

(2014) 10 JH CK 0017

In the Jharkhand High Court

Case No : W.P.(S) Nos. 5476, 5546, 6206 and 6255 of 2004

Nina Devi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Citation : (2015) 1 AJR 368 : (2015) 1 JLJR 120

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Deepak Kr. Bharti, Amit Kr., Manindra Kr. and A.K. Sahani, Advocates, Sanjay Piperwall, Devgan and Avenash Kumar, Advocate for the Appellant; Rakhi Rani, J.C. to Sr. S.C.-IIFor the JPSC: Sanjay Piperwall, Devgan and Avenash Kumar, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties.

2. Learned counsel for the petitioners in WPS No. 6255/2004, WPS No. 5476/2004 and WPS No. 5546/2004 submits that the petitioners of these writ petitions holding a qualification of physical trained teacher after having participated in the advertisement of 2002, issued by the Jharkhand Public Service Commission (JPSC), were recommended for appointment in the district of Palamau by the JPSC. The District Education Establishment Committee considered the recommendation and thereafter appointment letters were issued to the these petitioners in different Elementary/Middle Schools on the post of physical trained teacher. Petitioners" appointment were however terminated by the impugned order dated 25th August 2004. Learned counsel for the petitioners submitted that the advertisement was issued inviting application from all categories of trained teachers including those of physical trained teacher in terms of rule 2(Kha) of Jharkhand Primary Teachers Appointment Rules, 2002 which are framed for appointment of teachers in primary schools in the State of Jharkhand. It is submitted that the petitioners were permitted to participate in the selection process, though there was amendment subsequently on 6th March

2003 confining qualification of CPed/DPEd in respect of physical trained teachers in the appointment rules of 2002. Petitioners duly participated in the recruitment exercise and were recommended by the JPSC and appointed as such also on the post of physical trained teachers. It is pointed out by reference to annexure-23 to the supplementary affidavit filed on 16th April 2009 in WPS No. 5476/2004 that in the district of Palamau, there were five vacant posts of physical trained teachers. It is submitted that once appointments were made on the basis of recommendation made by the JPSC of 354 candidates for the district of Palamau, petitioners could not be blamed for any illegality or lack of eligibility for being appointed and continued thereafter in service.

3. However, respondents have chosen to terminate the appointment of these petitioners on the ground that there was no recommendation by the JPSC in respect of physical trained teachers for any of the districts. It is submitted that once appointment was made, petitioners had an accrued legal right to continue in service and that could only be curtailed after following the principles of natural justice which has not been done. It is submitted that the impugned order is non-speaking order. Learned counsel has also referred to the minutes of the District Education Establishment Committee, Palamau dated 24th August 2004 which is part of the same supplementary affidavit (Annexure-25) and submits that the only reason for cancellation of their appointment is that the JPSC later on informed that there was no recommendation in their favour as they were in the category of physical trained teachers. The State Government had also informed that there was no vacancy indented for the physical trained teacher. In these circumstances, cases of the present petitioners are distinguishable from those decided by the Hon'ble Supreme Court in the case of State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, as relied by the respondents.

4. Counsel for the State and the JPSC are present. Learned counsel for the respondents point out that these petitioners having qualification of physical trained teachers, had applied under the advertisement issued by the JPSC in 2002. The advertisement was followed by an amendment in rules through notification dated 6th March 2003 which confined qualification of CPed/DPEd in respect of physical trained teachers as amended in the Jharkhand Primary School Appointment Rules, 2002. Jharkhand Public Service Commission issued a corrigendum thereafter to the same effect and exam was held on 27th May 2003 and names of these petitioners were not recommended by the JPSC against vacancy of physical trained teachers. As such, respondents State had also not placed any indent of physical trained teachers. Petitioner in WPS Nos. 6255/2004, 5476/2004 and 5546/2004 were however inadvertently appointed on the vacancy meant for the primary trained teachers and not physical trained teachers in the respective districts. When the same was detected, services of these three writ petitioners were terminated. Petitioners in these three writ petitions were appointed on 17th January 2004 by the appointment letter issued by the District Superintendent of Education, Palamau and were terminated by a common order dated 25th August 2004 which is impugned in the present

writ applications.

5. It is further submitted that the petitioner in WPS No. 6206/2004 having qualification of physical trained teacher, has made a prayer for issuance of appointment letter on the post of physical trained teacher in primary/middle school of different districts as he had duly applied in pursuance of advertisement dated 26th August 2002 published in the newspaper and appeared in written examination and his name was also placed in the merit list. However, learned counsel for the respondents submits that since these petitioners were also having the qualification of physical trained teachers, in view of an amendment in the rules, and no recommendation having been made by the JPSC for their appointment in the category of physical trained teachers, they cannot claim a right to be appointed as physical trained teachers in the primary/middle schools of the State of Jharkhand under the said advertisement. Learned counsel for the respondents have relied upon the judgment rendered by the Hon'ble Supreme Court of India in the case of Ashok Kumar Dangi and others (Supra) where the very question relating to appointment of physical trained teachers under the same advertisement after amendment to the rules of 2002, as aforesaid, was under consideration. Learned counsel for the respondents point out that the Apex Court in para-23 to 26 of the said judgment clearly upheld the legality of the amended rules. The Hon'ble Supreme Court also proceeded to observe that any direction to consider the candidature of such persons having qualification of physical trained teacher would unsettle the settled matter and would result in chain reaction affecting the appointment of large number of persons. It is therefore submitted that no claim for appointment can be made on the basis of assertion that the petitioners have also duly participated in the selection process of physical trained teacher under the said advertisement of 2002. It is also pointed out that other writ petitions with the similar relief for seeking appointment under the same advertisement as a physical trained teacher have been negatived by this Court following the judgment passed by the Hon'ble Supreme Court in the Ashok Kumar Dangi and others (Supra).

6. Counsel for the respondents further added to their aforesaid submissions by raising a plea that there cannot be estoppel against the action of the respondents in terminating the services of the petitioners as they cannot claim a legal right to continue in service when there was no preparation of merit list or recommendation in their category by the JPSC under the advertisement of 2002. It is submitted that the recommendation was provisional and appointment letter was also provisional in nature subject to verification of the relevant educational certificates and eligibility criteria. Once it was detected that such appointments have been erroneously made without proper recommendation, correspondence was made by the Human Resources Development Department and JPSC duly informed the district authorities to revoke such illegal appointment. Learned counsel for the respondents have also relied upon the same minutes of the Establishment Committee dated 24th August 2004 in support of the aforesaid contention. Reliance has also been placed upon the judgment passed by the

Hon"ble Supreme Court in the case of Maharshi Dayanand University Vs. Surjeet Kaur, to advance their contention that there can be no estoppel against the statute.

7. I have heard learned counsel for the parties. Appointment of the petitioners in WPS Nos. 6255/2004, 5476/2004 and 5546/2004 were made on 17th January 2004 vide letters issued by the District Superintendent of Education, Palamau upon the decision of the District Education Establishment Committee based upon the recommendation made by the JPSC in respect of candidates who were having the qualification of primary trained teachers. Appointment of these three petitioners were terminated by the impugned letters of the same date i.e. 25th August 2004. As it appears from the consideration of the rival submissions and the pleadings on record and are specifically placed by the learned counsel for the petitioners in WPS Nos. 5476/2004 and 5546/2004 that though initially, advertisement for appointment of primary trained teachers under rules of 2002 specially rule 2(kha) was issued and applications were invited from the candidates holding the eligibility criteria prescribed thereunder, but rules itself had undergone an amendment on 6th March 2003 i.e. before holding of the exam. Amendments were in respect of eligibility criteria prescribed under the rules of 2002, whereunder qualification of CPED/DPED were confined in respect of physical trained teachers only. Jharkhand Public Service Commission issued corrigendum thereafter also to the same effect and exam were held on 27th May 2003.

8. It is not in dispute that pursuant to the said selection exercise, no list of successful candidates belonging to the physical trained category was prepared or recommended by the JPSC to any of the District Authorities thereafter. It also appears that in the list of candidates recommended for appointment as primary trained teachers in the district of Palamau, the names of four persons were recommended which includes the three petitioners in the aforesaid three writ petitions. Pursuant thereto, appointment letter was issued to them which was provisional in nature and subject to verification of relevant educational certificates and other eligibility criteria. In the meantime, there was correspondence between the Human Resources Development Department, Government of Jharkhand and the Jharkhand Public Service Commission to the effect that no indent for appointment as physical trained teacher have been placed by the State Government. Therefore, JPSC informed the district authorities of Palamau that no appointment on the post of physical trained teacher should be made from the list of primary trained teachers earlier recommended for the said district. Pursuant to such communication and the matter being considered by the District Education Establishment Committee in its meeting held on 24th August 2004, decision contained at agenda No. 5 was taken to terminate the services of four persons which includes the aforesaid three petitioners who were initially appointed as physical trained teachers in the said district. The legal right to appointment can accrue in favour of one or the other person in any selection exercise conducted for public appointment only if

the recruiting body has prepared the selection list comprising of candidates belonging to the said category and made recommendation from the said list.

9. In the instant case, since there were no indent placed before the Commission by the employer i.e. State Government; JPSC never prepared any list of physical trained teachers. Inadvertently, the name of four persons were included in the list of candidates recommended for appointment to the post of primary trained teachers in the district of Palamau by the JPSC. JPSC had prepared the selection list for the category of primary trained teachers only and not for any physical trained teachers. Applications of such physical trained teachers were confined to the posts which were meant for physical trained teachers as there was amendment in rules of 2002 carried out on 6th March 2003 and the corrigendum issued thereafter in the same advertisement. In any such recruitment exercise, selection list is to be prepared considering the inter-se merit of the candidates who belong to such category. Since the selection list of physical trained teachers were never prepared by the JPSC, petitioners are not justified in submitting that because of their appointment made in the district of Palamau, a legal right accrued in their favour. A legal right could only accrue if upon preparation of selection list of a particular category those who had a better merit were left out and those with inferior merit were shown higher in the merit list.

10. In the instant case, it appears that the whole exercise of appointment was made in respect of petitioners of the aforesaid three writ petitions on wholly misplaced premise that their names were properly recommended by the JPSC. Once rules- have been amended in 2003 and exam were also held thereunder, no physical trained teacher would have claimed a legal right to be recommended in the category of primary trained teacher as their qualification were confined to the post of physical trained teacher only. Moreover, not only the recommendation appears to be provisional in nature, but the appointment letters issued to the petitioners earlier, were also provisional in nature. The aforesaid irregularities having been detected, respondents were obliged to correct the same. Contention of the petitioners that principles of natural justice ought to have been followed before issuance of termination order will not hold good in the present case as the petitioners in the aforesaid facts and reasons did not have a legal right to continue on the post when there is no proper recommendation made by the JPSC for such category of teachers. The issue relating to the legality of amendment of 2002 rules were also considered by the Hon"ble Supreme Court in the judgment rendered in the case of Ashok Kumar Dangi and others (Supra) and amendments of the rules were upheld. The Hon"ble Supreme Court upon consideration of the claim of persons who were seeking appointment in the category of physical trained teachers, held that any direction to consider the candidature of such persons against the vacancy of primary school teachers would unsettle the settled matter and would result in chain reaction affecting the appointment of large number of persons. In such circumstances and in view of the judgment referred to above, claim preferred by other persons in the category of physical trained teachers under the same advertisement of 2002 have earlier been

repelled by this Court in WPS No. 2088/2004 and WPS No. 3709/2004 along with WPS No. 3819/2004.

11. In WPS No. 6206/2004, petitioner was seeking appointment on the claim that he had applied for physical trained teacher and duly qualified as such under the said advertisement. Such a claim however is not sustainable in view of facts and reasons discussed herein-above.

12. Having considered the aforesaid aspects of the matter, no illegality can be attached to the termination of services of these petitioners. In view of the ratio laid down by the Hon'ble Supreme Court on the very same issue in the case of Ashok Kumar Dangi and others (Supra) and also followed in the cases referred to herein-above, I do not find any merit in these writ petitions, which are accordingly dismissed.