
(2017) 04 JH CK 0006

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5332 of 2014

Dhananjay Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

Citation : (2017) 2 JBCJ 479

Hon'ble Judges : Mr. Ananda Sen, J.

Bench : Single Bench

Advocate : M/s Anil Kumar Sinha, Senior Advocate Rahul Kumar, Advocate, for the Petitioner; Mrs. Shweta Singh, J.C. to GP-V, for the State

Final Decision : Dismissed

Judgement

Mr. Ananda Sen, J.—The petitioner, by way of filing this writ petition, prays for direction upon the respondent authorities to offer appointment to the petitioner on the post of Deputy Administrator, Sports Authority of Jharkhand (hereinafter to be referred as "SAJHA"), since his name has been recommended for appointment for the said post, which was advertised vide Advertisement dated 11.12.2013. By way of amendment petition, the petitioner has also prayed for insertion of a new prayer for cancellation of the decision of the respondent authorities by which, they have decided to start a fresh selection process by cancelling the earlier process of appointment, by which, the name of the petitioner was recommended. The decision of re-advertisement is also under challenge.

2. The petitioner claims to be an Athlete having educational qualification of B.P.Ed.(Bachelor in Physical Education), M.P.Ed. (Master in Physical Education) and is pursuing Ph. D. It is submitted that one sanctioned and vacant post of Deputy Administrator, SAJHA, was decided to be filled up by the respondent authorities and accordingly the post was advertised vide Advertisement dated 11.12.2013. Pursuant to the said Advertisement, the petitioner along with others applied and only two candidates i.e. the petitioner and one Archana Kumari were

found eligible for appointment. The petitioner further claims that said Archana Kumari has political nexus and tried to influence the person concerned so that she gets appointment. The petitioner also submits that he and Archana Kumari were called for interview. The petitioner claims that he obtained 78.25 marks, whereas, Archana Kumari obtained only 57 marks and therefore, the Selection Committee recommended the name of the petitioner for appointment for the said post. The petitioner further submits that in spite of such recommendation, he has not been appointed. He alleges that he was not being issued the appointment letters at the instance of Archana Kumari.

3. The respondent State appeared and filed their counter affidavits stating therein that the Sports Authority of Jharkhand in its Meeting dated 3.9.2014 unanimously resolved to cancel the process of appointment for the post of Deputy Administrator, Sajha. The respondent authorities have denied any nexus with said Archana Kumari. It is further submitted that the post of Deputy Administrator, SAJHA, is not a Government post and the appointment on the said post has not been made through Jharkhand Public Service Commission or Staff Selection Commission. Counsel for the respondents further submits that the selection process had not become final and in fact, the same was cancelled as per the decision dated 3.9.2014 taken by the Executive Committee of Sports Authority of Jharkhand.

4. The Sports Authority of Jharkhand also filed a separate counter affidavit in which, they admitted that only two candidates have been found eligible pursuant to the said advertisement. It is further stated that when the matter was placed before the Secretary, Department of Sports, Arts, Culture and Youth Affairs, Govt. of Jharkhand, it was noted that the applications received have been scrutinized. However, there was no order in the file relating to constitution of the Screening Committee. It was further mentioned that the change in the constitution of the Selection Committee has not been approved by the Executive Committee. It was also pointed out that the entire actions have started on the basis of a non-Government letter No. 90 dated 20.9.2013 of Private Secretary to a Minister, whereby, the educational qualification and the eligibility have been fixed directly, which is different from the eligibility criteria, fixed in the meeting of the Executive Committee dated 5.1.2013. Further, it was pointed out that there were other irregularities, which makes the entire process of appointment ab initio irregular. It is stated that because of this irregularity in the eligibility criteria, limited number of candidates applied. It has also been mentioned that the whole process of appointment was not transparent and thus, it was decided to cancel the entire process initiated for the appointment for the said post.

5. Mr. Anil Kumar Sinha, learned senior counsel for the petitioner submits that the entire process of selection should not have been cancelled as the name of the petitioner was recommended after considering and following the entire procedure, as prescribed. It has further been stated that the cancellation of the selection process has been done only to give benefit to one Archana Kumari.

Senior counsel for the petitioner further submits that in fact, the conditions for the appointment were affirmed by the respondents and thus they cannot now back track. The action of the respondents is illegal and arbitrary. He also submits that the advertisement was duly approved by the Committee and thereafter, pursuant to the said advertisement, the petitioner appeared and was recommended for the said appointment. The contention of the petitioner is that only when another candidate Archana Kumari could not qualify, the entire process of appointment was cancelled, which is absolutely illegal.

6. Learned senior counsel appearing on behalf of the respondent No. 5 argues that there is no illegality in cancelling the selection process. He submits that there were large number of irregularities in the entire process of selection and only to bring transparency in the process, a fresh advertisement has been published. He further submits that because of earlier eligibility criteria, very small number of candidates could apply but in view of the new advertisement, large number of eligible candidates can apply and compete, which will give much better option to the respondents to choose better person.

7. After hearing the parties, I find that the present petitioner applied for the appointment to the said post and he was recommended for appointment. Thereafter, it was detected that there was serious irregularity and illegality in the entire selection process. The respondents have stated in their counter affidavit, in details, that the entire process suffers from various irregularities and the same was also not transparent. Respondent Nos. 5 and 6, in para 11 of their counter affidavit specifically stated as follows:-

"11. That with regard to the statements made in para 7 of the writ application, it is stated that although the executive committee of SAJHA had prescribed the qualification and eligibility criteria for appointment on the post of Deputy Administrator, Sports, one Shri Vijay Kujur, Private Secretary to the then Hon''ble Minister, HRD Department, Arts, Culture, Sports and Youth Affairs, Government of Jharkhand-cum-President, Sajha sent a note sheet dated 20.9.2013 to the Executive Director, Sajha fixing the qualification/eligibility, age limit cut-off date, cut-off marks etc. to be acted upon for appointment on the post of Deputy Administrator, Sports. In this note sheet, besides other changes in the eligibility and qualification criteria, the requirement of five years experience as decided by the Executive Committee in its meeting dated 5.1.2013 was given a go bye. A direction was also given to take the approval of the Hon''ble Minister within three days, so that the advertisement should be published by 5.10.2013. This note sheet bearing non-Government letter No. 90 dated 20.9.2013 signed by Shri Vijay Kujur, Private Secretary to the Hon''ble Minister does not bear endorsement or any signature of the Hon''ble Minister, HRD, Arts, Culture, Sports and Youth affairs, Government of Jharkhand. It is relevant to state that this change in the eligibility criteria as suggested by the Private Secretary to the Hon''ble Minister was never approved by the Executive Committee."

8. Subsequently, it has been mentioned in the said counter affidavit that on the

basis of the note of the Private Secretary to the Minister, the Executive Director, Sajha, sent suggestion to the Secretary, Departments of Sports, Art, Culture and Youth Affairs, Government of Jharkhand. Thereafter, the Secretary made a note to the Hon'ble Minister that a decision in the matter of appointment should be taken in the meeting of SAJHA. From paragraph 14 of the said counter affidavit, it is also clear that without any decision being taken in the meeting of the Executive Committee of SAJHA, the advertisement was published for appointment on the post of Deputy Administrator, Sports, in the newspaper dated 11.12.2013. It has specifically been mentioned that the said advertisement was not as per the terms and conditions, as decided in the Executive Committee of Sajha. It is also apparent from para 21 of the said counter affidavit that the eligibility criteria, as fixed by the Executive Committee, Sajha, in meeting dated 5.1.2013, were changed in the advertisement without approval of the Executive Committee. The matter relating to the eligibility was placed before the Executive Committee, Sajha, and thereafter, the Executive Committee vide their resolution dated 3.9.2014 considered the entire matter and resolved to cancel the process of the appointment on the said post and further decided to maintain the requisite eligibility/qualification for the said post, as decided in the earlier meeting dated 5.1.2013 so that more number of applications from able candidates may be received.

9. Thus, from the aforementioned facts and submissions advanced by the counsel for the parties, it is clear that the eligibility criteria were changed without approval of the competent authority and the advertisement was issued. Pursuant to the said advertisement, the petitioner was recommended for the said post. Later on, when these irregularities were detected, the selection process was cancelled and it was decided to start a fresh process of selection for the said post. The contention of the respondents is that since the eligibility criteria for selection was changed without approval of the competent authority, less number of able candidates participated in the said selection process. As per them, now more number of applications from able candidates will be received to enable them to choose a suitable candidate. Since, there were irregularities in the earlier process of selection, by which, the petitioner was recommended, such process was cancelled with a view to bring transparency in the procedure of selection on the said post.

10. In view of the facts mentioned above, I find no fault in the action of the respondent authorities in initiating a fresh process of appointment after scraping the earlier process. Further the petitioner was only recommended for the post. A mere recommendation for appointment does not confer any right to be appointed against a particular post. Further in view of the fact that when the process, by which, the petitioner was recommended, was found to be irregular one, the appointing authority cannot be forced to accept the said recommendation and there cannot be any direction to give appointment.

11. In the facts, stated above, I find no merit in this writ petition, accordingly,

the same is dismissed.