

(2004) 02 JH CK 0070
In the Jharkhand High Court
Case No : WP (S) No. 511 of 2004

Mrs. Kanan Bala Tirkey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 10

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.S. Anwar and N. Hoda, for the Appellant; R.N. Sahay, M.K. Roy and G.S. Prasad, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioner seeks a direction upon the respondents to make appointment on the post of Assistants in the Vidhan Sabha Secretariat strictly as per the provisions of Jharkhand Vidhan Sabha Secretariat (Recruitment and Condition of Services) Rules, 2003 and on the basis of the advertisement issued by respondent No. 2 and published in the Newspaper dated 20.12.2003 and further for quashing the advertisement issued by Incharge Secretary of the Jharkhand Vidhan Sabha, Ranchi on 29.12.2002 not to make appointment on the basis of said advertisement.

2. Petitioner's case is that the Jharkhand Vidhan Sabha (Recruitment and Condition of Services) Rules, 2003 (in short the "Rules") has been published in Jharkhand Gazette on 10.3.2003 making provision for constitution of appointment committee for the purpose of recruitment of staff in Jharkhand Vidhan Sabha Secretariat. On 20.12.2003 advertisement for appointment has been issued by the Speaker of the Vidhan Sabha for appointment on the post of Assistant. The last date for submission of applications for the post of Assistant was 3.1.2004. It is alleged that although appointment have to be made as per statutory Rules but respondent Nos. 3 and 4 illegally started taking steps for

back door appointment of 52 candidates who have been called for the written test and for which written examination was held on 17.1.2004. It is contended that all those 52 persons who have been called for written test were earlier appointed illegally by the then Speaker, Bihar Vidhan Sabha. The said appointment was challenged before the Patna High Court in CWJC No. 7995/1990 and all the appointments of Assistant numbering about 285 persons was declared illegal and quashed. The said judgment of Single Judge of the Patna High Court was challenged in Letter Patent Appeal which was also dismissed. The appeal filed before the Supreme Court was also dismissed and thereafter Bihar Vidhan Sabha Secretariat issued order dated 10.12.1996 terminating the services of all those employees. Allegation has been made that 52 dismissed/terminated employees of Bihar Vidhan Sabha have been issued back door admit cards by the Speaker of the Jharkhand Vidhan Sabha for appearance in the written test.

3. A counter affidavit has been filed by respondent Nos. 1 and 2 namely. Chief Secretary, Government of Jharkhand and the Secretary, Department of Personnel, Administrative Reforms and Raj Bhasa. Government of Jharkhand, Ranchi in which it is stated that the matter of appointment relates to Jharkhand Vidhan Sabha and therefore these respondents need not required to be replied. However, it is stated that Government of Jharkhand has issued its reservation policy prescribing 50% reservation for the reserve category.

4. The contesting respondent Nos. 3 and 4 have filed counter affidavit stating inter alia that first advertisement dated 29.12.2002 was issued considering the facts that Assembly was facing difficulties in its functioning on account of shortage of staff having only 7 Assistants. The aforesaid advertisement laid down different conditions, one of the essential conditions in the advertisement being three year's experience in any Legislative Establishment. Subsequently, post in the Jharkhand Legislative Assembly were notified and in pursuance of which second advertisement was brought out after lapse of about one year in which apart from the post of Assistant, post of drivers and grade IV posts were also advertised. So far second advertisement is concerned, over a lac of applications have been received which are yet to be processed. It is contended that first advertisement was made in the interest of administration and day-to-day running of the Jharkhand Legislative Assembly. Respondents further case is that in view of the observation made in LPA No. 20/1995 and having regard to the immediate need of staff in the Assembly, first advertisement was issued.

5. I have heard Mr. M.S. Anwar, learned counsel for the petitioner and Mr. Delip Jerath, learned counsel for respondent Nos. 3 and 4 namely Jharkhand Vidhan Sabha and its Speaker.

6. Mr. Delip Jerath, learned counsel mainly contended that first advertisement dated 29.12.2002 was issued for the purpose of making temporary appointment of clerks since the Assembly was facing difficulties in its functioning on account of shortage of staff. That is why condition was put in the advertisement that

applicants must have atleast three years" experience in any Legislative Establishment. Learned counsel submitted that petitioner did not apply against the first advertisement and therefore she cannot challenge the same. Learned counsel further submitted that 52 candidates who were removed from service in the Bihar Legislative Assembly were sorted out in view of the observation made in the Letters Patent Appeal. Learned counsel drawn my attention to the observation made by Letters Patent Court, which has been quoted In para 16 of the counter affidavit.

7. From perusal of the affidavits and the submissions made by the learned counsel, the main question that falls for consideration is whether the first advertisement dated 29.12.2002 issued by the Incharge Secretary of Jharkhand Vidhan Sabha and in pursuant to that advertisement whether calling only 52 candidates who were removed from the service by the Bihar Legislative Assembly is justified.

8. After bifurcation of State of Bihar, pursuant to Bihar Reorganization Act, 2000 the State of Jharkhand came into existence on 14.11.2000. In the said Act it was specifically provided that on and from the appointed day, the sitting members of the council of States representing the existing State of Bihar shall be deemed to have been elected to fill the seats allocated to the State of Bihar and Jharkhand. Number of seats In the Legislative Assembly of the State of Bihar and Jharkhand has also been clarified. The Act further provides that the Legislative Assembly of Bihar and Jharkhand shall be deemed to be duly constituted on the appointed day. Persons who immediately before appointed date are Speaker and Deputy Speaker of the Legislative Assembly of existing State of Bihar shall continue to be the Speaker and Deputy Speaker respectively of that Assembly on and from that day. It further provides that the Legislative Assembly pf Jharkhand shall choose two members of that Assembly to be respectively Speaker and Deputy Speaker thereof. Pursuant to that provision the Speaker and the Deputy Speaker of the Jharkhand Legislative Assembly have been chosen and they are functioning as such.

9. Sometime in the year 1990 about 234 persons were appointed to various posts of Assistants by the Speaker of the Bihar Legislative Assembly. The said appointment was challenged before the Patna High Court in CWJC No. 7995/90. It was pleaded by the writ petitioner that they were duly qualified to fill up the post at the relevant point of time but they could not apply for the post of Assistant, Typist, Routine Clerks, Peon etc. as no application was invited nor any advertisement was issued inviting application for appointment to those posts. Various grounds were pleaded for declaring the appointment as illegal, mala fide and violative of Articles 14 and 16 of the Constitution of India. The Hon''ble Judge of the Patna High Court quashed the appointment of 285 persons made by the Speaker, Bihar Vidhan Sabha to the post of Assistant and Class IV posts on the ground that such appointments were made In violation of the provisions contained in Articles 14 and 16 of the Constitution of India. The said judgment

was challenged in four Letters Patent Appeals. The Division Bench delivered the judgment on 3.4.1996. Since there was difference of opinion between two learned Judges of the Division Bench the matter was referred by the Hon''ble Chief Justice to a 3rd Hon''ble Judge who finally delivered his judgment and affirmed the judgment of the learned Single Judge holding that the appointment made by the Speaker is in violation of the Articles 14 and 16 of the Constitution of India. In the concluding portion of the judgment his lordship observed in paragraphs 92 and 93 as under :

"For all the reasons stated above, this Court cannot but hold that the judgment given by the learned Judge of the third Court has to be sustained and for the same reasons this Court affirms the judgment given by S.K. Singh, J. and does not agree with the judgment given by B.L. Yadav, J.

It is now open to the Speaker to initiate appropriate selection proceedings in accordance with law and in accordance with the provisions of Articles 14 and 16 of the Constitution of India for selection and appointment of Class-III and Class IV staff of the Assembly Secretariat at an early date and if such a proceeding is initiated all those 285 appointees whose appointment have been set aside are entitled to participate in the same and their candidature may be considered on merit in the said selection procedure and, if necessary, by condoning their age bar suitably."

10. Curiously enough the Speaker of Bihar Vidhan Sabha did not initiate any selection process for selection and appointment of Class III and IV staff of the Bihar Assembly Secretariat although observation to that effect was made against the Speaker of the Bihar Legislative Assembly. But from the facts discussed herein after, it appears that the Speaker of the newly born Legislative Assembly of the Jharkhand State in order to appoint those removed and terminated staff issued advertisement dated 29.12.2002. From perusal of the advertisement it appears that a condition was put that the candidate applies for the post must have three years" experience of working in Legislative Institution whereas in the recent advertisement inviting applications for the said post no such criteria has been fixed. The condition put in the earlier advertisement itself shows the intention of the Speaker to give employment to the terminated employees of the Bihar Legislative Assembly. The said advertisement dated 29.12.2002 (Annexure 4) does not even contain memo number or the date as appears in the subsequent advertisement published on 20.12.2003. It is further interesting to note that the admit cards were issued to only 52 removed candidates who were appointed in Bihar Legislative Assembly and the said appointment was quashed by Patna High Court and affirmed by the Supreme Court. No explanation has been given by the respondents in the counter affidavit as to why only those terminated employees of Bihar Legislative Assembly were called for written examination on 17.1.2003.

11. Besides the above, in the earlier advertisement clearly it was mentioned that appointment will be temporary and in the counter affidavit also it is stated that

such appointment was being made due to paucity of Assistants and because the work of the Assembly was suffering. In the meantime, Government of Jharkhand came with a Recruitment Rules namely, Jharkhand Vidhan Sabha Secretariat (Recruitment and Condition of Service) Rules, 2003 which has been notified in the Jharkhand Gazette on 10.3.2003. The Rule provides that all appointments shall be made strictly as per the Rules. The procedure for selection and appointment has been prescribed in the said Rules. After the aforesaid Rules came into force respondent No. 3 issued fresh advertisement on 20.12.2003 for filling up the posts of Assistant and other Class III and IV posts in the Assembly Secretariat.

12. Having regard to the entire facts and circumstances of the case, the earlier advertisement dated 29.12.2002 (Annexure 4) issued by respondent No. 3 and calling only 52 candidates who are the terminated employees of the Bihar Legislative Assembly for the written examination are wholly illegal, arbitrary, mala fide and discriminatory and violative of Articles 14 and 16 of the Constitution of India. The advertisement cannot and shall not be given effect to and no appointment shall be made pursuant to that advertisement.

13. Admittedly, in the fresh advertisement dated 20.12.2003 last date fixed for submission of applications was 3.1.2004. No date has been fixed by the respondents for holding the written examination. In order to meet the ends of justice and also to avoid any injustice to the candidates who applied pursuant to the advertisement dated 29.12.2002 it is directed that respondent Nos. 3 and 4 shall hold written examination of all the candidates who applied against the earlier advertisement dated 29.12.2002 and also against the fresh advertisement dated 20.12.2003. Thereafter the said respondents will proceed strictly in accordance with the Rules and procedure of appointment for the purpose of selecting suitable candidates for appointment without giving any undue preference to any of the candidates.

14. This writ application is therefore, allowed and the advertisement dated 21.12.2002 (Annexure 4) as also the examination conducted by the respondent on 17.1.2003 are quashed. Respondent Nos. 3 and 4 are directed to proceed in accordance with law and also in terms of the direction aforesaid for the purpose of making appointment in the Legislative Assembly Secretariat.