

(2018) 09 JH CK 0011

In the Jharkhand High Court

Case No : Letter Petent Appeal No.582 of 2017

Dr. Anuj Sharma

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Citation : (2018) 09 JH CK 0011

Hon'ble Judges : Aniruddha Bose, CJ;B.B. Mangalmurti, J

Bench : Division Bench

Advocate : Sumeet Gadodia, Ritesh Kumar Gupta, Ashwini Bhushan, Suman Kr. Ghosh, Ashok Kumar Singh, Indrajit Sinha

Final Decision : Disposed Off

Judgement

Bio Data,,,,,,,,

BDS Marks %,"MDS (in

concerned

speciality

subject)","Failure if any

in MDS","Publication

Maxm. 15

Points

(Journals)

during

qualifying

period.","Paper

presentation in
national /
international
conference
Maxm. 05
points during
qualifying
period","Teaching
Experience
Maxm. 15
points","Points
Obtained","Points by
selection
committee
Maxm. 25
points (25 x
a/100; a =
aggrregate %
of marks
obtained in
BDS)","10 Points","(-2 Points for
failures)","For each
publication in
International
Journal 04
Points /
National
Journal 03
Points","For each
paper

presentation

02 points", "02 Points in

each

completed

year", Total 70, 30 Points

6. Mr. Sumeet Gadodia, learned counsel for the appellant has submitted that consideration of materials published and produced subsequent to the date",,,,,,

of advertisement by the Institute was improper. He has drawn our attention to the application form of the selected candidate in which he had disclosed,,,,,,

against the column specified for paper publication 03 publications in State, 01 in National and there was no information against the column against",,,,,,

which International publication was to be disclosed and that space was kept blank. Mr. Gadodia has cited five authorities in support of his submissions.,,,,,,

These are :-,,,,,,

1. (2009) 4 SCC 555 Mohd. Sohrab Khan Vs. Aligarh Muslim University & Others.,,,,,,

2. (2008) 3 SCC 512 K. Manjusree Vs. State of Andhra Pradesh & Another.,,,,,,

3. (2013) 4 SCC 540 Tej Prakash Pathak & Others Vs. Rajasthan High Court & Others.,,,,,,

4. (2003) 3 SCC 548 Yogesh Kumar & Others Vs. Govt. of NCT, Delhi & Others." ,,,,,,

5. (2014) 5 SCC 774 Bishnu Biswas & Others Vs. Union of Indian & Others.,,,,,,

These authorities lay down in substance the proposition of law that a selection process is required to be conducted on the basis of predisclosed criteria,,,,,,

and such criteria cannot be altered midway through the selection process.,,,,,,

7. Appearing on behalf of the Institute, Dr. Ashok Kumar Singh, learned counsel has argued that there was no alteration of the selection criteria",,,,,,

subsequent to the commencement of selection process. Referring to Clause 18 in the advertisement, which we have quoted above, his submission is",,,,,,

that only age and experience was required to be counted as on 30th November, 2015 and it was well within the power of the Interview Board to",,,,,,

consider any publication effected subsequent to that date but prior to the date of interview. He has also argued that the appellant-writ petitioner would,,,,,,

himself be ineligible on the ground that he did not have sufficient teaching

experience in the concerned subject, which was the eligibility criteria." ,,,,,,

8. Mr. Indrajit Sinha, learned counsel for the selected candidate (Respondent No.4) has founded his case on the same reasoning as that of Dr. Singh." ,,,,,,

His case is that the cut-off date, if any, specified in the advertisement, was in relation to the age and experience only and it was permissible for any" ,,,,,,

publication made prior to the date of interview to be considered by the Interview Board.,,,,,,

9. We accept the submission of Dr. Singh and Mr. Sinha that publication in International Journal does not form part of essential eligibility criteria. But.,,,,,,

this is a supplemental factor on the basis of which a candidate's ability was required to be judged. Now the question arise as to whether the.,,,,,,

Interview Board had the discretion in accepting such supplemental factors which came into existence after the application forms were submitted. We.,,,,,,

have to test as to whether such post-application publications could have had been evaluated or not by the selecting body. Clause 1 of the.,,,,,,

Instruction for the Candidates stipulated that the applications in prescribed proforma with Bio-Data in all respect, signed by the candidate, were" ,,,,,,

to reach the office of the Institute on or before 30th November, 2015 till 5.00 PM. It was also specified that after the due date and time i.e., 30th" ,,,,,,

November, 2015 till 5.00 PM, applications or any other documents shall not be accepted. In this case, the Interview Board has accepted documents" ,,,,,,

generated subsequent to 30th November, 2015. This, in our opinion was in breach of the norms set down by the selecting body themselves. Secondly," ,,,,,,

in our view, in a selection process the selecting body can rely on only those materials which had been generated on the date of the publication of the" ,,,,,,

advertisement or on or before the last date for filing the application form in the absence of any cut-off date stipulated. A candidate, in absence of a" ,,,,,,

cut-off date, has to be assessed on the basis of his qualification on the last date of filing of the application form and not thereafter. Though the" ,,,,,,

specified norm in this case stipulated cut-off date in respect of age and experience, it cannot lead to the inference that in respect of other factors to" ,,,,,,

which weightage was to be given, the selecting body had unfettered discretion to extend time. Our opinion on this point, of course, is subject to any" ,,,,,,

other specific clause the selection body might stipulate in laying down the date stipulation. In this case, however, we do not find any such clause. This" ,,,,,,

being the position of law, we are of the view that the selection body had erred in taking into cognizance the publications of the Respondent No.4 at the" ,,,,,,

time of interview which were made subsequent to the date of filing of applications. This was contrary to Clause 1 of the Instruction for the ,,,,,,

Candidates and also the general principle of law that in the absence of any specific cut-off date, the last date for filing application form would be the" ,,,,,,

material date. ,,,,,,

10. For these reasons, we set aside the judgment of learned First Court. We direct the Institute to recast the score-sheets of the appellant and the" ,,,,,,

Respondent No.4 as regards allocation of points in relation to weightage given to publications excluding from the zone of assessment any publication ,,,,,,

produced by the Respondent No.4 made after 30th November, 2015. We have not made any comment on the qualification of the appellant as the" ,,,,,,

authorities themselves had passed him on that score. In the event there is any mistake, as suggested by Dr. Singh, it would be for the authorities to" ,,,,,,

take steps in accordance with law. We are not immediately invalidating the selection of the Respondent No.4. We direct that if he has already been ,,,,,,

appointed, his appointment shall be subject to recasting of the respective score-sheets in the manner directed by us. If after this exercise it is found" ,,,,,,

that on computation of total points, the appellant has scored more than the Respondent No.4, the selection of respondent No.4 shall stand invalidated." ,,,,,,

The appellant in such case, as the second best candidate on the basis of present evaluation shall be declared as successful candidate and all" ,,,,,,

consequential steps shall be taken. This exercise shall be undertaken and completed by the Institute within a period of twelve weeks from the date of ,,,,,,

communication of this order. ,,,,,,

11. The appeal is allowed in the above terms. The I.A. shall also stand disposed of. ,,,,,,

12. No order as to costs. ,,,,,,