

(2005) 05 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6669 of 2004

Md. Mustaque Ahmad and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-05-2005

Acts Referred:

Citation : (2005) 3 JCR 31

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Jyoti Prasad Sinha and Sumir Prasad, for the Appellant; S.K. Verma, S.C. (Mines), for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This case relates to appointment against Class IV posts in the State of Jharkhand. The respondent Deputy Commissioner, Hazaribagh, vide notice, published in the daily newspaper "Hindustan" dated 12th December, 2004 fixed 26th December, 2004 as the date to hold written test for appointment against Class IV posts. According to the petitioners, written test for appointment against Class IV post not being permissible, they have challenged the aforesaid notice.

2. The case of the petitioners is that they are Ummidbar peon, empanelled since 1991 and are eligible for appointment against Class IV posts on preferential basis over the outsiders, in terms with the judgment, rendered by this Court and the policy of the State Government. But with a view to exclude them, the Deputy Commissioner, Hazaribagh, has issued the impugned

notice to hold written competitive test for appointment against Class IV posts.

3. In this case, the only question arises is whether the respondents can hold written competitive test for appointment against Class IV post of Peon etc. or not. To determine the aforesaid issue, it is relevant to notice the relevant Rules/Guidelines, issued by the respondents from time to time, as discussed

hereunder :

4. By letter No. 3/R-103/73 Ka-6441 dated December 3, 1980, the State of Bihar from its Personnel & Administrative Reforms Department issued guidelines to fill up Class IV posts of Mufassil Offices of the State. It was decided to fill up the posts through a Selection Committee, known as District Level Appointment Committee, under the Chairmanship of the Deputy Commissioner of the District. It was directed to call for the names from the Employment Exchange. No minimum qualification was laid down in the said guidelines except that the persons should be literate and in the case of male candidate, he should have knowledge of cycling. Subsequently, a separate guideline was issued to the effect that Class IV posts should be filled up by publishing notice, in the Newspaper. By Resolution, circulated vide Memo No. 3/M1-1069/88 (Part) Ka 5940/Patna 15, dated June 18, 1993 the State Government while decided to terminate the services of those daily wages employees, appointed after 1st August, 1985, further decided to give preference to those daily wage employees over the outsiders, appointed prior to 1st August, 1985 and have completed 240 days of service. For the first time, passing of Class VIII was prescribed as qualification for appointment on Class IV post vide letter no. 3/M1-101/97-Ka 3577, dated April 25, 1997, issued from the Personnel and Administrative Reforms Department, Government of Bihar. It was mentioned that the candidate should have passed at least Class VIII examination but should not have possessed the qualification of more than Matriculation i.e. Secondary School Examination. Apart from the aforesaid qualification, it was informed that the candidate should be of sound health and must be having the knowledge of cycling, enrolled with the Employment Exchange. It was further ordered to give weightage to those daily wage employees, who have been empanelled and to give preference to the aged candidates over the youngsters, if two or more are found equal.

5. After re-organization of the State i.e. since creation of the State of Jharkhand, steps were taken to fill up Class IV posts, including those, vacant in the district of Hazaribagh. Having noticed different directions, given by the Patna High Court and this Court to fill up the posts in accordance with law, Advertisement No. 02/2002 was published in the newspaper, calling for applications for appointment against Class IV posts in the district of Hazaribagh. Qualification of passing Class VIII Examination, below Matriculation/Secondary School Examination was prescribed. It is mentioned that the person should be of sound health, having knowledge of cycling and preference will be given to those, already empanelled, against outsiders and to those, who are aged, against youngsters, if two or more are found equal. Petitioners and other applied in terms with the said advertisement, whereinafter, the Deputy Commissioner, Hazaribagh, published a general notice in the daily newspaper on 12th December, 2004, fixing 26th December, 2004 as the date to hold written competitive test.

6. Counsel for the petitioners submitted that written test is not permissible for appointment against Class IV posts and it was never the practice in past.

7. On the other hand, according to the learned counsel for the State, in absence of specific guideline it is always open for the Selection Committee/Appointing Authority to determine the mode of selection.

8. It appears that the written test was scheduled to be held on 26th December, 2004. However, it was stayed for some reason by publishing notice by the respondents in the newspaper "Hindustan" on 26th December, 2004. Subsequently, any written test has been conducted or not is not clear. The aforesaid issue fell for consideration before a Bench of this Court in the case of Gandadhar Bhandari v. Government of Jharkhand and Ors. W.P. (S) No. 4951 of 2004 and analogous cases. A Bench of this Court vide its judgment dated 16th February, 2004 upheld the decision of the respondents to hold written test for appointment against Class IV posts, not being contrary to any law. The Court observed that the written competitive test will help the District Administration to adopt proper elimination process for selection of the candidates out of large number of applicants.

9. I find no case to be made out to differ with the aforesaid findings of the learned single Judge, though I have some doubt with regard to the maximum qualification, laid down for appointment i.e. the provisions whereby those, who are possessing more qualification than Matriculation/ Secondary School Examination have been debarred. But the said issue not having been raised in the present writ petition, no specific finding is given in this regard. There being no merit, this writ petition is hereby dismissed.