
(2013) 10 JH CK 0056
In the Jharkhand High Court
Case No : WP (S) No. 1124 of 2013

Lakshman Lal

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2013) 4 JLJR 576

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Ritu Kumar and Mr. Samavesh Bhanj Deo, for the Appellant; M.K. Choubey and Abhijeet Kr. Singh for the State, for the Respondent

Final Decision : Disposed Off

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court challenging order dated 4.12.2012 and for a further direction for appointment on the post of Associate Professor (Biochemistry) in Rajendra Institute of Medical Sciences (RIMS), Ranchi. Heard the learned counsel appearing for the parties and perused the documents on record.

2. The petitioner was appointed on 17.3.1988 and he joined the post of Tutor in the year, 1992 in Rajendra Institute of Medical College Hospital (RIMS), Ranchi and he was transferred to Patliputra Medical College, Dhanbad by order dated 12.8.1998. The petitioner was thereafter promoted to the post of Assistant Professor on 1.4.2004 and at the time when he preferred the present writ petition, he was posted as Associate Professor at Mahatma Gandhi Medical College, Jamshedpur. An advertisement was issued in the year, 2005 inviting applications for appointment on several posts in the newly created Rajendra Institute of Medical Sciences (RIMS), Ranchi and the petitioner also applied pursuant to the said advertisement for appointment on the post of Associate Professor (Biochemistry). The petitioner was finally selected for appointment on the post of Associate Professor (Biochemistry) in Rajendra Institute of Medical Sciences (RIMS), Ranchi however, before appointment letter was issued, the

Governing Body of the Rajendra Institute of Medical Sciences (RIMS), Ranchi resolved in its meeting dated 9.6.2005 not to consider appointment of any serving officers in the other two medical colleges namely, Mahatma Gandhi Medical College, Jamshedpur and Patliputra Medical College, Dhanbad for appointment in the Rajendra Institute of Medical Sciences (RIMS), Ranchi. The said resolution was challenged by the petitioner by filing a writ petition being W.P. (S) No. 5684 of 2005. The petitioner preferred a contempt petition for non-compliance of the interim -order passed by the Court which was dismissed by order dated 3.7.2009. The petitioner, after the final order dated 21.4.2008 was passed, again preferred a contempt petition which was dismissed on 17.1.2012. On 7.6.2012, again an advertisement was issued for appointment on various posts including the post of Associate Professor (Biochemistry) and the said advertisement was challenged by the petitioner by filing a writ petition being W.P. (S) No. 3395 of 2012. The said writ petition was disposed of by order dated 5.11.2012, directing the respondents to decide the candidature of the petitioner in the light of the order passed on 21.4.2008 in W.P. (S) No. 5684 of 2005. The impugned order dated 4.12.2012 has been passed by the respondent-authority in the light of the order dated 5.11.2012 passed by this Court, rejecting the claim of the petitioner and therefore, the petitioner has approached this Court by filing the present writ petition.

3. A counter-affidavit has been filed in which it is stated:--

6. That, the details of the petitioner in short is as given below:--

a. The petitioner had applied against the post of Associate Professor, in the Department of Biochemistry against the advertisement No. IPRD 4677 (Health-106) 03-04 in the year 2004.

b. That Restriction was imposed by the Governing Body in its 9th meeting in Agenda No. 3 in appointing the candidates already working in other two medical colleges of Jharkhand, which is annexed as Annexure-2 of this writ petition, in a aim to save the recognition from MCI of other two medical colleges of Jharkhand, namely PMCH, Dhanbad and MGMCH, Jamshedpur.

c. That in W.P. (S) 5684 of 2005 the Hon''ble High Court was pleased to quash the restriction imposed by the Governing Body and directed to consider the petitioner''s candidature afresh by an order dated 21.4.2008 within two week of production/receipt of copy of the order which is annexed as Annexure-4 of this writ petition.

d. That it appears from the instant writ petition and the available records in RIMS, Ranchi that the petitioner never applied before the then Director, RIMS, Ranchi, alongwith a copy of the order who was the appropriate authority to/ initiate consideration of the petitioner''s claim, instead, the applicant preferred to approach the Hon''ble High Court, Jharkhand, by filing a Contempt Civil No. 99 of 2008, which was dismissed vide order dated 3.7.2009.

e. That once again, instead of giving representation to the then Director, RIMS, Ranchi, the applicant approached the Hon''ble Court vide Contempt Civil No. 526 of 2011 Which, again was dismissed by order dated 17.1.2012 with the following observations: "The applicant has filed I.A. No. 3065 of 2011 after lapse of 515 days and without any reasonable explanation as also there is no clear averments attracting any contempt proceeding against the opposite parties; There is also no sufficient ground for initiating proceeding against the opposite parties. The application is accordingly dismissed."

f. That subsequently a representation by the applicant was made before the undersigned after about 1/2 years of the judgment dated 21.4.2008 in W.P. (S) No. 5684 of 2005 which was received on 29.11.2012. While claiming his candidature afresh, the applicant had wrongly submitted that Cont. Case (Civil) No. 526 of 2011 was dismissed as withdrawn by order dated 17.1.2012 with a liberty to approach the appropriate authority, the fact is that it was dismissed by the Hon''ble Court on merit and not dismissed as withdrawn.

g. That the petitioner has made his claim on the ground that Dr. Mushtaque Ahmad Ansari has been appointed after quashing of the said resolution passed by Governing Body by the Hon''ble Court. But the applicant's case and circumstances is quite different from that of Dr. Mushtaque Ahmad Ansari, since the departments are different and moreover, Dr. Ahmad had claimed through proper channel within stipulated period of time and moreover his appointment was made before selection of doctors through advertisement No. 3619. But the applicant has shown his utter negligence while making his claim and hence the claim made by the applicant is not similar to that of Dr. Ahmad.

h. The petitioner then again approached the Hon''ble High Court, Jharkhand through W.P. (S) No. 3395 of 2012, which was disposed of by order dated 5.11.2012, with a direction to consider the candidature of the applicant within 30 days from the day of passing of the order, as per the judgment dated 21.4.2008 passed in W.P. (S) No. 5684 of 2005.

i. That in the similarly situated condition in case of Dr. Ajay Kumar v. State of Jharkhand in W.P. (S) No. 1543 of 2006, the Hon''ble Jharkhand High Court was pleased to pass an order dated 27.1.2012, the relevant portion of which is as under

...It is made clear that in future, if any advertisement made and petitioner applies for appointment according to said advertisement, then respondents shall consider his case for appointment in RIMS. With the aforesaid observation and direction, this application is disposed of.

j. That it is further relevant to point out here that after the preparation of merit list in 2005 which is the matter of past, appointment processes had been initiated by this Institute, twice; and which had been concluded by appointing Doctors to the various posts of RIMS, Ranchi, including in the Department of Biochemistry.

k. That in view of the above facts, it is evident that the candidature of the applicant had not been rejected on the ground of restriction of GB's resolution, rather; no appointment had been made in the department of Biochemistry from the merit list prepared pursuant to the advertisement of 2004.

l. That it is further pertinent to mention here that with the issuance of different advertisements, it was impliedly clear that previous advertisements stood cancelled.

m. Further, new appointments have already been made pursuant to the Advertisement No. 3619, dated 7.6.2012, in various departments, including the Department of Biochemistry, specially, on the post of Associate Professor, which was challenged by the petitioner, instead of applying against the posts advertised. Hon'ble High Court was pleased not to cancel/stay the advertisement or appointment process.

n. That it is stated that as per the direction of Department of Health, Medical Education & Family Welfare, vide File No. 80/RIMS, Ranchi, year 2010, Letter No. 64 (11)/Health/Ranchi, dated 23.5.2012, two posts of Associate Professors, in the department of Biochemistry was advertised, vide the said Advertisement No. 3619 dated 7.6.2012, in which, as per the roster, one post was for General Category and the another post was for the ST category. The General category post of Associate Professor, from the above said advertisement, has been filled up by one Dr. Santosh Kumar, after due selection process.

o. That in view of the facts and circumstances mentioned above, the Director, RIMS, Ranchi passed an order as "it will not be appropriate to appoint the applicant on the post of Associate Professor in the Department of Biochemistry in RIMS, Ranchi, however his candidature may be considered afresh, if he applies against the fresh advertisement in the future".

4. The learned counsel appearing for the petitioner has submitted that the specific directions of the Court have not been complied with by the respondents and though the contempt petition preferred by the petitioner has been dismissed, it would not absolve the respondents from their duty to comply with the specific order passed by this Court. She has further submitted that the grounds taken by the respondent-authority in the impugned order dated 4.12.2012 are misconceived inasmuch as this Court quashed the resolution of the Governing Body and therefore, one Mushtaque Ahmed Ansari has been appointed, ignoring the claim of the petitioner in utter violation of the direction given by this Court.

5. As against the above, the learned counsel appearing for the respondents has submitted that since the petitioner, pursuant to the order passed by this Court on 21.4.2008, never approached the authorities and therefore, his claim was not decided. He has further submitted that after the direction issued by this Court, a fresh advertisement was issued and the eligible person has been appointed and therefore, the claim of the petitioner is not tenable.

6. On perusal of the documents on record, more particularly order dated 21.4.2008, it would appear that the writ petition being W.P. (S) No. 5684 of 2005 was allowed after hearing the counsel for the parties and therefore, it was well within the knowledge of the respondents that a direction has been issued to the respondent-authority to consider the claim of the petitioner for appointment. The plea taken by the respondent-authority that the petitioner never approached him is misconceived inasmuch as, the direction to pass an appropriate order within two weeks was issued in the said order only for the purpose of fixing the time-limit for deciding the claim of the petitioner and it was never intended that the authorities would not comply with the specific direction passed by this Court.

7. In *S. Nagaraj and Others Vs. State of Karnataka and Another*, the Hon'ble Supreme Court has observed as under:--

12. ...Law on the binding effect of an order passed by a court of law is well settled. Nor there can be any conflict of opinion that if an order had been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. In *Halsbury's Laws of England* (Fourth Edn., Vol. 9 p. 35, para 55) the law on orders improperly obtained is stated thus:

The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order.

Any order passed by a court of law, more so by the higher courts and especially this court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly, No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by an authority according to its own understanding.

8. Although the contempt petition filed by the petitioner has been dismissed by this Court however, from the impugned order dated 4.12.2012, I find that even a specific direction given by this Court in order dated 5.11.2012 has not been complied with by the authority concerned inasmuch as, the authority had to decide the claim of the petitioner in the light of order dated 21.4.2008, which admittedly has not been done. The plea taken by the respondent-authority that another eligible person has been appointed pursuant to advertisement issued on 7.6.2012, is also not tenable, particularly in view of the fact that immediately after the advertisement was issued, the said advertisement was challenged on 19.6.2012 by filing the writ petition which was disposed of by order dated

5.11.2012, directing the respondent authorities to decide the claim of the petitioner in the light of order dated 21.4.2008 passed in W.P. (S) No. 5684 of 2005.

9. In view of the aforesaid, I am of the considered opinion that the specific directions issued by this Court have been violated by the respondent-authority. The claim of the petitioner has been rejected on frivolous ground, which cannot sustain the scrutiny of law. The impugned order dated 4.12.2012 is quashed. However, since another person namely, Dr. Sanjay Kumar has been appointed pursuant to the advertisement issued on 7.6.2012, a direction is issued to the Director, Rajendra Institute of Medical Sciences (RIMS), Ranchi to consider the possibility of appointment of the petitioner within a period of six weeks in the light of existing vacancy, if any, and the specific direction issued by this Court. The writ petition is disposed of in the aforesaid terms.