

(2015) 09 JH CK 0075
In the Jharkhand High Court
Case No : LPA No. 426 of 2012

Irfan Gani and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 4 JLJR 253

Hon'ble Judges : Rakesh Ranjan Prasad and Pramath Patnaik, JJ.

Bench : Division Bench

Advocate : Rahul Kumar, for the Appellant; L.C.N. Shahdeo and S.K. Gautam, for the Respondent

Final Decision : Allowed

Judgement

1. Before coming to the issue involved in this appeal, the fact of the the case which has given rise to this appeal needs to be taken notice. The then erstwhile State of Bihar came out with a scheme known as "Semen Bank Project". To run the project smoothly 400 posts of Technical Assistants were created for the regions, which subsequently fell within the territory of Jharkhand, for one year which was ex-tended time to time. Under the scheme, the Director, Animal Husbandry Department was competent to make appointments. However, the State Government in view of the urgency of making appointment to run the project permitted the Regional Directors to make appointments against Class-III posts of Technical Assistant on completely temporary and short term basis, by way of ad hoc arrangement, till regular appointments are made after following the procedure. Thereupon several appointments were made on the said posts without following the procedure and excess to the sanctioned post. When the said irregularity came to the notice of the State Government, the State Government, vide letter No. 5021 dated 3.10.1996 directed the authority to enquire into the matter and to terminate the services of the Technical Assistants, illegally appointed after giving him due notice. Thereafter, the respondents after

serving show causes to those who had been appointed terminated their services including the appellants as the appointments had been made excess to the sanctioned post and without following the minimum requirement contravening the provisions as enshrined under Articles 14 and 16 of the Constitution of India vide order as contained in a letter bearing No. 5530 dated 23.10.1998.

2. That order was challenged by several persons before this Court in C.W.J.C. No. 3503 of 1998 (R), C.W.J.C. No. 3934 of 1999 (R), C.W.J.C. No. 3769 of 1998 (R), C.W.J.C. No. 3813 of 2000 (R) and C.W.J.C. No. 2228 of 2001. All those cases were heard together. It was found by this Court that appointments had been made on the said posts without giving opportunity to similarly situated persons. In violation of Articles 14 and 16 of the Constitution of India are illegal. By holding so, this Court did hold that no relief can be granted and the writ petitions were dismissed. However, it was observed as follows:--

"However, taking into consideration the fact that all the petitioners are working for about 10 years or above, the State Governments are directed to give certain weightage to these petitioners as and when they fill-up the posts of Technical Assistant on regular basis, by giving appropriate age relaxation, if so required, and weightage over the outsiders."

3. Being aggrieved with that order passed by this Court whereby writ applications had been dismissed, the petitioners of those cases did prefer intra court appeal by filing L.P.A. which also got dismissed.

4. Against that order, some of the persons who were the petitioners in the writ application moved before the Hon"ble Supreme Court, vide Civil Appeal Nos. 5342-5243 of 2003 which was disposed of in the following terms:--

"In this view of the matter, we direct the State of Jharkhand to consider at the earliest for recruiting Technical Assistant for the Semen Bank Project and to fill up the existing vacancies within a period of three months from today. For that purpose the respondent-State is directed to constitute a Selection Committee as per the existing Rules within a period of three months from today;

(ii) The appellants whose services are terminated may apply to the Secretary of the Animal Husbandry Department within a period of one month for being re-appointed or for requisition of their services. The Committee shall consider the eligibility, suitability, past record as well as the educational qualifications of the appellants as per the rules as on today;

(iii) The Committee shall give relaxation of age and weightage over outsiders as directed by the High Court. However, if the appellants are found to unsuitable for some reasons, it would be open to the Committee to reject their applications."

5. While disposing of the said Civil Appeal on 23.7.2003, their Lordships also passed an order that appropriate authority shall issue orders for appointment after considering the roster on available vacancies and the merit list.

6. However, it was observed that the order shall not be treated as precedent as it was decided purely on the facts and in the peculiar circumstances of the case.

7. It appears that within the time as had been stipulated under the aforesaid order, the Committee could not be constituted and therefore, the State Government moved before the Hon''ble Supreme Court by filing Interlocutory Application whereby clarification was also sought as to whether the order passed by the Hon''ble Supreme Court earlier would confine only to the appellants or it would relate all the persons whose services had also been terminated. On the said Interlocutory Application, the Hon''ble Supreme Court did pass an order on 2.12.2003 whereby time for constitution of the Committee was extended and it was clarified that the direction of the Court is in relation to the appellants in the appeal.

8. Subsequent to that, the appellants, who were not the party in the earlier writ applications before this Court or before the Hon''ble Supreme Court, filed writ application, bearing W.P. (S) No. 6436 of 2003 seeking direction upon the respondents to give relaxation of the age and weightage to, the petitioners. That writ application was disposed of on 6.1.2004 in following terms:--

"The petitioners seeks a direction upon the respondents to fill up the post of Technical Assistant and different Grade-III posts and while filling up the vacancies give relaxation of age and weightage to the petitioner. From perusal of the judgment of the Supreme Court recently passed in Civil Appeal Nos. 5342-5343 of 2003 a direction has been issued to the State of Jharkhand to consider at the earliest for the recruiting Technical Assistant for the Semen Bank Project and fill up the existing vacancies within a period of three months from today. In view of the aforesaid direction given by the Supreme Court there is no need of issuing further direction by this court. So far claim of the petitioner is concerned they are entitled to apply for the said post and their cases shall also be considered along with others in accordance with law.

Since no relief can be granted, this writ application is dismissed with the aforesaid observation."

9. Much thereafter the respondents issued an advertisement on 28.8.2004 calling for the applications from all concerned including the persons whose services had been terminated with the stipulation that relaxation of age and also weightage would be given to the persons whose services had been terminated.

10. Pursuant to that, the petitioners and also other similarly situated persons, whose services had been terminated did apply. All the persons underwent process of selection. In that process, some of the persons whose services had been terminated like that of the appellants but were parties to the appeal preferred before the Hon''ble Supreme Court were selected upon weightage of 90 marks being given but the petitioners-appellants could not be selected as weightage of 90 marks was not given.

11. Being aggrieved with that, the petitioners-appellants moved before this Court, vide W.P. (S) No. 5528 of 2007 which was disposed of on 23.8.2011 directing the petitioners to file representation before the authority and the authority after giving adequate opportunity of being heard would be taking decision over the representation. However, the authority rejected the representation on the ground that though the petitioners' services had been terminated like that of other persons similarly situated who were selected upon weightage being given but as the petitioners-appellants were never parties before the Hon''ble Supreme Court in Civil Appeal Nos. 5342-5343 of 2003, the said benefit could not be given to the appellants in view of the order passed on 2.12.2003 whereby the Hon''ble Supreme Court had clarified that the order passed by the Court earlier would confine only to the petitioners of the Civil Appeals.

12. Being aggrieved with that order, the petitioners-appellants did prefer W.P. (S) No. 252 of 2012 which was disposed of on 19.9.2012 by holding that no mandamus could be issued in favour of the petitioners to provide them appointment by giving weightage to them in absence of any Rule, Regulation or statutory Scheme and that they have to go out since their initial appointments were found to be totally illegal.

13. At the same time, it was also observed that all the selected candidates have secured more marks than the petitioners. Accordingly, the writ petition was dismissed.

14. Being aggrieved with that order, this appeal has been preferred.

15. Mr. Rahul Kumar, learned counsel appearing for the appellants submits that it is true that these appellants were never the parties either to the writ applications preferred by some of the persons as C.W.J.C. No. 3503 of 1998 (R) and analogous cases nor were the parties to Civil Appeal Nos. 5342-5343 of 2003 and as such, according to the respondents, the appellants were not entitled to have weightage but the authority failed to take notice that the writ application filed by these appellants has been disposed of whereby this Court had given sufficient indication that they should also be given benefit of age relaxation and the weightage of marks which order attained finality, upon L.P.A. No. 268 of 2004 preferred by the State got dismissed and that the authority, in fact, has given benefit of age relaxation to these appellants but weightage of marks have not been given to the appellants, though the case was similar to those persons who had earlier preferred writ application bearing C.W.J.C. No. 3503 of 1998 (R) and analogous cases and also before the Hon''ble Supreme Court in Civil Appeal Nos. 5342-5343 of 2003 but the direction given by this Court in case of the petitioners-appellants was similar to that of direction given by this Court and affirmed by the Division Bench.

16. It was pointed out that on account of non-observance of the order passed by this Court an anomalous situation has arisen whereby the appellants though

have secured more marks than that of some of the persons similarly situated, still the petitioners-appellants were declared unsuccessful whereas persons securing less marks than the appellants have been selected.

17. In this regard it was clarified that if the point of weightage given as 90 marks is taken out from their score, number of persons similarly situated, who have been selected, would be having less marks than the appellants and thereby under the circumstances the respondents did commit illegality in not awarding weightage to the appellants but the learned Single Judge did not take into account all these aspects of the matter rather proceeded on the basis that since initial appointment of these appellants was illegal, no mandamus can be issued to provide them appointment by giving weightage.

18. Further it was submitted that some errors of record have also been crept in the impugned order wherein it has been observed that selected candidates have secured more marks than the marks obtained by the appellants.

19. Under the circumstances, the impugned judgment is fit to be set aside.

20. As against this, Mr. L.C.N. Shahdeo, learned G.P.-IV submits that admittedly these appellants were never the parties either to the writ application filed by some of the persons, being C.W.J.C. No. 3503 of 1998 (R) or Civil Appeal Nos. 5342-5343 of 2003 preferred before the Hon''ble Supreme Court and thereby in terms of the order passed by the Hon''ble Supreme Court on 2.12.2003 and as such, the appellants could not be given weightage and hence, the appellants now cannot claim weightage of 90 marks which have been given to other persons, in view of the order passed by the Hon''ble Supreme Court and thereby the learned Single Judge was absolutely justified in dismissing the writ application.

21. Having heard learned counsel appearing for the parties and on perusal of the record, we do find that admittedly the appellants had been appointed on the posts of Technical Assistant under the Semen Bank Project on ad hoc basis along with other persons. However, services of all the persons who had been appointed by the Regional Director had been terminated as their appointments were found to be illegal. Some of them preferred writ applications before this Court being C.W.J.C. No. 3503 of 1998 (R) and analogous cases whereby this Court having found the appointments being illegal dismissed the writ application. However, regard being had to the facts and circumstances that all the petitioners were working for about 10 years or above, the State Government was directed to give certain weightage to the petitioners as and when they fill up the posts of Technical Assistant on regular basis by giving appropriate age relaxation, if so required, and weightage over the outsiders. That order was affirmed in appeal and subsequently even by the Hon''ble Supreme Court and thereby in terms of the direction given by the Hon''ble Supreme Court, the process of appointment was undertaken in which the appellants though were given benefit of age relaxation but were not given weightage of 90 marks which have been given to similarly situated other persons, who were parties before the Hon''ble Supreme

Court in Civil Appeal Nos. 5342-5343 of 2003 in terms of the order passed by the Hon"ble Supreme Court as has been indicated above. So far as these appellants are concerned, the appellants though were not parties to the said Civil Appeals but they had moved before this Court in W.P. (S) No. 6436 of 2003 which though was dismissed but sufficient indication was there that the appellants were to be given age relaxation and the weightage as had been observed by this Court in case of other person in C.W.J.C. No. 3503 of 1998 (R), affirmed by the Supreme Court. Furthermore order passed in W.P. (S) No. 6436 of 2003 attained finality when L.P.A. preferred against the order passed in the said writ application was dismissed. Keeping in view such situation when the appellants did apply, pursuant to the advertisement published on 28.12.2004, benefit of age relaxation was given but the appellants were not given weightage, as a result of which, 90 marks could not be added to the marks fetched by the appellants in the selection process though in terms of the order passed by this Court as has been indicated above the said weightage was to be given to these appellants. But the learned Single Judge did not take into consideration all these aspects of the matter.

22. Furthermore, it has been demonstrated during hearing of the case that if 90 marks are added in the marks fetched by each of the appellants, they would be getting much more marks than the persons similarly situated who have been selected.

23. In such situation, there appears to be error of record whereby it has been observed that selected candidates have secured more marks than the petitioners.

24. Under the circumstances, action of the respondents appears to be not only arbitrary but also discriminatory and thereby the order dated 14.11.2011 as contained in Annexure-12 whereby the appellants have been denied with 90 additional marks as weightage is hereby set aside.

25. Accordingly, the order dated 19.9.2012 passed by learned Single Judge in W.P. (S) No. 252 of 2012 is also set aside.

26. Consequently, the respondents concerned are directed to consider the case of the appellants in the light of this order. Thus, this Letters Patent Appeal is allowed.