
(2004) 08 JH CK 0013

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6987 of 2002

Mandal Murmu and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2004) 4 JCR 694

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : A.K. Sahani and Gauri Devi, for the Appellant; H. Patwari, JC to GP III, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. A.K. Sahani, learned counsel for the petitioner and Mr. H. Patwari, J.C. to G.P. III and with their consent, this writ petition is being disposed off at this stage.

2. The five petitioners herein pray for issuance of a writ of mandamus upon the respondents for orders of posting and also to pay arrears and current salary to them as they are due since February, 2001 together with interest @ 12% per annum.

3. The petitioners were appointed on the post of "Dalpatis" in different panchayats in the district of Dhanbad. One Ashok Kumar Mishra along with others (who were also working as "Dalpatis" in the district of Dhanbad) filed a writ petition being CWJC No. 3831 of 1995 (R) for promotion to the next higher post of "panchayat sewak". That writ petition was withdrawn on account of an affidavit filed by the State to the effect that the appointment of panchayat sewak in the district of Dhanbad was under process. The withdrawal of the writ petition came on 12.12.1996.

4. It appears, as has been stated in the writ petition, that even thereafter, the

respondents did not complete the selection process of panchayat sewaks in the district of Dhanbad and this led to the filing of a second writ petition which was registered as CWJC No. 2522 of 1999 (R) by same Ashok Kumar Mishra and others.

5. On 4.4.2001 this writ petition was disposed off by Annexure- 1 with a direction that the respondents would prepare a panel for appointment of panchayat sewaks in the district Dhanbad as early as possible and preferably within a period of three months from the date of receipt production of a copy of the order. In so far as the petitioners therein were concerned, it was¹ observed that since they were admittedly working as Dalpati, therefore, the bar of age will not come in their way nor in the way of the respondents in considering their cases for appointment on the post of panchayat sewaks.

6. It is evident from the statements made in paragraphs 9 and 10 that thereafter the respondents took steps and ultimately, issued an order on 3.11.2001 (Annexure-2) whereby and whereunder, in active compliance of the directions made in the aforementioned CWJC No. 2522 of" 1999 (R), appointed eighteen Dalpatis after they had been screened and selected by the Selection Committee on the post of panchayat sewaks in the scale of Rs. 3, 200-85-4;900. A rider in the appointment letter was inserted making the appointment subject to approval by the Department of Finance. This order dated 3.11.2001 is Annexure-2 appended to the writ petition persons placed at serial Nos. 1, 2, 3, 8 and 11 of that list are petitioner Nos. 2, 1, 3, 4 and 11 respectively.

7. It is relevant to mention that in the aforementioned list, there were other persons who were also similarly appointed but the relevant names for purposes of this case are those who are placed at serial No. 10 (Madhusudan Mishra), 13 (Ashok Kumar Mishra), 14 (Anjani Kumar Sharma}, 15 (Umesh Prasad Choudhary), 16 (Bomkesh Chakravorty) and 18 (Shankar Prasad Sen).

8. The aforementioned names have been-mentioned here as they attain some significance on account of what will be stated later on.

9. It appears that pursuant to the issuance of the aforementioned office order dated 3.11.2001, the petitioners gave their joining on the post of panchayat sewak in the officer of the respondent No. 6 (District Panchayat Officer, Dhanbad) and subsequently on 20.5.2002, the respondent No. 5 (Deputy Development Commissioner. Dhanbad) modified the order of appointment by Annexure-3 by which all the panchayat sewaks including the petitioners Were informed that their appointment would be deemed to be effective on a temporary basis from the date of completion of training and subject to passing of an examination.

10. Accordingly, these 18 panchayat sewaks who had been selected by Annexure-2 were sent for training to the Central Training Centre at Brambay in the district of Ranchi and were released for training by order dated 5.6.2002. The petitioners thereafter went and joined on 6.6.2002 and completed their training. After completion of training as stated above, the petitioners and others were all

relieved by office order dated 4.9.2002 (Annexure-4) so as to enable them to join at Headquarters.

11. Now the grievance of the writ petitioners is that they are continuously and regularly working on the post of panchayat sewaks since November, 2001 but are not getting salary despite various representations having been made to various authorities.

12. It is the further case of the petitioners that subsequently by a letter dated 5.8.2002 issued by the Additional Finance Commissioner, Govt. of Jharkhand, the approval of the Department of Finance was duly communicated to the Deputy Commissioner, Dhanbad.

13. Out of the names mentioned above who were placed in the same list in Annexure-2 six of them at serial Nos. 10, 13, 14, 15, 16 and 18 and who were also working as panchayat sewaks, were issued with regular posting orders vide order dated 1.11.2002 (Annexure-8) leaving out the petitioners. This according to the petitioners, is a hostile discrimination visa-vis the writ petitioners and these persons. However, since these persons have not been made parties in this writ petition, this Court is not inclined to give a finding that there has been a hostile discrimination in relation to the petitioners visa-vis these six persons mentioned in Annexure-8 which are the same names found mentioned/quoted above and which is also included in Annexure-2.

14. The stand of the respondent No. 2, (Finance Commissioner, Jharkhand) is very specific on the issue that there was a general restriction on direct recruitment on non plan posts and this restriction was imposed with effect from 30.9.1983 by the Government of Bihar. However, in view of the order dated 4.4.2001 passed in CWJC No. 2522 of 1999 (R) Annexure-1), the Commissioner of Finance relaxed the restrictions by letter dated 5.8.2002 (Annexure-7). It is also evident from the counter affidavit of the Finance Commissioner that by an order dated 17.4.2003, the Special Works Officer of the Department of Finance, Government of Jharkhand wrote a letter to the Secretary, Department of Rural Development that in view of different orders passed by the High Court in relation to appointment of panchayat sewaks, the approval of the Department of Finance must be taken. Yet, strangely, in paragraph 9 of the counter affidavit, the deponent has stated that the Finance Department has no role to play in matters relating to posting of the petitioners or to pay arrears and current salary to them. These two stands i.e. the stand taken in paragraph 9 of his counter affidavit and the letter dated 17.4.2003 thus appear to be contradictory to each other.

15. The stand of the other respondents namely respondent Nos. 3 to 6 is that appointments were subject to approval by the Department of Finance and in case of disapproval, the appointments were to be deemed to have been cancelled.

16. This Court does not understand the different stands being taken by different authorities at different stages. Is it not correct that these petitioners along with

those six mentioned above were appointed by reason of one omnibus order and that too pursuant to directions made in CWJC No. 2522 of 1999 (R)? Is it also not true that all the petitioners except the petitioner No. 5 are all placed above these six persons in that letter of appointment? The answer to both the questions are in the affirmative and it is evident that these petitioners and those persons mentioned in serial Nos. 10, 13, 16 and 18 who have been named above are a class of appointments by themselves by reason of one omnibus order and i.e. Annexure-2. It is also evident upon reading Annexure-2 that these petitioners except petitioner No. 5 are all placed above these persons. Madhusudan Mishra is placed just above petitioner No. 5 namely Sikandar Sheikh.

17. This Court therefore does not understand as to what particular yardstick, was adopted by the respondents in giving posting to those persons i.e.- the persons mentioned/enlisted at serial Nos. 10, 13, 16 and 18 and as to why they chose not to give posting order in relation to these petitioners who are placed at serial Nos. 1, 2, 3, 8 and 11 of the same list. Moreover, the stand of the Finance Commissioner and Additional Commissioner of Finance making a statement that the Department of Finance has no role to play and yet insisting by Annexure-C (letter dated 17.4.2003) that in all matters in relation to appointment of panchayat sewaks arising out of orders of different Courts, must receive prior approval of the Department of Finance, appears to be a stand being taken only for purposes of a mere ritual and/or formality without explaining the inconsistency of such a stand.

18. This Court therefore, is of the definite opinion that the respondents have acted in a manner that does not appear to be either fair or rational while dealing with these petitioners. If the respondents have given posting to persons placed below the petitioners of the same list, then the petitioners are also entitled to similar benefits and the respondents cannot be allowed to create a class within a class or create a community within a community in violation of Article 14 of the Constitution of India or at least attempt to plead inconsistency before this Court.

19. Consequently, for the foregoing reasons, this writ petition has to be allowed and it is accordingly allowed. A writ of mandamus will be issued upon the respondent authorities to immediately and forthwith look into the matter and pass order in accordance with law after taking into consideration the observations made herein. The parties will suffer their own costs.