
(2004) 10 JH CK 0014
In the Jharkhand High Court
Case No : Writ Petition (C) No. 4776 of 2004

Neha Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72, 73
Constitution of India, 1950 — Article 226

Citation : (2004) 3 BLJR 1858 : (2004) 4 JCR 542

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

Bench : Single Bench

Advocate : Ashok Kr. Sinha, for the Appellant; Rakesh Kr. and H. Patwari, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner seeks mandamus directing the respondents to allow her to take admission in the first year of M.B.B.S. Course in the Rajendra Institute of Medical Science. Ranchi for the Sessions 2004-05.

2. Petitioner's case is that her father is in the police service in the Unified State of Bihar and presently posted as Inspector of Police at Patna. Petitioner appeared in the Entrance Examination and qualified for the preliminary test and also in the main examination and her position in the merit list is 43. Accordingly, call letter was issued for counseling. Petitioner appeared before the Counseling Board. But her admission was refused on the ground of non-resident of State of Jharkhand. It is contended by the petitioner that candidates upto 46 rank in the merit list got admission in Rajendra Institute of Medical Science, Ranchi, and so she is also entitled to admission in the said Institution.

3. A counter affidavit has been filed by respondent Nos. 3 and 4, namely, Controller of Examination, Jharkhand Combined Entrance Competitive Examination Board and the Counselling Board Jharkhand Combined Entrance

Competitive Examination Board wherein it is stated that in the prospectus itself it was clarified that only those applicant can get admission who is native/permanent resident of Jharkhand State or local resident of Jharkhand in terms of Circular No. 2691 dated 29.4.2002 or whose parent is an employee of United Nations Organisation and he/she is at present posted in Jharkhand, it is contended by the respondents that petitioner does not fulfill either of the criteria as native/permanent/local resident of Jharkhand State and admittedly, petitioner does not fulfill the criteria fixed in the Rules and therefore respondents have rightly denied admission of the petitioner.

4. I have heard Mr. Ashok Kumar Sinha, learned counsel for the petitioner and Mr. Saurav Arun, learned counsel for the respondents.

5. Learned counsel for the petitioner submitted that admittedly petitioner's father is in police service in the Unified State of Bihar and is presently posted at Patna since there has not be division of cadre of Inspector of Police till date and. therefore, the service of petitioner's father may be allotted to any of the two States. According to the learned counsel till the cadre division is finalized, service of the petitioner's father is for both the State of Bihar and the State of Jharkhand. Petitioner therefore fulfilled the criteria fixed in the Rules.

6. Mr. Saurav Arun learned advocate, on the other hand, submitted that in anticipation that in final cadre division petitioner's father may be allotted Jharkhand Cadre, it cannot be held that petitioner fulfilled the criteria fixed in the Rules framed by the respondents.

7. It has not been disputed that petitioner's father is in the police service in the unified State of Bihar and presently he is posted as Inspector of Police at Patna. It is also not in dispute that there has not been cadre division of Inspector of Police till date between the State of Bihar and the State of Jharkhand and therefore service of petitioner's father may be allotted to any of the two States.

8. Both the parties have annexed copy of extract of prospectus of Jharkhand Combined Entrance Competitive Examination. 2004 (in short JCECE) as" annexure-6/Annexure-A. In column (Kha) of the said prospectus the criteria for being local resident has been fixed. According to this circular/guideline a person will be deemed to be local resident if any of his/her parent is in the Government service of the State of Jharkhand or retired from the service of the Government of Jharkhand. Petitioner has annexed a copy of the prospectus of Bihar Combined Entrance Competitive Examination, 2004 in which criteria has been fixed that the candidates must be the permanent resident of the State of Bihar or parents of the candidates or one of them is an employee of the Government of Bihar or any candidate whose parent is in the service of Government of Bihar but posted in the State of Jharkhand and his or her cadre division has not been finalized.

9. For better appreciation extract of the provisions of the Bihar Combined Competitive Entrance Examination is reproduced hereinbelow :

"(Kha) Aawasiya kewal we hi aawedak prauesh paa sakte hain Jo Bharat ke niwasi hai our

I. Jinke Mata-Pita Bihar ke asthayee niwasi hain

Athwa

II. Jinke Mata-Pita Bihar me rahte adhiwasi/kawupbapsamak ham. Athwa

III. Jinke Mata-Pita Bihar me Nibandhit Sarnarhi hain. Athwa

IV. Jinke Mata-Pita, rahnewale dusre rjya ke hain. lekin Bihar Sarkar ke Karamchari hain. Athwa

V. Jinke Mata-Pita punargathan purva Bihar Sarkar ke waise karam-chari hain jinke samvarge ka vibhajan nahin hua hai aur jinke pad Bihar/Jharkhand rajya me abhi vi asthanantarniya haL

Athwa

VI. Jinke Mala-Pita Bihar me padas-thapit Bharat Sarkar ke Karamchari hain or Bihar me esthit Bharat Sarkar Dwara Sanchalit Karkhano athwa San-thano (Public Sector Undertaking of Government of India) ke Karamchari hain.

Athwa

VII. Jinke Mata-Pita Rashtrasangh ke Karamchari hain aur tatkaal Bihar me padasthapit hain.

VIII. Jo 24.7 ke antargat manonit hai.

(emphasis given)

10. The only question, therefore, that fall for consideration is as to whether a candidate will be deemed to be local resident of the State of Jharkhand whose parents or any one of them is in the service of the Unified State of Bihar and is posted in the State of Bihar but his or her cadre division has not been finalised.

11. Before answering that question I would like to consider the provisions of Section 72 of the Bihar Reorganisation Act, 2000. The said provision reads as under :

"72. Provisions relating to services in Bihar and Jharkhand.-(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Bihar shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Bihar unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Jharkhand :

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day,

(2) As soon as may be after the appointed day. the Central Government shall, by

general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person, who is finally allotted under the provisions of sub-section (2) to a successor State, if he is not already serving therein be made available or serving in the successor State from such date as may be agreed upon between the Government concerned or in default of such Central Government."

12. From the aforesaid provision it is clear that so long as the cadre is a Government servant serving in the Unified State of Bihar is not finally determined, he shall provisionally continue to serve in the successor State. As soon as the cadre is allocated by the Central Government to any of the successor State, such employee shall be deemed to be in the service of the successor State.

13. Section 73 of the Bihar Reorganization Act, 2000, is also worth to be considered which reads as under :

"73. Other provisions relating to services.-(1) Nothing in Section 72 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Bihar or to the State of Jharkhand u/s 72 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a persons-

(a) if he is deemed to have been allocated to any State u/s 72, shall be deemed to have been rendered in connection with the affairs of that State.

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Jharkhand shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions service.

(3) The provisions of Section 72, shall not apply in relation to members of any Alt India Service."

14. The aforesaid provision deals with the conditions of service of the persons serving in connection with the affairs of any State. This provision clearly states that the condition of service applicable before the appointed day in case of any person deemed to have been allocated the State of Bihar or the State of Jharkhand. shall not be varied to his/her disadvantage except with the previous approval of the Central Government. It appears that taking into consideration the provision of Sections 72 and 73 of the Bihar Reorganization Act. 2000, in the

prospectus of Bihar Combined Competitive Examination, 2004 the State of Bihar included a person as local resident of the State of Bihar if his or her parents or any one of them was in the service of the State of Bihar and is posted in the State of Jharkhand but the cadre division has not been finalized. The provision does not find place in the prospectus of the Jharkhand Combined Competitive Entrance Examination, 2004, in my opinion, therefore, a candidate whose presents are in the service of the Unified State of Bihar and is presently posted in the State of Jharkhand but the cadre division has not been finalized till date, shall be entitled to be treated as the local resident of the State of Jharkhand. There may be possibility that a person who is now posted in the Unified State of Bihar is finally allocated Jharkhand cadre and will become the employee of the successor State of Jharkhand. If the definition of local resident" is not extended to those persons whose parents are provisionally serving in the State of Bihar and their cadre has not been finalized, then that would amount to serious discrimination and affecting the condition of service of such persons serving in connection with the affairs of the State of Bihar.

15- Taking into consideration the entire facts and circumstances of the case and the relevant provisions of the Bihar Reorganisation Act. 2000, I am of the opinion that refusal of admission of the petitioner by the respondents on the ground that her father is posted at Patna in the State of Bihar, is arbitrary, discriminatory and violative of the provisions of the Bihar Reorganization Act, 2000 and also amounts to altering the conditions of service of her parents.

16. For the aforesaid reasons, this writ application is allowed and a writ of mandamus is issued directing the respondent to the admission of the petitioner in the first year of M.B.B.S. Course in RIMS for the Sessions 2004-05.