
(2016) 06 JH CK 0020
In the Jharkhand High Court
Case No : W.P.(S) No. 5731 of 2014

Lalit Asur

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 23-06-2016

Acts Referred:

Citation : (2016) 3 JBCJ 586 : (2016) 4 JCR 290

Hon'ble Judges : H.C. Mishra, J.

Bench : Single Bench

Advocate : M/s. Manoj Tandon, Advocate, for the Petitioners; M/s. Lal Chandrahas Nath Shahdeo, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

H.C. Mishra, J.— Heard learned counsel for the petitioners and the learned counsel for the respondent State.

2. The petitioners have filed this writ application with a prayer for directing the respondents, particularly respondent No. 3, The Deputy Commissioner, Gumla, to issue appointment letters to the petitioners on class-III post, in the light of the decision of the State Government.

3. The petitioners belong to "Asur" tribe, of the State of Jharkhand, which is one of the aboriginal tribes, identified by the State Government to be at verge of extinction. The members of this tribe are living in the forests, hills etc., and their main livelihood is by way of hunting, forest farming and like primitive methods. It was also found that in the census held in the year 1961, the population of the members of Asur and other such aboriginal tribes was only 3.54 % of the general population, which in the census in the year 1973 came down to 3.24 % and again in the year 1981 it came down to 3.17% only. Taking into consideration the fact that these aboriginal tribes were at the verge of extinction, a special drive was taken to save these tribes and it was decided by the State Government that if some youth belonging to these aboriginal tribes are educated, they may be

directly taken into service of the State Government, according to their educational qualification. The persons having the educational qualification of graduate level, were to be directly appointed in Class-III posts, without undergoing the regular selection process. Accordingly, a resolution was adopted by the State Government, mentioning the aforesaid facts, which was circulated under Memo No.2965 dated 23.12.2005, which was again clarified in the year 2008, in view of the fact that in the resolution taken in the year 2005 it was mentioned that those youths who had acquired the qualification of graduation till 30.11.2005 may only be appointed, which condition was relaxed in the subsequent resolution and it was resolved that such youths of the aboriginal tribes who had graduated till the year 2008 may also be directly appointed on Class-III posts in the District Collectorates. This resolution was circulated by the State Government under Memo No. 2147 dated 13.10.2008. One of the conditions of the said resolution was that this process of direct appointment was to be undertaken in special circumstances only for once, which would not be treated as precedent. Both these resolutions of the State Government, dated 23.12.2005 and 13.10.2008 have been brought on record by way of counter-affidavit filed on behalf of the State itself.

4. The case of the petitioners is that the petitioners passed the graduation examination prior to 2008 and their case was also recommended by respondent No. 2, Special Secretary to the State Government, in its Welfare Department, vide letter bearing No.-2/P.T.G.C.Ni-166/2008-K-88 dated 15.01.2010 to the Deputy Commissioner, Gumla, directing him to appointment the petitioners on suitable Class-III posts and after due verification of certificates etc., they may be issued the appointment letters. The letter of recommendation dated 15.01.2010 has been brought on record as Annexure-4 to the writ application. Pursuant to the said letter, the Deputy Commissioner, Gumla, vide his letter dated 26.07.2012 as contained in Annexure-5 to the writ application, sought clarification from the State Government stating therein that in the resolution contained in Memo No. 2147 dated 13.10.2008 it was mentioned that the process of appointment shall be undertaken only once and it shall not be taken as a precedent. It was also informed that earlier on such recommendation five candidates belonging to the aboriginal tribes had already been appointed. Accordingly, a clarification was sought from the State Government by the Deputy Commissioner, Gumla. The clarification as sought for, was duly replied by the State Government vide letter bearing No.-2/P.T.G.C.Misc.-155/2010-2443, dated 08.10.2012, as contained in Annexure-6 to the writ application, whereby it was clarified that the recommendation for the petitioners was made in the same transaction and the matter was unnecessarily being delayed for the last two years and the Deputy Commissioner, Gumla, was directed to appoint the petitioners on suitable class-III posts without any further delay and to inform the State Government accordingly. Thereafter, vide letters dated 17.12.2012 as contained in Annexure-7 series, the petitioners were informed by the Deputy Commissioner, Gumla, to appear before him on 26.12.2012 with all the relevant

certificates. It is the case of the petitioners that the petitioners appeared before the Deputy Commissioner, Gumla, on the date fixed and the certificates were also verified, but the petitioners have not yet been appointed by the Deputy Commissioner, Gumla.

5. Learned counsel for the petitioners has submitted that the action of the Deputy Commissioner, Gumla, in not appointing the petitioners is blatant violation of the direction of the State Government as contained in Annexure-4 & 6 to the writ application. It is also submitted that no reason whatsoever has ever been communicated to the petitioners for not appointing them, even though the petitioners gave representation for the same.

6. Learned counsel for the State on the other hand has opposed the prayer of the petitioners and has placed reliance upon a letter bearing No. 2965 dated 31.12.2012, issued by the Special Secretary to the Government, in Welfare Department, State of Jharkhand, which is a general letter giving clarification in connection with respect to the implementation of the resolutions of the State Government as contained in Memo No. 2147 dated 13.10.2008 as also another resolution issued subsequently. It was stated in the said letter that the process of direct appointment of the persons belonging to the aboriginal tribes was one time process which was not to be taken as a precedent, and as such, no further recommendations be made for such appointments. This letter has been brought on record by way of counter-affidavit filed on behalf of the State.

Learned counsel submitted that in view of this letter the appointment process was stopped and the petitioners have no right to be appointed. It is submitted by learned counsel for the State that due to this letter issued in the meantime, all such appointments were stopped in this connection learned counsel has also placed reliance on paragraph-14 of the counter-affidavit which reads as follows:-

"14. That in reply to Para-21 of the petition, it is submitted that Welfare Department, Govt. of Jharkhand vide letter No. 2443 dated 08.10.2012 clarified and informed the Respondent No. 3 that the recommendation of the petitioners were made in consonance of Government Resolution No. 2147 dated 13.10.2008, but the conditions as contained in clause-7(Gha) of the said Resolution was not relaxed by the Welfare Department. Further, through Circular No. 2965, dated 31.12.2012 issued under the signature of the Special Secretary to the Government, Department of Welfare, Jharkhand, addressed to the Deputy Commissioner of the Bokaro, Ramgarh, West-Singhbhum, Dhanbad and Gumla Districts, it was explicitly clarified and directed not to forward any application to the Department for direct appointment of Adim Janjati in view of provisions contained in clause-7 (Gha) of the said Resolution.

Hence, in view of the latest clarification and regard being had to the Rule position, appointment of the Respondents (sic should be petitioners) to the Class-III posts in Gumla district cannot be made. Accordingly, the instant writ petition of the petitioners is liable to be rejected in limine, having no merit".

7. Learned counsel for the State, accordingly, submitted that in view of the letter dated 31.12.2012, the respondent No. 3 had no authority to appoint the petitioners, and accordingly, there is no merit in this writ application.

8. Having heard learned counsels for both sides and upon going through the record, I find that the submissions of the learned counsel for the State have no legs to stand. The said letter dated 31.12.2012 is only in nature of general instructions addressed to the Deputy Commissioners of the different districts and it only directs the Dy. Commissioners not to forward any further recommendations for direct appointment of the persons belonging to the aboriginal tribes. It is nowhere stated in the said letter that the recommendations already made in favour of the petitioners by the State Government vide Annexure-4 and clarified vide Annexure-6 to the writ application, stand withdrawn, or that this letter would be applicable in the case of the petitioners also. In fact there is no mention about Annexures-4 and 6 in the letter issued by the State Government on 31.12.2012. In spite of that it is stated in the counter-affidavit that in view of this clarification by the State Government the petitioners cannot be appointed. This interpretation made by the deponent of the counter affidavit is in complete violation of the recommendations of the State Government as contained in Annexure-4 and Annexure-6 with respect to the petitioners. This (mis)-interpretation to the letter dated No. 2965, dated 31.12.2012, ex facie, appears to have been made by the deponent of the counter affidavit only with the intention to deprive the petitioners of their legitimate dues and is absolutely mala fide.

9. The counter affidavit has been sworn by the Establishment Deputy Collector, Gumla, and it is stated that he has been duly authorised by the answering respondents to swear the affidavit. By way of such statement made in paragraph-14 of the counter-affidavit the said officer has tried to interpret something in the letter dated 31.12.2012, which is not at all there in the said letter, and has tried to completely mislead the Court.

10. In view of the discussions made above, I find and hold that the petitioners have been illegally and arbitrarily denied of the appointments which were legitimately due to the petitioners, in view of the recommendations made by the State Government. The petitioners were also called by the Deputy Commissioner, Gumla, by letters contained in Annexure-7 series, with all their certificates, which the petitioners did, but they have been illegally denied of their appointments, though the petitioners fulfilled all the criteria for their appointment on suitable class-III posts, and they had the legitimate expectation that they are going to be appointed soon.

11. In the facts and circumstances of the case, this Court has no option, but to direct the respondents, particularly the respondent No.3, Deputy Commissioner, Gumla, to forthwith appoint the petitioners on the suitable Class-III posts in the District Collectorate, Gumla. This direction must be complied with positively within a period of two months from the date of production / communication of

this order.

12. Before parting with this order, this Court cannot ignore the hostile attitude shown by the respondents No.3 and 4 in denying the legitimate claims of the petitioners. At one hand, the State Government was anxious to save the aboriginal tribes from extinction, but at the other, the mufassil officers, in their habit of red tapism, have not spared any stone unturned to see that the efforts of the State Government fall flat. The petitioners, who belong to the aboriginal community at the verge of extinction, have not only been denied of their legitimate dues for the last about five years, rather they were forced to take the shelter of this Court incurring substantial cost.

13. Accordingly, I direct the State of Jharkhand to make the payment of Rs. 50,000/- (rupees fifty thousand) to each petitioner, for the delay and harassment caused to the petitioners, which at any cost, must be paid to all the petitioners latest by the time of their appointments.

14. The State Government shall be at the liberty to realise this amount from the salary of the officer swearing the affidavit, and / or the officer authorising the deponent of the counter-affidavit to swear such malicious and misleading affidavit, after fixing the responsibility upon the officer concerned in accordance with law.

15. This writ application is accordingly, allowed with the directions as above.