

---

**(2010) 09 JH CK 0146**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 301 of 2009**

Narayan Sharma and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

---

**Date of Decision : 01-09-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 226(3)

**Citation : (2010) 4 JLJR 484**

**Hon'ble Judges : N.N. Tiwari, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

---

## **Judgement**

N.N. Tiwari, J.

I.A. No. 119 of 2010

1. This interlocutory application has been filed on behalf of the applicants-intervenors-Jallaluddin Ansari, Anil Kumar Mishra and Uday Chandra Jha under Article 226(3) of the Constitution of India. Prayer has been made for vacating stay granted in W.P.(S) NO. 301 of 2009.

2. It has been, inter alia, stated that the said interim order was passed without impleading the interveners as party. According to the applicants, their interest has been hampered due to the said ex parte stay. The applicants had appeared in the examination held by Jharkhand Public Service Commission (JPSC for short) for appointment on the posts of Headmaster of Secondary Schools. The result of the said examination was published and the Petitioners have been selected for appointment. The selection has been also approved by the Government of Jharkhand, but they have not been appointed by the Government on the plea of stay order passed in W.P.(S) No. 301 of 2009.

3. This application has been contested by the writ Petitioners. It has been stated that the applicants have no locus standi to file application under Article 226(3) of

the Constitution of India, as at the relevant time-when the order was passed, they were not parties to the writ petition. By the said order dated 24.7.2009, time was granted on the prayer of the counsel for JPSC and, in the meanwhile, State-Respondents were directed not to make any further appointment on the basis of the revised list published by JPSC. Subsequently, the said order was modified after hearing the concerned parties by order dated 24.5.2010 whereby liberty has been given to the State-Respondents to make appointment against vacant posts of Headmaster of Secondary Schools out of the selected candidates whose names figured both in the first list well as in the revised list. The writ Petitioners along with several others were selected by JPSC and their names were recommended for appointment to the posts of Headmaster of Secondary Schools, but the State Government instead of appointing those selected candidates, issued a guideline to JPSC for making recommendation afresh. The JPSC on the basis of the said guideline revised the selection list and published a fresh list dropping the names of the candidates, who were originally selected by JPSC. Whether JPSC has got power to publish a revised list after publication of final result and making recommendation for appointment - is the main question raised in the writ petition. The applicants have intervened the matter at subsequent stage. There was no occasion to furnish a copy and other documents and of hearing the applicants, who were not before the Court: when the interim order was passed.

4. I have heard learned Counsel for the parties and considered their submissions. On perusal of record, I find that by -order dated 24.7.2009, three weeks" time, as prayed for, was grantee to the JPSC and, in the meanwhile, the Respondents were directed not to make any further appointment on the basis of the revised list published by JPSC. Further, I find that by order dated 24.5.2010, the said interim order was modified and the State-Respondents were given liberty to make appointment against vacant posts of Headmaster of Secondary Schools out of the selected candidates whose names figured both - in the first list as well as in the revised list. Whether the first list or the revised list is legal and valid - is yet to be decided in the writ petition. Since the parties were not at variance on the appointment of the candidates whose names figured both in the first list as well as in the revised list, the State Government has been allowed to make appointment of those candidates whose names figured in both the lists.

5. Vacating the interim order and allowing the State-Respondents to make appointment on the basis of the revised list would amount allowing the claim of the interveners on their interlocutory application and before final hearing and disposal of the writ petition raising the validity of the revised list.

6. The applicants-interveners have sought vacation of the said interim order under Article 226(3) of the constitution of India. They have also contended that the said interim order amounts to deciding the matter finally, which is yet to be heard on merit and the same is not permissible in law. They relied upon the decisions of the Hon"ble Supreme Court in Union of India (UOI) and Others Vs.

Kundan Rice Mills Ltd., ; "Dayanand Vedic Vidyalaya Sanchalak Samiti v. Education Inspector, Greater Bombay and Anr." (2007) 15 SCC 192 and State of U.P. and Others Vs. Desh Raj, .

7. In the instant writ petition, the Petitioners have prayed for a direction on the Respondents to issue appointment letters to the Petitioners on the posts of Headmaster on the basis of their selection and recommendation by JPSC. By the said interim order dated 24.7.2009, relief for appointment of the writ Petitioners, in the meanwhile, has not been granted. I, therefore, find no substance in the submission made by learned Counsel for the Respondents that by the said interim order, final relief has been granted to the writ Petitioners. I find no application of the said decisions of the Supreme Court to the facts and circumstances of the case.

8. Further that the interim order was passed after hearing the parties as then were on record. The applicants were not parties to the writ petition on the day when the interim order was passed. Article 226(3) of the Constitution of India provides as follows:

Article 226: xxx xxx xxx (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under Clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

9. Since the applicants were not the parties, there was no occasion for furnishing copy of the petition and the documents and hearing them. In view of the above, there is no application of the provision of Article 226(3) of the Constitution of India.

10. The said interim order dated 24.7.2009 has been further modified by order dated 24.5.2010 by which liberty has been given to the State-Respondents to make appointment against vacant posts of Headmaster of Secondary Schools out of those candidates whose names figured in both the list.

11. In view of the above, I find no ground made out for allowing this application.

12. I.A. No. 119 of 2010 is, accordingly, rejected.