

(2008) 09 JH CK 0014
In the Jharkhand High Court

Md. Abul Kalam and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Citation : (2008) 4 JCR 678

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—This writ application has been filed on behalf of the petitioners for issuance of a writ in the nature of mandamus directing the respondent No.7 to issue appointment letter in favour of the petitioners, pursuant to recommendation made by the Deputy Commissioner, Dhanbad vide letter No. 52 dated 24.1.2007 (Annexure 7) in the light of the Government letter No. 1096 dated 27.2.2002 (Annexure 5) and also Government letter No. 49 dated 28.2.2006(Annexure 6) issued by the Secretary, Science and Technology Department, Government of Jharkhand, respondent No. 4.

2. The case of the petitioners is that an advertisement (Annexure 3) issued by Deputy Commissioner, Dhandbad was published in the daily newspaper on 28.10.2005 inviting applications from the eligible candidates for the appointment on Class IV post in different offices in the district of Dhanbad. Pursuant to that, petitioner and others including those persons, who had earlier been impanelled applied for. The petitioners on passing written test etc. were selected and accordingly a panel of the successful candidates was published on 23.4.2006. Subsequently, Deputy Commissioner, Dhanbad in compliance of the direction issued by the Secretary, Science and Technology Department, Government of Jharkhand under letter No. 1096 dated 27.7.2002 (Annexure 5) and also letter No. 49 dated 28.2.2006 (Annexure 6) made recommendation for appointment of the petitioners and others on the Class IV posts at BIT, Sindri vide letter No. 52 dated 24.1.2007(Annexure 7). When respondent No. 7, Director, BIT, Sindri did not take any action, the Deputy Commissioner again under letter No. 186 dated

22.2.2007 (Annexure 8) made request to take action in the matter of appointment and thereupon respondent No. 7 made appointment to some of them, whose names were down below in the merit list, in other words, junior to the petitioners, which action of the respondent No. 7 is not only arbitrary but also discriminatory.

3. The stand of the Deputy Commissioner (respondent No. 6) and others is that earlier one panel had been prepared by the District Administration, Dhanbad in the year 1992 for appointment on Class IV posts at BIT, Sindri but in that panel ward servant working from before had not been impanelled. Some of them moved before the Hon"ble Supreme Court and even to this Court and under the directions of the Court, their names were included in the panel but could not be appointed due to some reason or other. However, they also applied when the advertisement was issued in the year 2005 and keeping in view the earlier direction given by the Court, they were also impanelled in the select list prepared in terms of the advertisement issued in the year 2005. Thereupon, the Deputy Commissioner, Dhanbad made recommendation of the petitioners and others for their appointment on Class IV posts at BIT, Sindri. but the authority of the College seems to have turned down the recommendation on the basis of a letter No. 524 dated 19.3.2007 issued by the Science and Technology Department, Government of Jharkhand making a point that department of Science and Technology is not under the Mufassil Office and, therefore, it is not obligatory on the part of BIT, Sindri to appoint persons from the select list prepared only at the district level.

4. Stand of the Director, BIT, Sindri (respondent No. 7) as has been disclosed in the counter affidavit filed on behalf of him is that Department of Science and Technology being not subordinate to the District Administration, is not supposed to appoint those persons, whose names have been recommended for appointment on Class IV posts rather respondent is bound by the direction of the Hon"ble Supreme Court and this Court whereby the college authority had been directed to make appointment and under this situation, only those candidates, impanelled in the select list tow had been asked to be appointed by the Court have been appointed leaving the claim of others including the petitioner as the college authority is not bound to make

appointment on the recommendation made by Deputy Commissioner, Dhanbad.

5. Having heard learned Counsel appearing for the parties and on perusal of the records, it does appear that consequent upon the examination taken, pursuant to advertisement made in the year 2005 for appointment on Class IV posts in different offices at Dhanbad, a select list consisting the names of the petitioners and also some of the persons, who had earlier been impanelled in the year 1992 but could not be appointed, was prepared. Thereupon, Deputy Commissioner, Dhanbad in terms of request made by the then Secretary, vide his letter No. 1096 dated 27.7.2002 (Annexure 5) and also letter No. 49 dated 28.2.2006 (Annexure 6) for taking action in the matter of appointment on Class IV post at

BIT, Sindri, sent select list to the Director, BIT, Sindri, respondent No. 7, vide letter No. 186 dated 22.2.2007 (Annexure 8) requesting therein for appointment on 155 vacant posts. But respondent No. 7 made appointment to some of them, who were junior to the petitioners on the plea that those persons had been directed to be appointed either by the Hon'ble Supreme Court or by this Court and the rests are not entitled for their appointment as establishment of the BIT is never subordinate to the District Administration and this assertion of the respondent No. 7 gets reflected from letter dated 19.3.2007 (Annexure C) issued by Principle Secretary, Science and Technology Department, Government of Jharkhand, but the respondent while taking such plea completely lost sight of the earlier letter issued by the then Secretary, vide his letter No. 1096 dated 27.7.2002 (Annexure 5) and also letter No. 49 dated 28.2.2006 (Annexure 6) under which Science and Technology Department, Government of Jharkhand had made request to Deputy Commissioner to take action in the matter of appointment on Class IV post and that respondent No. 7 himself under letter No. 1208 dated 21.12.2006 had given details of 155 vacancies of Class IV posts at BIT and that earlier also the authority of BIT had made appointment in the establishment of BIT, Sindri on Class IV post on the recommendation made by District Authority which gets reflected from office as contained in memo No. 28 dated 6.1.1982 (Annexure 14) and also memo No. 2709 dated 12.5.1986 (Annexure 15) issued by the Director, BIT, Sindri. That apart, respondent No. 7 though has tried to justify his action by making appointment of some of the persons who were junior to the petitioners on the plea that they have been directed earlier by the Hon'ble Supreme Court or the High Court to be appointed but it is manifest from the select list that those persons who were appointed were junior to the petitioner and therefore, claim of the petitioner being senior (or) them cannot be ignored or by-passed.

6. Under the circumstances, the matter is remitted to the Director, BIT, Sindri to consider the claim of the petitioners and pass an appropriate order in accordance with law within a period of six weeks from the date of receipt/production of a copy of this order.

7. With the aforesaid direction/Observation, this writ petition is disposed of.