

(2011) 02 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1352 of 2007

Harendra Kumar Ghosh and Kishore Kumar Tiwary

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2011) 02 JH CK 0004

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel

1. The present petition has been preferred mainly for the reason that though petitioners were amongst successful candidates for the post of Teacher and though, after selection, they have submitted all the necessary documents in time and though the documents are never verified in the month of December, 2003 by the respondents themselves, rest of the selected candidates were given appointment in the year 2003 on 22nd December, whereas the petitioners are given appointment on 2nd December, 2004 and therefore, prayer is made in this petition for notional date of appointment with effect from 22nd December, 2003. The petitioners are not claiming salary for the period from 22nd December, 2003 to 2nd December, 2004. Counsel for the petitioners submitted that in pursuance of the public advertisement for the post of Teacher, examination was conducted in the year 2003. petitioners were amongst the 577 successful candidates. Thereafter, all the documents were submitted by the petitioners on 22nd November, 2003. Other successful candidates were given appointment on 22nd December, 2003, whereas for the petitioners were not issued appointment letter for the reason best known to the respondents. Thereafter, on 8th October, 2004, a direction was issued by the Joint Secretary to the Human Resources Development Department, State of Jharkhand to the Respondent no. 4, who is the District Superintendent of Education, Dhanbad to give appointment to the

petitioners. Though, verification of all the documents of the petitioners, were over, but for the reason best known to the respondents, appointment letters were not issued to the petitioners and ultimately, on 2nd December, 2004 petitioners were issued appointment letters. It is also submitted by the counsel for the petitioners that there are no justifiable reasons as to why the respondents have not appointed the petitioners with effect from 22nd December, 2003 because other similarly situated selected candidates were given appointment with effect from 22nd December, 2003. If the petitioners are not granted appointment with effect from 22nd December, 2003, they will lose their seniority, which will affect their opportunity for promotion as well as some other benefits like G.P.F. and Pension etc. and therefore, this petition is filed with a prayer for notional date of appointment with effect from 22nd December, 2003.

2. Counsel for the respondents submitted that it is true that petitioners were selected along with total 577 successful candidates for the post of Teacher in pursuance of the examination taken for the aforesaid post by the respondents, but the documents, which were submitted by the petitioners, were required to be verified and as the verification process takes some time, therefore, petitioners were" given appointment on 2nd December, 2004 after completion of the verification process.

3. Having heard counsel for both sides and looking to the facts and circumstances of the case, it appears that petitioners were amongst the successful candidates for the post of Teacher. After being selected, petitioners have submitted all their documents about educational qualification etc. within time, i.e. on 22nd November, 2003. Other selected candidates were appointed on 22nd December, 2003. Some correspondences were being exchanged for verification of the documents submitted by the petitioners and though this verification process was also complete by 1st November, 2004, petitioners were issued appointment letters on 2nd December, 2004.

4. Looking to the counter affidavit filed by the respondents dated 17th October, 2011, especially Annexures C, D & E, it appears that the documents submitted by petitioner No. 1 were sent for verification on 14th January, 2004 and the same has been received after verification on 1st November, 2004. So far as petitioner no. 2 is concerned, the documents submitted by him were sent for verification on 1st December, 2003 and after due verification, the same were received by the respondents on 15th December, 2003. Thus, it appears from these documents that there was no fault on the part of the petitioners as they have submitted the required documents for verification on time.

5. Verification process of the documents submitted by petitioner no. 2 was already completed on 15th December, 2003. Unnecessarily the respondents waited and issued appointment letters to the petitioner no. 2 on 2nd December, 2004. Therefore, petitioner no. 2 should have been given notional date of appointment along with other similarly situated candidates, i.e. with effect from 22nd December, 2003.

6. So far as petitioner no. 1 is concerned, it appears that his documents were sent after few weeks for verification because petitioner no. 1 has submitted all the documents on 22nd November, 2003, which were sent for verification on 14th January, 2004. After verification, communication was received on 1st November, 2004. It ought to be considered by the respondents that as per Office order at Annexure 3 to the Memo of the petition, especially clause 3, 4, 7, 11 and 12 thereof, verification can be done later on also and if the documents are found false, fabricated or otherwise tampered with, the appointment can be cancelled. Annexure 3 is an Office order dated 2nd December, 2003 issued by respondent no. 4, which has not been followed in this case and unnecessarily the petitioners have been issued appointment letters on 2nd December, 2004 instead of 22nd December, 2003, i.e. the date on which other similarly situated candidates selected for the post of Teacher were appointed.

7. In view of these facts and looking to Annexure 3 to the writ petition, I, hereby, direct the respondents to issue necessary office order, circular, treating 22nd December, 2003 (the date on which other successful candidates, for the post of Teacher, have been issued appointment letters) as the date of appointment of the petitioners.

8. The petitioners are actually appointed on 2nd December, 2004 and Counsel for the petitioner has made, it clear that the petitioners are not claiming any salary from 22nd December, 2003 to the actual date of appointment, i.e. 2nd December, 2004. But if 22nd December, 2003 is not treated as the date of appointment of the petitioners, they will lose their seniority, G.P.F. & Pensionary benefits etc.

9. I, therefore, direct the respondents to issue office circular/order/notification giving notional date of appointment with effect from 22nd December, 2003 to the petitioners. This writ petition is allowed to the aforesaid extent.