

(2010) 09 JH CK 0139
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3345 of 2007

Manoranjan Tiwary

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2010) 4 JLJR 465 : (2010) 58 BLJR 1644

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; S.C.-III, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This writ application has been filed under Article 226 of the Constitution of India for direction to the Respondents to consider the case of the Petitioner for his appointment on the post of Laboratory Technician (Frozen Semen) under Semen Bank Project as against the post reserved for physically handicapped persons.

2. Controversies are as such that background of the case needs to be stated hereinbelow:

Since the year 1988, a large number of Laboratory Technicians were appointed in the Department of Animal Husbandly & Fishery, Jharkhand, Ranchi. When it came to the notice of the State Government that those appointments were made in complete violation of Articles 14 and 16 of the Constitution of India, the services of those Technicians, illegally appointed, were terminated vide office order No. 5330 dated 23.10.1998.

Being aggrieved with the said order of termination, some of the Laboratory Assistants moved before the then Ranchi Bench of Patna High Court in the writ application bearing C.W.J.C. No. 3503 of 1998 (R), which was dismissed. The said order was affirmed by the Division Bench in Letter Patent Appeal. The

aggrieved persons thereafter moved before the Hon''ble Supreme Court in Civil Appeal Nos. 5342 and 5343 of 2003. They were heard along with other appeal bearing Civil Appeal Nos. 5344-5346 and 5376 of 2003. Hon''ble Supreme Court after hearing the matter passed the order, relevant portion of which is being given hereinunder:

(i) 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 regularization 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 unsuitable for some reasons, it would be open to the Committee to reject their applications.

Appropriate authority shall issue orders for appointment after considering the roster and the merit list, on available vacancies.

The appeals disposed of accordingly. There shall be no order as to costs. We, however, make it clear that this case shall not be treated as precedent as we have decided it purely on the facts and in the peculiar circumstances of this case.

3. From the order of the Hon''ble Supreme Court, it would be evident that the persons, whose services were terminated, were to be given age-relaxation if overage and weightage over the outsiders in the process of re-appointment or for regularization of their services. Thus, there is no doubt that the outsiders were to be given opportunity along with the persons whose services were terminated. It further appears from the order passed in W.P.(S) No. 156 of 2005, though it has not been pleaded either by the Petitioner or by the Respondents, that pursuant to the said order, passed by the Hon''ble Supreme Court the State of Jharkhand issued Advertisement bearing No. O.C.-01/04 through Labour Employment & Training Department, Sub Employment Exchange, Dumka calling for the applications for appointment to the post of Laboratory Assistant.

4. In the said advertisement, one year's experience in Frozen Semen was prescribed as one of the essential criterias for appointment to the post of Laboratory Assistant. Pursuant to that, the persons applied took examination held on 5.10.2004 but without declaring the result an another Advertisement bearing No. 01/05 was issued by the Department of Animal Husbandry & Fishery, Jharkhand, Ranchi calling for the applications for appointment to the post of Laboratory Assistant. In the said advertisement, certain modification was made

in one of the clauses relating to essential eligibility, whereby it was mentioned that one year's experience should be from the Government Institution. Pursuant to that, the Petitioner, who is holding diploma in Veterinary Science & Animal Husbandry, did apply annexing therewith the work experience certificate, issued by Ananda Marga Gurukula, Institute of Veterinary Science & Animal Husbandry, Purulia (West Bengal) and also certificate showing the Petitioner being handicapped and on being issued Admit-card took examination held on 9.1.2005 and stood first in the examination and as such, his name finds placed at Serial No. 1 in the merit list, but to utter surprise of the Petitioner he was never offered with the appointment though he had topped the list and had also claimed his appointment in reserved category of physical disability. That action of the State Government gave cause of action to the Petitioner to file this writ application.

5. A counter affidavit was filed on behalf of the Respondents on 16.4.2009, wherein it has been stated that pursuant to the order passed by the Hon'ble Supreme Court and also by this Court, the State Government called for the applications from the Ex-Technical Assistants as well as the outsiders possessing some qualifications and experiences and thereupon got the written examination conducted by an independent agency and the result of the written test was placed before the Selection Committee for considering the eligibility, suitability, educational qualification etc. Accordingly, the Committee decided to give priority to those Technical Assistants, whose services had been terminated, and also of the persons, whose cases were covered under the order of this Court. It has been specifically pleaded that the Committee did not recommend any outsiders for appointment considering the limited post.

6. In this respect, the deponent went on further to state in Paragraph-8 of the counter affidavit, which reads as under:

That it is humbly stated and submitted that the Petitioner was not worked as Technical Assistant in this department Bihar or Jharkhand and his service was not terminated from the post of Technical. In view of Selection Committee, he was outsider.

Contention of the Petitioner is not based on facts and Petitioner cannot be accommodated in view of the direction of the Hon'ble Apex Court and compliance of that by the Respondents.

7. Thus, the stand, which was taken by the Respondents in its counter affidavit dated 16.4.2009, is that the case of the Petitioner, being outsider, was not considered for appointment and this statement is based on the report of the Members of the Selection Committee which was the basis for making appointment in the Department of Animal Husbandry & Fishery, Jharkhand, Ranchi pursuant to the order passed by the Hon'ble Supreme Court and also by this Court.

8. Subsequently, pursuant to the order passed by this Court, a supplementary counter affidavit was filed explaining therein that as the certificate of experience,

which was produced by the Petitioner, was not in accordance with the requirement of the concerned Department, as given in the advertisement, the case of the Petitioner was not considered for his appointment. In this respect it was further explained that the experience certificate/produced by the Petitioner, had never been issued by any Government Institute and hence, the Petitioner was not entitled to be appointed as Laboratory Assistant. On filing such affidavit, this Court vide its order dated 14.12.2009 after taking notice of the case of Chandra Kant and Ors. v. The State of Jharkhand and Ors. vide W.P. (S) No. 156 of 2005 did observe that the controversy as to whether the certificate, issued by the Non-Governmental Institute, should be recognized or not, has been set at rest and as such, the Respondents - Authorities were again directed to reconsider the case of the Petitioner taking into account that as per the certificate, produced by the Petitioner, he does have one year Frozen Semen Work Certificate. Pursuant to that, the Committee on considering did find that the work experience certificate, issued by Ananda Marga Gurukula, Institute of Veterinary Science & Animal Husbandry, Purulia (West Bengal), cannot be taken to be work experience as it is the same Institute from where the Petitioner has acquired diploma has granted certificate for the period when the Petitioner was still pursuing his diploma course and as such, that cannot be said to be an experience certificate and hence, the Committee rejected the claim of the Petitioner for his appointment on the post of Laboratory Assistant.

9. Having heard learned Counsel appearing for the parties and on perusal of the record, I do find that when the services of the Laboratory Assistants, appointed illegally since the year 1988, were terminated, writ application was filed before this Court which was dismissed and was even affirmed by the Division Bench in Letter Patent Appeal and then the matter came up before the Hon"ble Supreme Court, whereby the Hon"ble Supreme Court directed the State of Jharkhand to take steps for re-appointment/regularization of the terminated employees along with the outsiders, wherein relaxation in age and the weightage over the outsiders were to be given to the employees whose services had been terminated. Thereupon, an Advertisement bearing No. 1/2005 was issued. Pursuant to that, the Petitioner also applied and took the examination held on 9.1.2005 and stood first, still his case for appointment was not considered for the reason which appears from the report of the Committee dated 12.1.2005 that the Petitioner is outsider. It does appear from the affidavit as also from the order passed by the Committee, as contained in Annexure-C, that the Members of the Committee were under the impress on that only the cases of the persons, whose services have been terminated, were to be considered for its appointment, which was absolutely against the order of the Hon"ble Supreme Court as also against the order passed by this Court, as the persons, whose services were terminated, have to be given weightage and age relaxation and as such, the outsiders were very much in the fray and such outsiders securing more marks even after giving weightage to the terminated employees, were entitled to be appointed. It is never the case of the Respondent that all the terminated employees whose

names were recommended for appointment on being given weightage have secured more marks than the Petitioner, rather by referring to merit list, prepared by the agency on taking examination, it was stated that some of the persons, whose name has been recommended for appointment, was having less mark even on giving weightage and in that view of the matter, the action of the Respondents - Authorities in not considering the case of the Petitioner only for being outsider is not only bad but also arbitrary.

10. Now coming to the other aspect relating to the experience certificate, it be reiterated that under Advertisement bearing No. 1/05, there was essential eligibility of having one year's experience certificate of Frozen Semen work from Government Institution, that clause was found to be quite illegal by this Court in the case of Chandra Kant and Ors. (supra) keeping in view that under the guide-lines of the Department of the then State of Bihar, only one year's experience of Frozen Semen Work has been prescribed and that no Government Institution is imparting training in Frozen Semen work in the State of Bihar or in the State of Jharkhand and thus, it was held that the impugned classification made on the ground of experience between those who has experience from Government Institution and private Institution being against the guide-lines and having no nexus with the object sought to be achieved, the same cannot be upheld.

11. In that view of the matter, rejection of the candidature of the Petitioner on the aforesaid ground is certainly bad particularly when this ground had never been taken by the Committee while considering eligibility, suitability etc. of the candidate who came out successful, rather the Petitioner's claim at that time was rejected simply for the reason that he is outsider and the Members of the Committee seem to have carried impression that the case of only terminated employees is required to be considered which was against the spirit of the Order passed by the Hon'ble Supreme Court as also against the order passed by this Court and, under these circumstances, Petitioner's claim for being appointed on the post of Laboratory Assistant (Semen Bank Project) seems to have been rejected arbitrarily and without there being any legal basis.

12. Consequently, the Respondents are directed to consider the case of the Petitioner again for his appointment on the post of Technical Assistant (Semen Bank Project), Department of Animal Husbandry & Fishery, Jharkhand, Ranchi within a period of two months from the date of receipt/production of a copy of this order.

13. In the result, this application is allowed.