

(2004) 08 JH CK 0064
In the Jharkhand High Court
Case No : L.P.A. No. 249 of 2004

Dr. Kaushal Kishore Shrivastava

APPELLANT

Vs

Dr. Heem Bachan Sahu and Others

RESPONDENT

Date of Decision : 17-08-2004

Acts Referred:

Citation : (2004) 4 JCR 602

Hon'ble Judges : P.K. Balasubramanyan, C.J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : Delip Jerath, for the Appellant; M.S. Anwar, for the respondent Nos. 1 to 4, Sanjay Piprawal, for the respondent Nos. 5 and 6 and B.S. Lal, Addl. A.G. for the respondent Nos. 7 to 9, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Jerath, counsel for the appellant, Mr. S. Piparwal, counsel for the Jharkhand Public Service Commission and counsel for the contesting respondent.
2. For the post of Director, Higher Education, applications were invited by the first Jharkhand State Public Service Commission, attempted to be created by the appointment only of the Chairman and one Member. 47 applications were received. The Jharkhand State Public Service Commission or its Secretary, as it is found by the learned single Judge, purported to eliminate 42 of the applicants and short listed only five candidates including the appellant, for being interviewed by the interview board constituted by the Jharkhand State Public Service Commission created in a truncated form. This was challenged in the writ petition, inter alia, on the ground that there was no valid constitution, of the Public Service Commission in the State after its formation and. hence, the action of the Chairman and the Member or the Secretary in eliminating 42 applicants and short listing only five of the applicants was illegal. The decision of the Division Bench in Jharkhand Justice Forum and Another, Jharkhand Rajya Berojgar Prathmik Parshikshit Sikshak Sangh and Another, Agamlal Mahto and Others, Susen Chandra Kumar and Others and Sachindra Prasad Singh and

Others Vs. State of Jharkhand and Others, was relied on in support. In answer, the appellant raised various contentions including the contention that the writ petitioners were not qualified persons and they had no locus standi to challenge the process of selection. The learned single Judge held that in the light of the decision of the Division Bench, it had to be held that there had come into existence no Public Service Commission for the State of Jharkhand and as a consequence, it had to be held that the recommendations sent by the Chairman and the Member are invalid. The learned Judge thus having found that the whole action was ultra vires allowed the writ petition and directed the subsequently properly constituted Commission, to immediately start the process of selection to the post of Director, Higher Education. The appellant who was apparently continuing after the direction on the basis of an interim arrangement has filed this appeal, challenging the decision of the learned single Judge.

3. Learned counsel for the appellant contended that in the very decision relied on by the learned single Judge, the de facto doctrine was applied to save the act of the truncated Public Service Commission or of the Public Service Commission which had not come into existence in the eye of law. Counsel contended that the de facto doctrine be applied to validate the action of the Commission. What we see is that the truncated body. Which now must be taken to be still born in the light of the earlier decision of this Court, not only initiated and proceeded to receive applications and constitute a competent Interview Board but also eliminated to the 42 of the applicants by itself and forwarded only five applications to the Board for interview and selection. In other words, 42 of the applicants were eliminated by a body which had not come into existence in the eye of law by exercising a power which is exercisable by a legally constituted body.

4. In this context, it appears to us that we would not be justified in applying the de facto doctrine to sustain the action of the Public Service Commission. After all, there were only 47 applicants and the post of Director, Higher Education who is to be in charge of higher education in the whole of the State. There will be no undue delay in having a fresh selection. We are, -therefore; satisfied that this is not a fit case for applying the de facto doctrine to sustain what is apparently an illegal fact on the part of the so called Public Commission. In view of this, we do not think it necessary to go into the controversy whether the elimination of 42 candidates was done by the Chairman or by the Secretary acting on his own or by the Public Service Commission as it existed on that day consisting of one Chairman and one Member. Since we satisfied that this is not a fit case for applying the de facto doctrine; we are satisfied that no interference is called for. Once it is found that the whole process is bad, the question whether the writ petitioners were entitled to be considered or appointed to the post, loses its significance. We are therefore satisfied that the decision of the learned single Judge deserves to be confirmed.

5. We, therefore, confirm the same dismiss the appeal.