
(2009) 04 JH CK 0080
In the Jharkhand High Court

Dr. Kumari Bharti Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

Jharkhand State Universities Act, 2000 — Section 57, 58

Citation : (2009) 04 JH CK 0080

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed for the following reliefs:

(i) For a direction to the Respondent Public Service Commission (hereinafter referred to as ?JPSC?) to rectify the mistake in calculation of marks of the petitioner in the academics and for a follow up direction to recalculate the aggregate of the petitioner in the JPSC selection for appointment as Lecturer pursuant to advertisement No. 1/2007 and accordingly direct the Respondent JPSC to revise the merit position of the petitioner.

(ii) For a direction to the Respondent JPSC to produce the evaluation sheet of the interview held on 26.6.2007 to ascertain the actual marks obtained by the petitioner in interview.

(iii) For a further direction to the Respondents to consider the case of the petitioner for appointment as lecturer English on the basis of corrected merit position i.e. on the basis of rectification in the calculation of the marks of the petitioner in the selection process.

(iv) For a follow up direction to the Respondents to consider the case of petitioner for appointment against the vacancies occurring during the currency of panel i.e. up to 15.1.2009.

(v) For a direction to the Respondents to consider the case of the petitioner for appointment against the post lying vacant on account of either non joining or non recommendation.

2. Heard the learned Counsel for the petitioner and the learned Counsel for the Respondents.

3. The challenge in this writ application is to the refusal of the Respondent-J.P.S.C. to recommend the petitioner's candidature for her appointment to the post of Lecturer and the refusal of the Respondent to fill up the vacancies in the posts from the wait list.

4. The impugned decision of the Respondent-J.P.S.C. has been assailed on the ground of arbitrariness, mala fides and of adopting illegal selection process.

5. Facts of the case are as follows:

After about six years of the creation of the State of Jharkhand, and pursuant to a direction issued by this Court in W.P. (S) No. 1059 of 2006, steps were initiated by the Respondents for identifying and filling up the vacancies in the various teaching faculties existing in the Constituent Colleges of the Universities within the State. Each of the Universities had identified the existing vacancies and had intimated the State Government accordingly. Since the selection was to be conducted by the J.P.S.C. under the provisions of the Jharkhand State Universities Act, the J.P.S.C. was entrusted with the task of selecting the suitable candidates.

The J.P.S.C. thereafter initiated the process of selection by publishing an Advertisement No. 1 of 2004 on 30.01.2007, inviting applications from eligible candidates, for appointment against the posts advertised. The Advertisement contained the conditions relating to the eligibility criteria, the vacancy position of teaching faculty in the various Universities, the number of vacancies to be filled up under the Reserved categories etc.

In response to the Advertisement, the petitioner submitted her application duly filled up enclosing all the relevant documents, for her appointment in the faculty of English and supplied the informations as required under the Advertisement.

The selection process fixed by the J.P.S.C. was by way of conducting interviews of the candidates. It was communicated to the candidates that out of total 100 marks, 60 marks would be allotted for academic performance and 40 marks for the Interview.

The petitioner had appeared at the Interview. After concluding the interviews of the candidates, the J.P.S.C. published a select list of candidates on 15.01.2008, for their appointment to the post of lecturers under the various Universities under the State.

The petitioner's name did not appear in the select list.

She sought information under the Right to Information Act, on 29.01.2008, of the marks obtained by her, and also the comparative marks of the other applicants and their position in the merit list.

The information was furnished after about five months of her demand from which she could understand that she was awarded only 54 marks for her academic performance and 18 marks for the Interview and that the last candidate, whose name was recommended for appointment to the post of lecturer, had secured 75.25 marks.

The petitioner raised a genuine grievance that marks allotted towards her academic performance, was not in accordance with the criteria declared in the Advertisement and that on proper assessment, she should have been allotted 27 marks instead of 24 marks. The Respondent-J.P.S.C. in their counter affidavit have acknowledged the error in computing and have accepted that on correction, the marks for academic qualifications should be 12 instead of 9.

6. Mr. K.P. Deo, learned Counsel for the petitioner would highlight the grievances of the petitioner in the following terms:

(i) The petitioner has an outstanding academic achievement in as much as she was a Gold medalist and has also obtained the degree of Ph.D. and in the background of her academic qualifications, the allotment of 18 marks for the Interview, is ridiculous, grossly underestimated and arbitrary.

(ii) The further grievance is that the marking system for the Interview was also arbitrary and against the principles laid down by several judgments of the Supreme Court and the High Court in as much as the marks were awarded in ? finer decimal points? in stead of the number system and by adopting such method, the Respondent-J.P.S.C. has given scope for extending favouritism to undeserving candidates.

(iii) Against the 47 vacancies advertised for the unreserved category, the J.P.S.C. had recommended for appointment to 44 posts only. Three posts which had originally remained vacant plus two more, which have fallen vacant on account of non-joining of the candidates, whose names had appeared in the select list over 44 candidates, and considering the fact that the petitioner's name stands immediately after the 44th candidate, who was allotted 75.25 marks, the Respondents should have extended the benefit of appointment to the petitioner, since her name transpires in the wait list, immediately below the last candidate.

7. Raising the points of law, learned Counsel submits that in the light of the admitted facts that three vacancies still exist, even from the panel, the Respondents authorities were obliged to fill up the vacancies by issuing appointment letters to the candidates in the wait list of the panel and by their acts of omission, the Respondents have arbitrarily and illegally deprived the petitioner of her legitimate opportunities.

8. Countering the stand taken by the Respondents that the wait list candidates

have no right to claim appointment, learned Counsel would explain that the wait list candidates have definite right to be considered for their appointment and they cannot be deprived of such right. Learned Counsel adds that the present writ application was filed much before the period of expiry of the panel and the Respondents therefore, cannot deny the benefit to the petitioner on the ground that the validity period of the panel has lapsed. The vacancies notified, have to be filled-up and if any post has fallen vacant on account of non-joining of the candidates, such vacancies have to be filled-up from out of the candidates, whose names transpire in the wait list.

To buttress his arguments, learned Counsel would refer to and rely upon the judgment of the Patna High Court in the case of *Ranjit Kumar Singh v. The State of Bihar and Ors.* 1997 (2) P.L.J.R. 960; in the case of *Vijay Lakshmi Kumari v. The Union of India and Ors.* 1998 (1) P.L.J.R. 851 and also to the judgment of the Supreme Court in the case of *Jai Narain Ram Vs. State of U.P. and others*, .

Arguing further, learned Counsel would submit that it has been laid down by the Supreme Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, that "Article 226 of the Constitution of India is designed to reach in justice wherever, it is found and it enables the High Court to mould the relief to meet the complicated requirement of this country and technicalities should not come in the way of granting relief under Article 226?.

Distinguishing the case of *Shankarsan Dash Vs. Union of India*, relief upon by the Respondents, learned Counsel would place reliance on the judgment of the Patna High Court in the case of *Ranjit Kumar Singh (Supra)* and would argue that even if the inclusion of the candidate in the merit list, does not confer any right to him to be appointed however, it does not mean that the State has the license of acting in an arbitrary manner, as has been declared even in the case of *Sankarsan Dash (Supra)* and highlighted in the case of *Ranjit Kumar Singh (Supra)*. The decision not to fill up the vacancies has to be bona fide and for appropriate reasons.

9. Mr. Sanjoy Piprawall, learned Counsel for the Respondent-J.P.S.C. and Mr. Anil Kumar Sinha, learned Senior Advocate for the Respondent-State, on the other hand, would first want to explain the facts in proper perspective. Learned Counsel explain that in the Advertisement, issued by the Respondents-J.P.S.C., applications were invited for appointment of lecturers not only in the different universities of the State of Jharkhand, but also for appointment of lecturers in the Sanskrit Colleges of the State. The cadres of lecturers in the Sanskrit Colleges, is a separate cadre under the jurisdiction of the Vinoba Bhave University, whereas, in the different universities of the State, except the Sanskrit Colleges, it constitutes one cadre and the appointees can be transferred in any of the Universities in accordance with the Jharkhand State Universities Act, 2000, the lecturers appointed in the Sanskrit Colleges can be transferred only to other Sanskrit College and not to any other constituent College. It is further explained

that in the Advertisement, as issued by the Respondents-J.P.S.C., it was categorically stated that the candidates who were desirous for appointment as lecturers in the Universities in the State of Jharkhand and those desirous for appointment in the Sanskrit Colleges, should submit two different application Forms for each category. The Interview Boards were also constituted separately for Sanskrit Colleges and the Interviews were held accordingly. Though the Interview was conducted for the Sanskrit Colleges also but the J.P.S.C. did not recommend for appointment of candidates in the Sanskrit Colleges. Learned Counsel submits that the petitioner cannot claim therefore, that the two posts of lecturers belonging to the Sanskrit Colleges should be included with the requisition of the posts of the Universities.

10. Learned Counsel for the J.P.S.C. would explain that the Ranchi University had initially submitted its requisition indicating 21 vacancies, but later on, after verification of the posts vacant, it had communicated that there were only 17 vacant posts. Likewise, though the Vinoba Bhave University had initially communicated 16 vacant posts, but after verification, it had declared that the total number of vacant posts were 19. It was accordingly, assessed that the total number of vacancies for which the J.P.S.C. was called upon to select and recommend, was only 44 posts and not 47.

Learned Counsel point out that even though in the original Advertisement, the total number of vacancies was communicated as 47, but in the same Advertisement, it was categorically declared that the number of vacancies may be subject to any increase or decrease. It was also communicated that the process adopted for the selection of the candidates, was in accordance with the provisions of Sections 57 and 58 of the Jharkhand State Universities Act, 2000.

11. As regards, the petitioner's contention that the J.P.S.C. had adopted a most unfair, unreasonable, and irrational criteria of awarding marks for the Interview in the finer line of decimal points instead of number patterns?, learned Counsel for the J.P.S.C. would argue that before commencing the interview, a meeting was held on 15.03.2007 in which the Chairman and one senior member of the J.P.S.C., the Vice-Chancellors of the three Universities, the Deputy Director, Human Resources Development Department, Government of Jharkhand and the Head of Department of several faculties under the various Universities, whose names were nominated by the State Government, had participated. The criteria and process for awarding marks for the Interview was discussed and decided upon by the aforesaid Committee and the Interview Boards, which were constituted, comprising of the University Professors, another academicians had conducted the Interview accordingly. Learned Counsel contends that under such circumstances, the criteria adopted by the Interview Board for awarding marks, cannot be questioned or challenged, merely on presumptions and conjectures that it may give scope for extending favouritism to undeserving candidates against those who deserve better consideration.

Learned Counsel submits further that the contention of the petitioner that her

name had appeared in the select panel is also incorrect and misleading since, the petitioner's name was not included in the select panel at all for the main reason that initially, due to inadvertent error, she was allotted only 72 marks. Learned Counsel adds that even otherwise, the petitioner cannot claim any benefit on the basis of the select panel/merit list because of the fact that the validity of the panel was only for one year and the same had lapsed in January, 2009.

Mr. Sanjoy Piprawall would further submit that even by correcting the petitioner's marks, the total marks, which the petitioner has secured, including the marks for her academic achievements and the marks for the interview would be 75. Apart from the petitioner, there were four other candidates each of whom have secured 75 marks, whereas the last candidate, whose name was placed as the 44th candidate in the select panel, had obtained 75.25 marks. As such, the petitioner cannot claim any benefit even by the calculation of total marks after correction and even by accepting her claim that her name would have appeared in the wait list.

12. Mr. Anil Kumar Sinha would argue further that the petitioner's contention that the two posts against which the candidates to whom appointment letters were issued but had not joined, should be filled up by offering the post to the petitioner is also misconceived. Learned Counsel explains that such vacancies, if any, created due to nonjoining of the selected candidates shall have to be considered for the next selection only.

The State Government in its department of H.R.D. had also taken a decision and communicated the same to the J.P.S.C. communicating therein, that since upon the receipt of the select panel, recommending appointment of lecturers against the 44 vacancies for the Sessions 2007-08, the appointment letters have been issued and therefore, the transaction has been completed and for any new or subsequent transaction, the J.P.S.C. would be called upon to make a fresh recommendation. The contention of the learned counsel therefore is that by implication it stands that the State Government, has decided to carry forward the vacancies arising out of the non-joining of the candidates to the next Session and not to fill up the same for the current Session from the wait list. Learned counsel would further argue that it is a settled principle of law that inclusion of candidate's name in the merit list does not confer upon him any right to be selected. Even if some vacancies remained unfilled after process of selection is finally closed and the candidate is not appointed it would not amount to any discrimination. To buttress his argument, learned counsel would refer to and place reliance upon the judgment of the Supreme Court in the case of Shankarsan Dash Vs. Union of India, , and to the judgment in the case of Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, and also to the judgment in the case of All India S.C. and S.T. Employees' Association and Anr. v. A. Arthur Jeen and Ors. (2007) 2 SCC 362.

13. From the facts as stated and explained by the Respondents, though initial advertisement was for filling up 47 vacancies but recommendation by the J.P.S.C.

was made in respect of 44 vacancies only pertaining to the cadre of Universities excluding the vacancies in the Sanskrit Colleges. Admittedly, the petitioner had applied for her appointment in the English faculty in respect of vacancies in the cadre of Universities and not for the vacancies in the Sanskrit Colleges.

In the merit list, after rectification of the petitioner's marks, the petitioner's position would stand at 47. Appointment letters were issued to all the 44 recommended candidates, out of whom two candidates did not accept the offer by joining, thereby leaving two vacancies to be filled up. One vacancy accrued subsequently on the death of one of the candidates, who died subsequent to her acceptance of offer of appointment. This third vacancy cannot be said to be strictly a vacancy on account of nonabsorption of the candidates. Thus, the Respondent-State had to decide upon filling up two vacancies, created on account of the non-acceptance of the offer by two candidates. From the stand taken by the Respondent-State, a decision appears to have been taken for ? closing the transaction? in respect of appointments of lecturers for the Sessions 2007-08 after the appointment letters were issued to all the 44 selected candidates, on the basis of the recommendation of the J.P.S.C. This decision implies that the posts against which the advertisement was issued and the recommendations by the J.P.S.C. was made remaining unfilled by the non-joining of the candidates, would be carried forward for the next Session and not included in the present Session. It may be noted that the panel list containing the recommendation of the J.P.S.C., was valid for a period of one year from the date of approval and admittedly, the period had lapsed, on 09th January, 2009.

14. In the above factual position, the petitioner would invite Court's consideration to two relevant issues:

- (i) Whether the petitioner, whose name would appear in the wait list, can claim right of her appointment, against the existing vacancies?
- (ii) Whether the refusal of the Respondent-State to fill up the existing vacancies from the wait list of the select panel, would amount to an arbitrary and discriminatory action of depriving the petitioner of her constitutional and legal right?

15. It is by now well-settled that the inclusion of the name of a candidate in the merit list does not confer any right upon him to be appointed.

In the case of Sankarshan Das (*Supra*), the Supreme Court in this context has observed as follows:

It cannot be said that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire a indefeasible right to be appointed, which cannot be legitimately denied. Ordinarily the Notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. Unless, the relevant recruitment rules so indicate, the State is under no

legal duty to fill up all or any of the vacancies.

The same view was taken by the Supreme Court in the case of Union of India and Ors. v. S. Vinodh Kumar and Ors. (Supra) and also in the case of All India S.C. and S.T. Employees' Association (Supra).

16. Mr. K.P. Deo, on the other hand, on placing reliance upon the judgment of the Patna High Court in the case of Ranjit Kumar Singh (Supra), would argue that even though in the case of Sankarsan Dash (Supra), the Supreme Court has laid down that inclusion of a candidate in the merit list does not confer any right upon him to be appointed, the application of the law as laid down in the aforesaid decision, would depend upon the facts of the case. Even in the case of Sankarsan Dash (Supra), the Supreme Court has held that though inclusion of a candidate in the merit list does not confer any right upon him to be appointed but it has also observed that "however, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons".

Referring to the facts of the present case, learned Counsel would argue that there being admittedly a vacancy existing which could be offered to the petitioner as a selected candidate as on her merit position, denial of appointment to her without a proper reason is not justified. Learned Counsel places emphasis in support of his contention on the judgment of the Supreme Court in the case of R.S. Mittal Vs. Union of India (UOI), .

17. There could be no dispute to the proposition of law that the wait listed candidates have no legal right to be appointed. Even though, the post advertised were public posts, yet the petitioner did not acquire any vested right for her appointment. As observed by the Supreme Court in the case of All India S.C. and S.T. Employees' Association (Supra), the State is under no obligation to fill up all or any of the vacancies.

18. At the same time, it is well-settled, that the decision of the State authorities in not filling up the vacancies cannot be left to its caprice and whims. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. If the vacancies or any of them are filled-up, the State is bound to respect the comparative merits of the candidates as reflected at the recruitment Test and no discrimination can be permitted.

19. In the instant case, even though two vacancies against the posts advertised for, remain unfilled on account of the non-joining of two candidates, the Respondents State appear to have decided to not to fill up the vacancies in the current Session and to carry forward the same as vacancies to be advertised in the next Session. The reason for taking such a decision as explained by the learned Counsel for the State is that the Selection process was undertaken for recruitment of lecturers for the Sessions 2007-08 and after having issued the appointment letters to the 44 candidates from the merit list on the basis of the recommendations of the J.P.S.C., transaction relation to selection process was

completed and it came to an end. Thus, though no specific decision was taken by the State Government on the issue as to whether the two vacancies, which remain unfilled on account of non-joining of the candidates to whom appointment letters were issued, should be filled up from the existing panel or not, yet, the State Government has closed the transaction, once for all on the ground that the selection process was completed after issuance of the appointment letters, and the same came to an end.

It may be noted that the relevant recruitment Rules of the State Government do not specifically cast any legal duty upon the State Government to fill up all or any of the vacancies.

Learned Counsel for the petitioner would indicate that by an interim order that by an interim order dated 16.01.2009, the Respondents were directed to keep reserve the vacancy, if any in the panel. Even so, as per the admitted position, the validity period of the panel had lapsed on 09.01.2009 i.e. even before passing of the interim order. Even if the Respondent-State Government had considered the filling up of the two vacancies from the wait list panel, there could be no certainty that the petitioner herself, would have been benefited, in view of the fact that even though she had secured 75 marks, she was bracketed alongwith four other candidates, who were awarded the same marks. The petitioner cannot possibly challenge the criteria of awarding marks in the ?finer decimal points? nor can she question the marks allotted to her for her academic qualifications, unless she is able to demonstrate that such criteria of awarding marks was patently illegal beyond the scope of discretion of the Respondents and was arbitrary and mala fide. The petitioner has not been able to demonstrate as much.

20. Considering the above facts and circumstances, since the selection process has been completed for the current Session, it would not be proper for extending the validity period of the panel beyond the stipulated one year period and direct the State Government to fill up the existing two vacancies from the wait list of the select panel. Furthermore, considering the fact that even in the wait list, the petitioner?s name would have appeared as the 47th candidate and there being a tussle between her and the four other candidates who have acquired the same marks as she had, the petitioner?s prayer for directing the Respondents to grant her appointment against the two vacant posts, is not tenable and cannot be allowed.

21. In the light of the above discussions, this writ application is dismissed at the stage of admission itself.