH CK 0002
In the Jharkhand High Court
Case No : Writ Petition (S) No. 156 of 2005

Chandra Kant and Others	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16

Citation : (2006) 3 JCR 364

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;Permod Kohli, J

Bench : Division Bench

Advocate : Kailash Prasad Deo, for the Appellant; R.N. Sahay, Sr. SC II, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This writ petition has been preferred by the petitioners against the advertisement No. 01 Secretariat Animal Husbandry/2004-05, published in the newspaper for appointment to the post of Laboratory Technician (Frozen Semen), so far as essential eligibility clause is concerned, whereby and where under, while one year's experience In Frozen Semen work has been prescribed, it has been mentioned that such experience, except from Government Institution will not be accepted as none of the private Institutions has been approved by the Animal Husbandry Department.

2. The only question requires for determination is whether the Secretary, Animal Husbandry and Fisheries Department, Government of Jharkhand has jurisdiction to prescribe such condition, if the guidelines issued by the State do not prohibit experience from any other Institution. 3. For determination of the issue, it is necessary to look into certain facts, including the orders passed by the Supreme Court.

Since the year, 1988, a large number of clerical, semi technical and technical

persons were engaged in the Animal Husbandry Department and Fisheries Department of the erstwhile Government of Bihar. Appointments were also made to the post of Laboratory Technician. When it came to the notice of the State Government that none of the appointments was made after issuance of advertisement in the newspaper and all of them were made in violation of Articles 14 and 16 of the Constitution of India, the services of illegally appointees were terminated by office order No. 5330 dated 23th October, 1998.

Against such orders of termination, the Laboratory Assistants moved before the Ranchi Bench of the Patna High Court in writ application CWJC No. 3503 of 1998(R), which was dismissed and the said order was also affirmed by a Division Bench in letters patent appeals. Aggrieved persons, thereafter, moved before the Supreme Court in civil appeal Nos. 5342-5343 of 2003. They were heard along with other civil appeal Nos. 5346-5344, 5345, 5376 of 2003. The Supreme Court vide its judgment dated 23rd July, 2003 See Uma Kant Sinha and Others Vs. State of Jharkhand and Others , while did not choose to interfere with the order of termination, made certain observation and passed order under Article 142 of the Constitution of India: the relevant portion of which is quoted hereunder :

XXX XXX XXX XXX (i) In this view of the matter, we direct the State of Jharkhand to consider at the earliest for recruiting Technical Assistant for the Semen Bank Project and to fill up the existing vacancies with a period of three months from today. For that purpose the respondent-State is directed to constitute a Selection Committee as per the existing Rules within a period of three months from today.

(ii) The appellants whose services are terminated may apply to the Secretary of the Animal Husbandry Department within a period of one month for being re-appointed or for regularization of their services. The Committee shall consider the eligibility, suitability, past record as well as the educational qualifications of the appellants as per the rules as on today;

(iii) The Committee shall give relaxation of age and weightage over outsiders as directed by the High Court. However, if the appellants are found unsuitable for some reasons, it would be open to Committee to reject their applications.

Appropriate authority shall Issue orders for appointment after considering the roster and the merit list, on available vacancies.

The appeals disposed of accordingly. There shall be no order as to costs. We, however, make it clear that this case shall not be treated as precedent as we have decided it purely on the facts and in the peculiar circumstances of this case.

From the order of the Supreme Court, it will be evident that those whose services were terminated were to be given age relaxation, if overage and weightage over outsiders, as was directed by the High Court. That means, the cases of all those whose services were terminated were to be considered along with outsiders at the time of direct recruitment. The respondent-State of Jharkhand, thereafter, issued Advertisement No. OC-01/04 through Labour,

Employment and Training Department, Sub-Employment Exchange, Dumka and called for applications for appointment to the posts of Laboratory Assistant. In the said advertisement, one year's experience in Frozen Semen was prescribed as one of the essential criteria for appointment to the posts of Laboratory Assistant. At Clause 9 of the Application Format, as was printed with the advertisement itself, candidates were asked to mention the name of the Institution/Office, issuing certificate of one year's experience in Frozen Semen work and were asked to enclose the certificate.

4. According to petitioners, they being eligible, having one year's experience of Frozen Semen work from private Institutions, applied for appointment to the post of Laboratory Technician in pursuance of advertisement No. OC-01/04. They were provided with admit card with roll No. 285 (petitioner No. 1), roll No. 290 (petitioner No. 2), roll No. 273 (petitioner No. 3), roll No. 289 (petitioner No. 4) and roll No. 296 (petitioner No. 5) and the written test was held on 5th October, 2004 in which they appeared.

Further case of the petitioners is that in pursuance of advertisement No. OC-01/04, their names having empanelled, were forwarded to the Secretary, Animal Husbandry and Fisheries Department for publication of result and for appointment. Thereafter, without publication of result and without issuance of letter of appointment, impugned advertisement No. 01 Secretariat Animal Husbandry/2004-05 (Annexure-3) was issued, calling for applications for appointment to the posts of Laboratory Assistant in eight districts, Including the district of Dumka for which earlier advertisement was issued. In the said advertisement, while it was mentioned that those who have applied in response to the advertisement published earlier by different Deputy Commissioner were not required to apply, it was also mentioned that one year experience should be from Government Institution. In pursuance of second advertisement, admit cards were issued and written test was to be held on 9th January, 2005 but no admit cards were issued to the petitioners on the ground that they do not have Frozen Semen work experience from Government Institution.

In the aforesaid background, while petitioners have challenged the part of the advertisement No. 01 Secretariat, Animal Husbandry/2004-05, so far it relates to one year's experience in Frozen Semen work from Government Institution, they have also prayed for a direction on the respondents not to publish the result nor to make any appointment out of the subsequent advertisement, in question.

When the case was taken up on 17th January, 2005, this Court made it clear that publication of result and appointment of persons, if made, in the meantime, shall be subject to the result of the writ petition.

5. In the present case, the petitioners have specifically stated that there is no Government Institution in the State of Bihar or Jharkhand, which imparts training in Frozen Semen. The Government Institutions, which were imparting training in the field of Frozen Semen in the erstwhile State of Bihar, had been closed since

more than 20 (twenty) years.

6. Counsel for the petitioners submitted that only to accommodate the illegal appointees whose services were terminated, the impugned subsequent advertisement No. 01 Secretariat Animal Husbandry/ 2004-05 was issued.

7. The respondents have not disputed the fact as alleged that there is no Government Institution, which imparts training in Frozen Semen since last 20 (twenty) years. There is nothing on the record to suggest, that any student was trained or came out successful from any Government of Bihar or Jharkhand Institution Imparting training in Frozen Semen.

To find out as to what is the minimum experience prescribed by the State, this Court vide order dated 10th May, 2006 directed the respondents to bring on record the Rule/Guidelines, if any prescribed by the competent authority.

8. The respondents in their supplementary affidavit while enclosed a copy of the circular No. 14 Estt. (6J123/90-A.H. Patna 15, dated 22nd March, 1990 issued from Animal Husbandry Department, Government of Bihar, have also enclosed an order dated 10th April, 2006 passed by the Supreme Court in civil appeal No. 2018 of 2006. That was also a case of persons, who were appointed between 1988 to 1992 in the erstwhile State of Bihar on adhoc basis in Frozen Semen Bank Project. Their adhoc appointment was extended from time to time and terminated in the year 1998. Like others, they also moved before this Court for similar relief as was granted by the Supreme Court vide order dated 23rd July, 2003 and quoted above but the High Court refused to do so in view of last paragraph of the order of the Supreme Court that the case shall not be treated as precedent.

The Supreme Court having heard the parties, by order dated 10th April, 2006, made the following observation and direction :

xxx xxx xxx xxx We are of the view that the issue should be resolved finally and should not be kept pending. The earlier order of this Court was passed on 23.7.2003. The right to be selected thereunder cannot continue indefinitely. Therefore, we direct :

(1) That the respondent-authority shall advertise in the local newspapers having wide circulation of the holding of selections for the purpose of filling of those vacancies which, according to the Rules, are to be filled by direct appointment;

(2) Applications should be asked for from those adhoc employees who were appointed in the Frozen Semen Bank Project between 1988 to 1992 and whose services were terminated in 1998. No such employee who has already been considered by the Selection Committee under the order dated 23.7.2003 shall apply;

(3) No appointment already made either in the normal course or pursuant to the earlier order of this Court shall be disturbed;

(4) The advertisement shall specify the last date with which the candidate concerned shall apply for consideration including thereon proof that the candidate had served with the respondents.

(5) The selection shall be made by the Selection Committee only against the available vacancies. Preference shall be give to those who have longer tenure of service over those who have shorter tenure of service, other things being equal;

(6) All other conditions in the order dated 23.7.2003 shall De operative as far as the procedure to be followed by the Selection Committee to be set up permanent to this order is concerned;

(7) This shall be a one time exercise. No further application shall be entertained by such adhoc employees. This fact should also be mentioned in the advertisement.

9. From the guideline, as was issued by the State of Bihar on 22nd March, 1990, it will be evident that one year's experience in Frozen Semen work was prescribed. No criteria was laid down that the experience should be from a Government Institution. Subsequently, neither the State of Bihar nor the State of Jharkhand has fixed any criteria laying down experience in Frozen Semen work from a Government Institution. Thus, even if the guideline dated 22nd March, 1990 is applied in the State of Jharkhand, the respondents cannot classify further amongst those who were treated equal in the matter of one year's experience In Frozen Semen work. This apart, there being no Government Institution imparting training in Frozen Semen work for about 20 years either in the State of Bihar or in the State of Jharkhand, the respondents cannot fix such eligibility criteria, no such candidate being available.

So far as work experience is concerned, according to petitioners, it is only those Laboratory Assistants, who were illegally appointed and whose services had been terminated have certain work experience of Frozen Semen work. There is no other person available in the State with such experience in a Government Institution, in absence of any such Government Institution. Persons are obtaining training of Frozen Semen work from Private Institutions or while attached with private doctors. If it is limited amongst the illegal appointees and outsiders are not given opportunity on the ground that they do not have one year's experience in Frozen Semen work from Government Institution, this will frustrate the order passed by the Supreme Court on 23rd July, 2003 in civil appeal No. 5342-5343 of 2003 Uma Kant Sinha and Others Vs. State of Jharkhand and Others and analogous cases.

It has been pointed out that no outsider except those who were illegally appointed and those services have been terminated can have any Frozen Semen work experience from a Government Institution, there being no such Government Institution working in the State of Bihar or Jharkhand for more than 20 years.

The allegation made on behalf of the petitioners appears to be correct; though it is alleged that only to accommodate the illegal appointees whose services were terminated, such clause has been incorporated in the subsequent advertisement No. 01 Secretariat Animal Husbandry/2004-05, no reply has been given by the respondents.

10. It is a settled law that performance of an act otherwise and in a manner, which does not disclose any discernible principle, which is reasonable, may itself attract vice of arbitrariness.

11. In the present case, the respondents have not given any explanation as to why in spite of written test, selection and preparation of panel, appointments were not made in pursuance of earlier advertisement No. OC 01/04, which was issued after the order passed by the Supreme Court on 23rd July, 2003. Similar advertisement was also published through Employment Exchange in other districts but instead of acting on the same, why a consolidated advertisement No. 01 Secretariat Animal Husbandry/2004-05 with modified experience criteria was issued. It has already been noticed that the State Government had laid down only one year's experience in Frozen Semen work and no classification has been made by the State on the ground of experience from a Government or a private Institution.

The doctrine of equality before the law is necessary corollary to the high concept of the rule of law accepted by Constitution of India. One of the aspects of rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority. (Ref. the decision of the Supreme Court in *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, .

It is true that inclusion of name in merit list does not give any right for appointment but if the advertisement is published, test is conducted, after selection panel is prepared, during the life time of the panel if advertisement is not acted upon and fresh advertisement is published with modified eligibility criteria by a different authority, the State Government is bound to explain the reason and the nexus with the object to achieve.

12. In the present case, the respondents have failed to show the grounds for changing the eligibility criteria. They have also not explained the ground for not acting upon the merit list, as was prepared in pursuance of advertisement No. OC-01/04 nor shown any ground for classification as made between persons having experience, as prescribed by guideline dated 22nd March, 1990. learned Counsel for the State also failed to explain as to why one year experience from a Government Institution was prescribed in the subsequent advertisement, if there is no Government Institution in the State imparting training in the subject concerned. Thus, the impugned classification made on the ground of experience between those who has experience from Government Institution and private Institution being against the guidelines and having no nexus with the object

sought to be achieved, the same cannot be upheld. The criteria of experience from Government Institution, as made in advertisement No. 01 Secretariat Animal Husbandry/2004-05 is, accordingly, set aside. The respondents are directed to act as per guideline dated 22nd March, 1990, as was reflected in advertisement No. OC-01/04 i.e. "one year Frozen Semen work experience" and will reconsider the cases of petitioners and other similarly situated persons, who are otherwise eligible for their appointment to the posts of Laboratory Assistant and will complete the process of selection within four months from the date of receipt/production of a copy of this order.

13. This writ petition is allowed, with the aforesaid observations and directions. In the facts and circumstances, there shall be no order as to costs.

Pramod Kohli, J.

14. I agree.