
(2006) 01 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 1633 of 2004

Kuldeep Shyam, Dhaneshwar Singh, Ram Prasad Kori and
Chandan Kumar

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 3 MPJR 67 : (2006) 3 MPLJ 154

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Swapnil Ganguly, for the Appellant; Om Namdeo, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

The order in this petition shall also govern the disposal of W.P. (S) No. 2092/2003 (Bharti Choudhary and Anr. v. State of M.P. and 3 Ors.).

By this petition under Articles 226 and 227 of the Constitution of India, the petitioners are seeking quashment of impugned order dated 22.9.2003 (Annexure- P-1) which is in regard to the cancellation or selection process (after completion of the selection) to the post of Forest Guard in District Shahdol in violation to the principles of natural justice.

Chief Conservator of Forest (respondent No. 2) vide its order dated 17.3.2003 issued an advertisement and the time table schedule for the recruitment for the post of Forest Guard and further directed Conservator, Shahdol Circle, Shahdol (respondent No. 3) to ensure to fill up the vacancy of backlog post of Scheduled Castes and Scheduled Tribes under the special recruitment drive. The petitioners have filed a copy of the order dated 17.3.2003 along with the advertisement as Annexure-P-2 Respondent No. 4 Divisional Forest Officer was appointed as Nodal

Officer of the Selection Committee of District Shahdol for recruitment of the Forest Guards. The contention of learned Counsel for the petitioners is that petitioners 1, 2 and 4 belong to Scheduled Tribe category whereas petitioner No. 3 belongs to Scheduled Caste category. In the connected writ petition i.e. W.P.(S) No. 2092/2003 filed by Bharti Choudhary and Yatri Singh, petitioner Bharti Choudhary is a Scheduled Caste woman candidate and petitioner Yatri Singh daughter of Gopal Singh Pandre is a woman candidate belonging to Scheduled Tribe category.

The entire selection for the posts of Forest Guards as per the petitioners was conducted according to the schedule given by the Chief Conservator of Forest (respondent No. 2) vide Annexure-P-2. According to the petitioners during the entire selection process, Conservator of Forest of District Shahdol was present and supervised the selection process. On 2.5.2003 the entire selection process was completed and the results were declared in which the petitioners were selected in their respective categories. A copy of the select list dated 2.5.2003 has been placed on record as Annexure-P-4.

It has been contended by Shri Ganguly, learned Counsel for the petitioners that the special drive for recruitment of the Scheduled Castes and Scheduled Tribes candidates on the above-said posts was conducted throughout in the State of Madhya Pradesh and the same time table has been followed in each district. Thereafter the suitable candidates were appointed and were posted. For example order dated 11.7.2003 issued by Divisional Forest officer, Dindori issuing posting orders in the said area has been placed on record as Annexure-P-5. The contention of learned Counsel is that the petitioners were also waiting for their posting orders but they did not receive the same till the impugned order dated 22.9.2003 (Annex.P-1) came into existence by which they came to know that the entire selection process has been cancelled and some inquiry has been set-up. By placing reliance on order Annexure-P-6 dated 29.7.2003 which is issued by Conservator of Forest, Shahdol Circle, Shahdol directing respondent No. 4 to issue appointment orders forthwith specially to the candidates Scheduled Tribes, it has been contended that nothing has been done so far and hence this writ petition has been filed.

By placing reliance on two decisions of the Supreme Court P.N. Premachandran v. State of Kerala and Ors. 2004 (1) All India Services Law Journal 229 and Escorts Ltd. and Another Vs. Collector of Central Excise, Chandigarh, it has been contended by the learned Counsel for the petitioners that on account of some irregularity due to some administrative lapse the persons who were duly selected, cannot be allowed to suffer.

Shri Namdeo, learned Govt. Advocate by inviting my attention to the averments made in the return has submitted that since there were some irregularities in the selection process, therefore, the select list was rightly cancelled by the impugned order Annexure-P-1. However, it is not disputed by the learned Govt. Advocate that the petitioners were selected.

Shri Ganguly, learned Counsel for the petitioners by inviting my attention to Annexure-R-3 which has been placed reliance by the respondents and which has also been filed along with the return, has submitted that Assistant Conservator of Forest, Forest Circle, Shahdol wrote letter to the Conservator of Forest in regard to the irregularity in selection of the candidates of Scheduled Castes and not in regard to the Scheduled Tribes as it is apparent on bare perusal of the "subject" of Annexure-R-3.

After having heard learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

On going through Annexure-R-3 which is a letter issued by Assistant Conservator of Forest, Circle Shahdol, Shahdol addressed to respondent No. 3 it is gathered that the entire selection process was not found to be irregular or defective. The inquiry was made on account of some complaints. The nature of complaint on first page of Annexure-R-3 and it reads as under:

**1- vuqlwfpr tkfr oxZ ds p;u izfdz;k esa Hkz"Vkpkj ds dkj.k Jh Hkjr dqekj uxjkos ftudk esfjV esa ikWpok Lfkku Fkk dk u pquk tkuk A

2- Jh jktsUnz dqekj pkS/kjh dks i{kikr djds pquk tkuk A

3- dqN mEehnokjksa ds tkfr izek.k i= ckn esa "kfey fd;k tkuk A

4- efgyk mEehnokjksa dh viw.kZ "kkjhfd eki ysuk A

5- cSxk tkfe ds mEehnokjh dh izkFkfeDrk ds rkaj ij HkrhZ u djuka**

On going through the points of the inquiry it is gathered that they pertain to selection of candidates belonging to Scheduled Castes category. The petitioners 1, 2 and 4 belong to Scheduled Tribes category and petitioner No. 2 of W.P.(S) No. 2092/2003 is also a Scheduled Tribe candidate. Apart from this after holding the inquiry and giving report vide Annexure-R-3 dated 25.7.2003, thereafter the Conservator of Forest, Shahdol Forest Circle issued a letter on 29.7.2003 (Annexure-P-6) to respondent No. 3 mentioning therein the reference of letter of Chief Conservator of Forest dated 7.7.2003 that in the selection of special drive recruitment appointment letters of all the candidates belonging to the Scheduled Tribes category may be issued forthwith. The authenticity of Annexure-P-6 has not been challenged in the return. Thus, selection of petitioners 1, 2 and 4 and Yatri Singh petitioner No. 2 of W.P.(S) No. 2092/2003 as they belong to Scheduled Tribes category, should not have been cancelled.

So far as selection of petitioner No. 3 and petitioner No. 1 of W.P.(S) No. 2092/2003 who belong to Scheduled Caste category is concerned, on bare perusal of Annexure-R-3 it is gathered that in entire State of Madhya Pradesh a uniform selection process was adopted and same procedure was also adopted in district Shahdol also. The appointments were made thereafter in the rest of the part of the State, but, the select list of Shahdol district was cancelled. On going through the points for determination which are referred on the first; page of

Annexure-R-3 it is gathered that one of the point to hold the inquiry is that one Bharat Kumar Nagrale was at Serial No. 5 in the merit list, but he was not selected. However, no merit list has been filed by the respondents. On going through Annexure-R-3 it is gathered that on the back side of Page 3 the factum of selecting some person by obtaining illegal gratification is not found to be proved. The answer sheets were also perused and it was found that they were rightly checked and the marks were also found to be correctly given. The irregularities which are pointed out do not go to the root of the matter and they cannot be treated as illegality. In the case of *Rajesh P.U., Puthuvalnikathu (supra)* it was held by the Supreme Court that where from out of the selectees it was possible to weed out the beneficiaries of irregularities or illegalities, there was no justification to deny appointment to those selected candidates whose selections were not vitiated in any manner. The Supreme Court further held that the cancellation of entire selection in its entirety was rightly held to be irrational by High Court. It would be appropriate to quote para 6 which reads thus:

6. On a careful consideration of the contentions on either side in the light of the materials brought on record, including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed or our directions - which report itself seems to have been also produced for the perusal of the High Court - there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the process of the written examination - either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions on a loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of invigilators for every then candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answer-sheets which reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by re-evaluating the answer-sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment there was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee, In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very

process itself In its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

In the case of P.N. Premachandran (*supra*) in para 7 the High Court held that if there is some administrative lapse a candidate should not suffer.

On going through Annexure-R-3 which is inquiry report it is gathered that the selection was to be made by following a particular procedure which is mentioned on the backside of first page of Annexure- R-3. There is nothing on record to show that the procedure of selection which was prescribed was not followed. This procedure of selection of the candidates belonging to Scheduled Castes and Scheduled Tribes was adopted throughout the State of Madhya Pradesh and the appointments were made throughout the State, except in Shahdol district. The same procedure of selection was also followed in the Shahdol district, but select list was cancelled. Since the procedure of selection was fully complied and thereafter selection was made on the basis of the said procedure, the irregularities in regard to the selection which has been pointed out on the back side of page 3 of Annexure-R-3 do not relate to the violation of the procedure of selection followed throughout in the State and which has been mentioned on the back side of first pages of Annexure-R-3. Thus, even if there were some irregularities, they were not in contravention to the procedure which was required to be followed and hence selections of the petitioners were wrongly cancelled.

For the reasons stated hereinabove, this petition stands allowed and the impugned order dated 22.9.2003 (Annexure-P-1) so far as it relates to the petitioners is hereby quashed. The respondents are hereby directed to issue necessary orders in favour of the petitioners. Looking to the facts and circumstances, the parties are directed to bear their own costs.