
(2014) 05 JH CK 0017
In the Jharkhand High Court
Case No : W.P. (P.I.L.) No. 3167 of 2013

Mithilesh Kumar Verma

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Constitution of India, 1950 — Article 320, 320(3)(a)

Citation : (2014) 3 JLJR 154

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Shresth Gautam, Advocate for the Appellant; Rangan Mukhopadhyay, S.C. II and Vijay Shankar Prasad, Advocate for the Respondent

Judgement

1. The petitioner claiming himself to be a social worker, engaged in the activity of assisting unemployed educated persons, has approached this Court by filing a Public Interest Litigation seeking issuance of a Writ of Prohibition, directing the respondent-authorities not to act in furtherance of Resolution dated 28.09.2012 in and by which appointment on the post of Range Forest Officer would be made without consulting the Public Service Commission and thus, in complete violation of Article 320(3)(a) of the Constitution of India and also for seeking a direction upon the respondents for filling up the post of Range Forest Officers by direct recruitment.

2. Brief facts: It is stated that, though the sanctioned strength of Range Forest Officer is 383 and 25% of the posts are required to be filled by way of promotion, more than 40% posts of Range Forest Officer are vacant. The respondents initially decided to make new appointments by way of promotion on the post of Range Forest Officer through the recommendation of the Public Service Commission however, subsequently it was decided to make appointments without consulting the Public Service Commission. One Anand Kumar working as Range Forest Officer, Kharsawan submitted a representation to the Jharkhand Public Service Commission which was forwarded vide letter No. 544 dated 25.02.2012

to the Department of Forest and Environment and thereafter, vide letter dated 19.06.2012 certain clarifications were sought from the department. It is further stated that a Fitment Appellate Committee was constituted vide Resolution dated 15.01.2000 which recommended that Foresters should be promoted to newly created post of Deputy Range Officer. It also recommended that there should be an intermediate level of Head Forest Guard between the Forest Guard and Forester. The recommendation of the Fitment Appellate Committee is binding on the State. The Principal Secretary, Department of Finance also issued Memo dated 11.10.2007 for formulation of service conditions for all departments however, without framing the service conditions for the post of Range Forest Officer, the respondents have decided to promote the persons working on the post of Ranger in the rank of Range Forest Officer. The respondents thus, in the garb of promotion are providing back door entry and intentionally they are not framing rules for promotion and in the absence of the same, any promotion given is illegal and against the provisions of law.

3. A counter affidavit has been filed by the Assistant Conservator of Forest, Ranchi Forest Division on behalf of the respondents stating that the issue of promotion cannot be brought into the domain of "Public Interest", the present writ petition is abuse of judicial process and hence deserves to be dismissed. It is stated that vide Resolution dated 21.02.1973 issued by the Government of Bihar the post of "Range Officer of Forest" is redesignated as Range Forest Officer and declared a Gazetted post, subject to certain conditions mentioned in the said resolution however, the said resolution being self-contradictory, could not be implemented by the government. The said resolution was not taken to its logical conclusion and it was not notified in the official Gazette. The appointing authority of the Range Forest Officer is the Principal Chief Conservator of Forest and their grade pay is Rs. 4200/-. The post of Range Forest Officer is not the basic grade of State Forest Service rather, Assistant Conservator of Forest which is a higher post, constitutes the basic grade of State Forest Service. The concurrence of State Public Service Commission is required only in those matters of appointment/promotion which relate to the basic grade of State services/cadre. As per rules, a proportion of the sanctioned strength in the rank of Range Forest Officer has to be filled by promotion from the post of rank of Forester. The State Government has decided to promote Foresters to the post of Range Forest Officer against vacancies under the promotion quota and in accordance with the approved roster. It is alleged that the present writ petition has been filed at the instance of the officers in the Range Forest Officer's cadre.

4. I.A. No. 7299 of 2013 has been filed seeking permission to intervene by one Akhilesh Kumar working as Forester for the last 26 years.

5. The learned counsel appearing for the petitioner has submitted that the Range Forest Officers are Gazetted officers and the post of Range Forest Officer is a "civil post" in terms of the Civil Services (Classification, Control & Appeal) Rules, 1930 however, in complete violation of provision under Article 320 of the

Constitution of India, the Resolution dated 28.09.2012 has been issued and the promotion and appointment by way of promotion to the civil post of "Range Forest Officer" is being done without recommendation of the Public Service Commission and therefore, the respondents should be prohibited by issuing a Writ of Prohibition from acting in furtherance to Resolution dated 28.09.2012. It is further submitted that though the Fitment Appellate Committee recommended for creation of a post of Deputy Range Officer and that the Forest Rangers should be promoted to the post of Deputy Range Officer, in breach of the binding recommendation of the Fitment Appellate Committee, the respondents have taken a decision vide Resolution dated 28.09.2012 to promote Forest Ranger on the post of Range Forest Officers.

6. Mr. Rangan Mukhopadhyay, learned counsel appearing for the respondents questioned the maintainability of the writ petition relying on the decision of Hon'ble Supreme Court in Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, , and submitted that in service matters no writ petition in the garb of Public Interest Litigation is maintainable. The writ petitioner being a stranger cannot be permitted to approach this Court in the garb of a Public Interest Litigation which is more in nature of a private interest, filed at the behest of some interested parties.

7. Mr. Vijay Shankar Prasad, the learned counsel appearing for the intervenor has brought to the notice of the Court notification dated 08.01.2014 and submitted that 65 Foresters have already been promoted on the post of Range Forest Officers in pursuance of notification dated 28.09.2012.

8. We have considered the submission advanced by the counsel appearing for the parties and perused the documents on record.

9. In the writ petition, though the petitioner has claimed himself a social worker assisting unemployed educated persons, he has not furnished any detail in what manner he allegedly has been assisting unemployed educated persons. The petitioner has not disclosed his credentials and source of his livelihood etc. in terms of the Rules framed by the Jharkhand High Court. In paragraph No. 3 of the writ petition, it is claimed that he is entitled for enforcement of his fundamental rights as guaranteed under the Constitution of India however, nowhere he has indicated which of his fundamental rights are not being enforced. The prayer in the writ petition itself would disclose that the petitioner is nowhere connected with the promotions in the Forest Department. The learned counsel for the respondents contended that, the petitioner is a stranger and at his behest, the Public Interest Litigation cannot be entertained. Per contra, the learned counsel appearing for the petitioner relies on a decision of Hon'ble Supreme Court in "S.P. Gupta Vs. Union of India and Another" in (1981) Suppl. SCC 87, and submits that, in cases where the provision of the Constitution of India has been violated, even a stranger can maintain the writ petition.

10. The petitioner has claimed violation of Article 320(3)(a) of the Constitution of

India on a presumption that the post of Range Forest Officer is a civil post and a Gazetted post, on which appointments without consultation of Public Service Commission cannot be made. The respondents have specifically averred that the appointments on the post of Range Forest Officer are being made by way of promotion against the vacancies in the promotion quota and in accordance with approved roster. It is also stated that since the post of Range Forest Officer is not the basic grade in the State Forest Service, concurrence of State Public Service Commission is not necessary. We find no substance in the contention of the petitioner that appointments to the post of Forest Range Officer would be in contravention of Article 320(3)(a) of the Constitution of India, if the Notification dated 28.09.2012 is permitted to be implemented. The plea taken by the petitioner that, since the provision of Article 320(3)(a) of the Constitution of India is being violated, he can approach this Court by filing a Public Interest Litigation, is baseless. In "S.P. Gupta Vs. Union of India" (supra) it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the court under the guise of a public interest.

11. The respondents have seriously challenged the credibility of the petitioner and stated that the present writ petition in the garb of Public Interest Litigation has been filed at behest of the persons in the cadre of Range Forest Officers. In Dr. B. Singh Vs. Union of India (UOI) and Others, , the Hon"ble Supreme Court has observed as under,

16.Where the petitioner has not even a remote link with the issues involved, it becomes imperative for the court to lift the veil and uncover the real purpose of the petition and the real person behind it. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts.

12. In Gurpal Singh Vs. State of Punjab and Others, , the Hon"ble Supreme Court has observed as under,

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking.....

13. The petitioner is apparently a stranger. The relief sought in the writ petition and the averments in the memorandum of the writ petition clearly establish that this writ petition involves a purely service matter and is liable to be dismissed with costs. In Ashok Kumar Pandey Vs. The State of West Bengal and Others, , the Hon"ble Supreme Court has observed as under,

16. Though in Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and

strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision.....

14. In the writ petition though the petitioner has stated that photo-copy of the note-sheets obtained under the RTI Act has been annexed and marked as Annexure 1, Annexure 1 does not contain the official letter through which the note-sheets have allegedly been provided to the petitioner. We have more than one reason to doubt the statement made by the petitioner in the writ petition. In "Dr. B. Singh Vs. Union of India & Others" (supra), the Hon"ble Supreme Court has observed as under,

16. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out whether it was a bona fide venture. Whenever such frivolous pleas are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs, as it prima facie gives impression about oblique motives involved, and in most cases shows proxy litigation.....

15. In the light of above discussion and the law laid down by the Hon"ble Supreme Court, we find no public interest involved in this writ petition. The writ petition styled as "Public Interest Litigation" is an abuse of the process of law Accordingly, it is dismissed with cost of Rs. 10,000/-. The amount of cost to be paid to Jharkhand State Legal Services Authority, Ranchi within a period of eight weeks from today.

16. Let a copy of this order be forwarded to the Secretary, Jharkhand State Legal Services Authority, Ranchi for information and realising the amount of cost.