
(2016) 11 JH CK 0090

In the Jharkhand High Court

Case No : L.P.A. No. 513 of 2014 with I.A. No. 5393 of 2016

Nina Devi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 AIRJharR 120 : (2017) 1 JLJR 652

Hon'ble Judges : Mr. D.N. Patel and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. Deepak Kumar Bharati and Mr. Tejo Mistry, Advocate, for the Appellant; Mr. Ravi Kumar, J.C to S.C II, for the State; Mr. Sanjay Piprawall, Advocate, for the J.P.S.C

Final Decision : Disposed Off

Judgement

D.N. Patel, J.(Oral)—This Letters Patent Appeal has been preferred against the judgment and order passed by the learned Single Judge in W.P(S) No. 6255 of 2004, which was dismissed vide order dated 31st October,2014 and hence, the original petitioner has preferred this Letters Patent Appeal.

2. Counsel appearing for the appellant (original petitioner) submitted that advertisement was issued by the Jharkhand Public Service Commission (JPSC), which is at Annexure 1 to the memo of the Letters Patent Appeal. This appellant (original petitioner) applied for the post of Trained Teacher (Primary) in the district of Palamau. Further counsel appearing for the appellant (original petitioner) has taken this Court to Annexure-2, which is a corrigendum in the public advertisement to the effect that those candidates, who having diploma in education, will be entitled only for Physical Trained Teacher (PT Teacher).This appellant (original petitioner) has Diploma in Physical Education (DPE) who applied for the post of a teacher and was appointed. The advertisement is dated 24th August of 2002 and this appellant was appointed on 17th January, 2004 as primary teacher in the district of Palamau (Jharkhand). His service book was

open from 4th July, 2004 and he was transferred as PT Teacher in another government school on 6th June, 2004 and this appellant (original petitioner) was dismissed from the services on 25th August, 2004 on the basis of the letter of the JPSC dated 21st June, 2004 and hence, both these dismissal order as well as JPSC's letter were challenged by this appellant (original petitioner) in W.P(S) No. 6255 of 2004. It is further submitted by the counsel for the appellant that the Public Service Commission's letter is not a law at all. Counsel for the appellant has relied upon several decisions which are as under :-

(i) Gulf Goans Hotels Company Limited and another v. Union of India and others, reported in (2014) 10 Supreme Court Cases 673;

(ii) Union of India v. Naveen Jindal and another, reported in (2004) 2 Supreme Court Cases 510;

(iii) Union of India and others v. West Coast Paper Mills Ltd. and another, reported in (2004) 2 Supreme Court Cases 552;

(iv) K.P. Manu v. Chairman, Scrutiny Committee for Verification of Community Certificate reported in (2015) 4 Supreme Court Cases 1;

(v) Seema Kumari and others v. State of Jharkhand and others, reported in (2006) 12 Supreme Court Cases 215.

(vi) Shrawan Kumar Jha and others v. State of Bihar and others reported in AIR 1991 Supreme Court 309.

(vii) Haryana Financial Corporation and another v. Jagdamba Oil Mills and another, reported in (2002) 3 Supreme Court Cases 496.

On the basis of the aforesaid decisions, it is submitted that the letter of JPSC is not a law at all. In fact, this appellant (original petitioner) was selected by the Public Service Commission after due examination, which was being taken and on the recommendation of the Public Service Commission, the State Government has given appointment. This aspect of the matter has not been properly appreciated by the learned Single Judge and hence, judgment and order passed by the learned Single Judge is deserved to be quashed and set aside. It is further submitted by the counsel for the appellant (original petitioner) that, in fact, there were vacancies in four districts for the post of PT Teacher and therefore, there is no illegality in the appointment of this appellant (original petitioner) as a PT Teacher, as this appellant is also having qualification of Diploma in Physical Education (DPE). It is also submitted by the counsel for the appellant that no where it has been mentioned in the counter affidavit that how many posts were for Primary Trained Teachers and how many posts were for Physical Trained Teachers and hence, this argument cannot be canvassed in this Letters Patent Appeal that there was no vacancy for the post of Physical Trained Teacher. This aspect of the matter has not been properly appreciated by the learned Single Judge. Counsel appearing for the appellant (original petitioner) has also pointed out that the decision, upon which heavy reliance is placed by the respondents in

the case of "State of Jharkhand and others v. Ashok Kumar Dangi and others", is not applicable to the facts of the present case. In that case, the Division Bench of the court had given a direction to the State for appointment of Physical Trained Teacher, whereas, here this appellant (original petitioner) was already appointed as a teacher and dismissal of this appellant is under challenge and that too, on the basis of a letter. written by JPSC, dated 21st June, 2004 (Annexure-10 to the memo of this Letters Patent Appeal), which is not a law at all. This type of executive instruction can also be changed and similarly situated another employee is already working in the nearby district.

3. Counsel appearing for the JPSC as well as counsel for the State of Jharkhand submitted that initially rules for appointment of primary teachers were governed by the Jharkhand Primary Teachers' Appointment Rules, 2002 and at that time, the definition of Section 2(B) was different than the present existing rules, as per Jharkhand Primary School's appointment (Amendment) Rules, 2003. The major is - those candidates, who having a qualification of Diploma in Physical Education, will be appointed only for the Physical Trained Teachers. This amendment has to be carried out because of the judgment delivered by the Hon'ble Supreme Court. Be that as it may, the fact remains that when the advertisement was given on 24th August, 2002 (Annexure-1 to the memo of this Letters Patent Appeal), advertisement was only for Primary Trained Teachers and hence, there was no advertisement for Physical Trained Teachers and therefore, those candidates, having qualification of Diploma in Physical Education, perhaps, there was no requisition and advertisement at all. Hence, their services have been rightly terminated by the State Government. There may be an error on the part of the JPSC in recommendation or there may be an error on the part of the State Government. Every error of public authority cannot be encashed by the candidates. Illegal appointment should always be brought to an end, in the interest of justice. This aspect of the matter has been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by this appellant (original petitioner). Counsels for the respondents have heavily relied upon the decision rendered by the Hon'ble Supreme Court in the case of "State of Jharkhand and others v. Ashok Kumar Dangi and others", reported in (2011) 13 Supreme Court Cases 383. On the basis of the aforesaid decision, it is submitted that those candidates, who are having qualification of Diploma in Physical Education (DPE) can be appointed only for the vacancies of physical trained teachers and hence, this appellant cannot be appointed towards any other vacancies than physical trained teachers. This aspect of the matter has also been properly appreciated by the learned Single Judge, while dismissing the writ petition preferred by this appellant. Hence this Letters Patent Appeal may not be entertained by this Court.

REASONS

4. Having heard counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent

Appeal mainly for the following facts and reasons :-

(i) Public Advertisement was issued by the respondent on 24th August, 2002, which is at Annexure-1 to the memo of this Letters Patent Appeal, for the post of Trained Teachers (Primary) ;

(ii) For the various districts, vacancies are different. Here, we are concerned with the district of Palamau, in which, there are vacancies of 120 trained teachers;

(iii) The education qualification of this appellant(original petitioner) is B.A and Diploma in Physical Education (DPE);

(iv) Looking to the corrigendum issued by the JPSC, which is at annexure-2 to the memo of this Letters Patent Appeal, reveals that those candidates,who are having DPE qualification, can be appointed only against the vacancies of physical trained teachers.

(v) Now the bottleneck starts. In fact, looking to the annexure-1 to the memo of this Letters Patent of Appeal, there was no requisition nor there was any advertisement for the post of physical trained teachers.

(vi) Corrigendum, which is at annexure-2,makes it explicit clear that the candidate having a qualification of DPE shall be appointed against the vacancies of the physical trained teacher. In fact, JPSC should have amended the advertisement to the effect that those candidates having DPE qualification will be qualified for any of the posts which are advertised. Thereafter, again the error continues by the JPSC more mechanically and with less vigilance. The present appellant (original petitioner), having DPE qualification, was selected unnecessarily because there was no advertisement for the post of Physical Trained Teachers. It appears that because of this error, government initially appointed this appellant hurriedly .

(vii) Immediately within the couple of months i.e within 7-8 months, the services of this appellant (original petitioner) have been brought to an end because JPSC has written a letter dated 21st June, 2004.

(viii) It appears that letter of JPSC "may not be a law" as per article 13(3)(a) of the Constitution of India, but, the facts remains that the letter of JPSC dated 21st June, 2004 (Annexure-10 to the memo of the Letters Patent Appeal) reveals the correct proposition of law viz. those who are DPE candidates or those candidates having qualification of DPE can be appointed towards the vacancies of Physical Trained Teachers.

(ix) As stated herein above, and looking to the public advertisement dated 24th August, 2002, which is at annexure-1 to the memo of this Letters Patent Appeal, there was no advertisement for the post of Physical Trained Teachers for any of the districts of the State of Jharkhand and hence, any candidates having B.A. qualification cannot be appointed as Primary Trained Teachers much less this appellant. This is a clarification of the law which is in existence and hence, the

decisions upon which the counsel for the appellant has relied are of no help. Most of the decisions upon which reliance is placed by the counsel for the appellant are upon "Theories of Law" - may be Austin's theory; Jeremy Bentham's theory; HLA Hart theory. We are not concerned with the theories of law in this case because JPSC's letter dated 21st June, 2004 is not a law, but, it explains what is the law, more particularly, in a form of recommendation to the government to awake a sense of the government, for correct applicability of the law, so that, if any candidate like this appellant, is wrongly appointed, as a primary teacher, though having a qualification of a diploma in physical education, his services can be brought to an end. The law has already been established that a candidate having physical education, diploma in physical education, can be appointed only towards the vacancy of physical trained teachers and letter of JPSC dated 21st June, 2004 is nothing, but, reiteration of the law. Hence, the judgment upon which heavy reliance is placed by the counsel for the appellant are of no help. Moreover, it is duty of the JPSC to point out such type of existing law to the government and to assist the government so that legally qualified candidates can be appointed, even after some error has been committed in appointment.

(x) Hon"ble Supreme Court in the case of "State of Jharkhand and others v. Ashok Kumar Dangi and others", reported in (2011) 13 Supreme Court Cases 383 in para 17,18,23 to 26 has held as under :-

"17. The High Court has found that the Government of Jharkhand, till date, had not framed any policy regarding the number of posts to be filled by physical trained candidates. How many posts of primary school teachers be filled up by physical trained candidates, in our opinion, is essentially a question of policy for the State to decide. In framing of the policy, various inputs are required and it is neither desirable nor advisable for a court of law to direct or summarise the Government to adopt a particular policy which it deems fit or proper. It is well settled that the State Government must have liberty and freedom in framing policy. Further, it also cannot be denied that the courts are ill-equipped to deal with competing claims and conflicting interests. Often, the courts do not have the satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of the case.

18. One may contend that providing primary education to the children is essential for the development of the country. Whereas others argue that physical training of the children in the primary schools is must as that would make the nation healthy. As in the present case, the candidates trained in teaching claim that the posts of primary school teachers be filled by them and physical trained candidates be considered for posts of physical trained teachers only as they in the absence of any training in education are not equipped to teach in primary schools, whereas physical trained teachers contend that they should be considered for appointment against both the posts. These competing claims, in our opinion, need to be addressed by the policy-makers. Further, we do not have the statistics as regards to the number of primary schools, the resources which

the Government can spend for providing physical trained teachers and their need. In such a situation, any direction in matters of policy is uncalled for.

23. The respondents contend that amendment of Rule 2(b)(iii) of the Rules by the Notification dated 6-3-2003 shall not apply to the appointment in question as the process of appointment commenced, by inviting applications prior to that date, on 24- 8-2002. It has been pointed out that the rights and benefits already acquired under the Rules prior to amendment cannot be taken away by amendment of the Rules. It is emphasised that the respondents acquired vested right of being considered and their rights crystallised on the date of publication of the advertisement.

24. It has further been submitted that since the process of the appointment commenced with the advertisement which being an integral part of appointment the same would come to an end on the declaration of result and the consequential appointment, hence the candidates are required to be considered on the basis of the eligibility criteria initially provided in the Rules and the advertisement. In support of the submission, reliance has been placed on a large number of decisions of this Court viz. A.A. Calton v. Director of Education; N.T. Devin Katti v. Karnataka Public Service Commission; Gopal Krushna Rath v. M.A.A. Baig and Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar.

25. We do not find any substance in the submission of the counsel for the respondents. It is relevant here to state that at no point of time had the writ petitioners challenged the amendment of the Rules which provided that the physical trained candidates shall be eligible only for the appointment to the posts of physical trained teachers as also the corrigendum issued by the Commission confining their eligibility for the physical trained teachers only. Their prayers in the writ petition were as follows:

"It is, therefore, respectfully prayed that Your Lordships may graciously be pleased to admit this case, issue notices to the respondents and direct for the following reliefs:

(I) For issuance of an appropriate writ in the nature of mandamus commanding upon the respondents to immediately and forthwith publish the result of these petitioners in view of the fact that in terms of Annexure I i.e. advertisement dated 24-8-2002 all the petitioners had applied for being appointed as a primary school teacher out of 9223 seats and 528 were shown vacant in the district of Jamtara but now simply because of the fact that they possess the qualification of physical trained teachers they have been kept (sic out of) it on the ground that their appointment shall only be made for the vacant posts of physical trained teachers in the districts of Giridih and Lohardaga in nonexistence;

(II) For an appropriate writ in the nature of mandamus commanding upon the respondents particularly, Respondent 2, to consider the case of these petitioners for being appointed as primary school teachers as against the total vacancies of 9223 seats for which advertisement was issued and for which the petitioners had

applied not to consider by restricting their candidature only in the four districts in the State of Jharkhand;

(III) For a further direction upon the respondents to immediately and forthwith appoint the petitioners to the posts of teachers of primary schools in view of the fact that the examinations had already been conducted on 27-5-2003 and both the petitioners had prepared very well in the said examination; and

(IV) For any other appropriate writ(s)/order(s)/direction(s) that Your Lordships may deem fit and proper for doing conscionable justice to the petitioners in the facts and circumstances of the present case."

26. It is in the present appeals that the writ petitioners, for the first time, have attempted to contend that amendment to Rule 2(b)(iii) made on 6-3-2003, which inter alia provided that candidates having CPED or DPED shall be eligible for the posts of physical trained teachers only cannot be applied retrospectively and their cases shall be governed by the unamended Rules. It has been pointed out that the amendment has not been made with retrospective effect. We are not inclined to go into this question in the present appeal for the reason that in the light of the amendment in the Rules, the Commission issued a corrigendum and confined the candidature of persons holding qualification of CPED or DPED, like the writ petitioners, to the posts of physical trained teachers only. It conducted the examination on that basis and the writ petitioners without making any challenge to the same, participated in the selection process and appeared in the examination without any murmur. It is only after the result was published and their candidature not considered against the entire vacancy of the primary school teachers that they have chosen to file the writ petition with the relief aforesaid. Any direction to consider the candidature of the writ petitioners against the entire vacancy of primary school teachers would unsettle settled matter and shall result into chain reaction, affecting the appointment of a large number of persons."

(Emphasis supplied)

5. In view of the aforesaid decision, direction given by the Division Bench of the Court was quashed and set aside. Direction given by the High Court was to the effect that e.g for 100 posts of Primary Trained Teacher, if the advertisement has been given, this Court had given direction to the State to appoint 5% as a Physical Trained Teacher. Thus bifurcation was made by the Division of Bench of this Court, in view of the aforesaid illustration, as 95 posts for Primary Trained Teacher and 5 posts for Physical Trained Teacher. Thus bifurcation was not allowed by the Hon'ble Supreme Court. If we match this fact with that facts, they are alike. Here also, public advertisement which is at annexure-1 is composite requisition or advertisement, for various district including for district Palamau. Bifurcation cannot be done by this Court. The bifurcation is a matter of policy that how many, out of advertised posts, will be for Physical Trained Teacher and the remaining may be for Primary Trained Teacher. In fact, there is

not a single post mentioned in the advertisement for Physical Trained Teacher. Thus, neither this Court will bifurcate any post out of 120 vacancies for the district of Palamau, looking to the aforesaid decision, nor this court will allow this appellant (original petitioner) to continue as a trained primary teacher because this appellant is having a qualification of diploma in physical education. He is qualified for the post of physical trained teachers for which there is no advertisement at all or at the highest, even if the case of this appellant (original petitioner) is accepted, this court will have no option, but, to bifurcate the vacancies for 120 posts for the district of Palamau, then this appellant (original appellant) can only continue in the government job. This court will do neither, viz.-

(a) No bifurcation of the 120 vacancies for the district of Palamau will be made by this court;

(b) This court will not allow the appellant to continue in the services by quashing and setting aside the termination order dated 25th August, 2004 because this appellant is not qualified for the post of Primary Trained Teacher;

(c) There is no advertisement for the post of Physical Trained Teacher, for which, this appellant (original petitioner) is qualified;

6. Thus this appellant (original petitioner) is not qualified for the advertised post and for the post for which this appellant is qualified, is never advertised and hence, in either of the case, this appellant can be continued on the post of Primary Trained Teacher. Nor he can be appointed as a Physical Trained Teacher. This appellant (original petitioner) cannot be appointed as Physical Trained Teacher, which is never advertised. His services have been rightly terminated by the State of Jharkhand vide order dated 25th August, 2004. No illegality has been committed by the State. This aspect of the matter has been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by the appellant(original petitioner).

7. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we see no reason to take any other view what has been taken by the learned Single Judge in deciding W.P(S) No. 6255 of 2004 vide judgment and order dated 31st October, 2014. No error has been committed by the learned Single Judge in deciding the said writ petition. Hence, there is no substance in the Letters Patent Appeal and the same is hereby dismissed.

8. I.A. No. 5393 of 2016 is also disposed of, in view of the final decision rendered by this Court in the instant Letters Patent Appeal.