
(2011) 07 JH CK 0120
In the Jharkhand High Court
Case No : L.P.A. No. 597 of 2006

Niranjan Prasad Deo and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Bihar Forest Service Rules, 1953 — Rule 3, 35

Citation : (2011) 4 JCR 1

Hon'ble Judges : Prakash Tatia, Acting C.J.;Jaya Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, Act.C.J., J.—This Letters Patent Appeal has been preferred to challenge the order dated 14th July,2006 passed by the learned Single Judge in W.P.(C) No. 6629 of 2005(Arvind Kumar and Ors. v. State of Jharkhand and Ors.), by which the writ petition of the Petitioner to challenge the order of promotion/appointment of some of the Respondents issued vide Notification No. 5775 dated 14th December, 1987 as also the orders of appointment of other Respondents, which were issued vide Notification Nos. 1671 dated 13th April, 1988 and 5001 dated 10th August, 1989, has been dismissed after observing that the Petitioners are challenging the promotion and/or appointment of the Respondents and others issued 16 to 21 years back, and so far as issue of seniority is concerned, the matter having been settled by the Hon''ble Supreme Court, rendered in the case of Sanjay K. Sinha-II and Others Vs. State of Bihar and Others, , no further order is required to be given. The learned Single Judge also observed that the State Government is supposed to act in terms with the aforesaid decision of the Supreme Court rendered in the case of Sanjay K. Sinha-II (supra) and if provisional gradation list dated 30th November, 2004 has been issued in violation of the the Supreme Court's order and that has been brought to the notice of the authorities by the Petitioners, the State Government is required to decide such objection expeditiously. The learned Single Judge further

observed that it is expected that the State Government will finalize the seniority list preferably within four months from the date of receipt/ production of a copy of the order passed by the High Court.

2. Aggrieved with the above order dated 14th July, 2006, the Appellants have preferred this Letters Patent Appeal.

3. This Court on 16th May, 2011 found that in the present Letters Patent Appeal only notices for application u/s 5 of the Limitation Act were issued as the appeal was preferred after delay of 107 days and since the learned Single Judge vide impugned order dated 14th July, 2006 directed the State to take some decision in consonance with the decision of the Supreme Court delivered in Sanjay K. Sinha-II's case, therefore, it was found proper to look into the merit of the case without service of the notice for condonation of delay upon the other Respondents because if subsequent development has rendered this appeal infructuous then there is no need to issue notice to the unserved Respondents. The learned Advocate General was requested to assist the Court in the matter upon which the learned Advocate General pointed out that he was counsel for the writ Petitioners in earlier writ petition and after taking notice of that fact this Court requested the learned Advocate General to assist the Court only to address on the back ground of the case and pursuant thereto the learned Advocate General brought to our attention to the judgment of the Supreme Court delivered in the case of Sanjay K. Sinha-II(supra) only, which judgment has already been considered by the learned Single Judge. However, we have heard learned Counsel for the Appellants at length on the question whether the present Letters Patent Appeal has become infructuous, in view of the subsequent event or not.

4. It will be appropriate to recapitulate the facts of the case. The writ Petitioners have challenged the appointment of the Respondent Nos. 9 and 10, who were appointed on the posts of Assistant Conservator of Forests, by competing in competitive examination in the year, 1985 and were appointed vide notification No. 5775 dated 14th December, 1987, which appointment, according to the Petitioners, were given beyond the advertised seventeen vacancies for general candidates and for quashing the appointment of ten candidates, namely, Respondent Nos. 11 to 13 and Respondent Nos. 14 to 20, whose appointment were made in two phases vide notification No. 1671 dated 13th April, 1988 and vide notification No. 5001 dated 10th August, 1989, which, according to the Petitioners, was made without any advertisement and was only to fill up the vacant seats, allotted to the State of Bihar in the Training College, run by Government of India. Then the Petitioners have prayed for quashing the retrospective seniority, given to 1987 batch promotee Assistant Conservators of Forests (Respondent Nos. 21 to 41), who, according to the Petitioners, were already held to be appointed irregularly against non-existing substantive vacancies, as held by the Hon"ble Court in the case of Sanjay K. Sinha-II (supra). Then, the Petitioners further prayed for quashing the promotion and consequential seniority of Respondent No. 42, who was promoted to the post of

Assistant Conservator of Forests on 31st December, 1985 by the Government of Bihar, in violation of letter dated 23rd September, 1985 of the Chief Conservator of Forests, Bihar, whereby, it was already disclosed that quota for the said promotion has already been occupied by the preoccupied by the source of recruited persons. The Petitioners are aggrieved against the placement of Respondent No. 42 Mr. R.L. Panna at first place in the seniority list by the Forest & Environment Department, Government of Jharkhand, vide resolution No. 2920 dated 26th July, 2004, over and above 25 direct recruits of 1985 examination. Then the Petitioners further prayed for quashing of retrospective promotion and consequential seniority, given to the promotee Assistant Conservators of Forests (Respondent Nos. 43 to 48) w.e.f. 30th March, 1990, which retrospective promotion was given in spite of the fact that Petitioners' names were recommended by the Bihar Public Service Commission, much earlier vide letter No. 363 dated 3rd November, 1989. Then the Petitioners prayed for quashing the induction of Respondent Nos. 49 and 50 into Bihar Forest Services Cadre, as Assistant Conservators of Forests, despite they having acquired Honours Degree in Forest Training prior to 26th December, 1989, which, according to the Petitioners, is in violation of Rule 3(aa), added into the Bihar Forest Services Rules, 1953. Then the Petitioners further prayed for prohibiting the Forest and Environment Department, Government of Jharkhand, from acting upon resolution No. 2920 dated 26th July, 2004 of Government of Jharkhand and tentative gradation list, by sending the names of the officer of State Forest Services Cadre for induction into Indian Forest Services Cadre or any promotional benefits to the Respondents, without publishing final gradation list, in view of the various objections to the tentative gradation list dated 30th November, 2004 and lastly prayed for a direction to the Respondent-State of Jharkhand to publish the final gradation list, at the earliest, keeping in view the objection to the tentative gradation list dated 30th November, 2004 in the light of the judgment of the Hon'ble Supreme Court, delivered in the case of Sanjay K. Sinha-II (supra).

5. A bare perusal of the reliefs, referred above, clearly indicate that the Petitioners have prayed for several different reliefs, which may not have any direct relation with each other, but, since the learned Single Bench of this Court was of the view that the Petitioners' challenge to the promotion/appointment of the Respondents, made after 16 to 21 years, cannot be entertained and since, the issue regarding seniority has already been decided by the Hon'ble Supreme Court and the guidelines have already been given in the judgment in the case of Sanjay K. Sinha-II(supra), then the State should act in consonance with the views expressed in the said case and therefore, we may examine the limited issue as to whether the Appellants can maintain the Letters Patent Appeal to challenge the appointment referred above as well as the others and Appellants are entitled to any relief beyond the relief granted by the learned Single Judge by issuing direction to the State to take a decision regarding the above claim of seniority of the officers, in the light of Sanjay K. Sinha-II's case.

6. From the facts referred above, it is clear that the Appellants had challenged

the appointment made vide notification No. 5775 dated 14th December, 1987 and the Appellants are appointees of the year 1990, as has been admitted in paragraph-4 of the writ petition. The writ Petitioners are direct recruits of the Batch of 1990. In Sanjay K. Sinha-II's case, the same appointment made on 14th December, 1987 were under challenge and matter came up before Hon''ble Supreme Court and Hon''ble Supreme Court in Sanjay K. Sinha-II and Others Vs. State of Bihar and Others, examined the challenge to the appointment made vide order dated 14th December, 1987, when it was challenged by the promotees in the service. The Hon''ble Supreme Court after considering the cadre strength of Bihar Forests Service and distribution of a post to promotees and direct recruits in paragraph-12 held as under:

It is clear from the admissions made on behalf of the Respondents by way of affidavits filed in judicial proceedings that sanctioned number of posts were not available in the year 1987 when the Respondents were promoted as ACFs, rather the promotions were made against non existing posts. Can such promotions confer any right on the officers concerned particularly over and above the other duly appointed officers in the service like the Appellants ? In this connection we have to note that Rule 35 of Bihar Forest Service Rules provides that seniority of officers appointed to the service is to be determined with reference to the date of their substantive appointment. In order to become a member of the service the persons concerned has to satisfy at least two conditions - first, appointment must be in substantive capacity, and second, the appointment has to be to the post of service according to the Rules and within the quota to a substantive vacancy (per Keshav Chandra Joshi v. Union of India)

Further, in paragraph-13, it has been held as follows:

In the present case, neither of the two conditions is satisfied. The post to which substantive appointments were to be made were not available, therefore, there could be no appointment to the service when there is no appointment to the service, much less substantive appointment to the service, the promotees could not be given seniority with effect from the purported date of their promotions

7. However, inspite of holding that at the relevant time, the posts were not available for appointment over which appointments have been given to the persons vide order dated 14th December, 1987, the Hon''ble Supreme Court did not choose to declare those appointment illegal nor has quashed the said appointment. However, for other relief with respect to seniority of the Appellants over the Respondents, the appointee, by virtue of the order dated 14th December, 1987, the Hon''ble Supreme Court held that the State Government may regularize the appointment of the Respondent-promotees, obviously who were appointed in excess to the quota and available seats, vide order dated 14th December, 1987, but at the same time held that such Respondents cannot given seniority over and above the Appellants-Petitioners. Obviously the direct recruits who were the Appellants before the Hon''ble Supreme Court as well as the writ Petitioners. The Hon''ble Supreme Court then quashed the seniority list dated

24th July, 1989 and direction was issued to the State Government to issue fresh seniority list, fixing the seniority of the Appellants over the Respondents in accordance with the judgment delivered by the Hon''ble Supreme Court.

8. In view of the above, any challenge to the appointment made by notification dated 14th December, 1987 cannot be made as said issue has been decided by the Hon''ble Supreme Court, though when challenged by the other persons and not by the Petitioners as well as by the direct recruit, and Hon''ble Supreme Court refused to quash the said appointment. Therefore, writ petition is not maintainable so far this relief is concerned. Not only this, apart from the above fact that the issue has been decided by the Hon''ble Supreme Court, the learned Single Judge was also right in holding that the Petitioners have approached the Court after delay of 16 to 21 years and that is factually correct and furthermore, the Petitioners are challenging the order of the appointment made by order dated 14th December, 1987 whereas they themselves born in the cadre only in the year 1990 and, therefore, if they had the grievance of giving appointment without there being any vacancy in the direct recruit quota or promotional quota then that fact was in their knowledge when they sought appointment in the process initiated wherein they themselves were selected in the year 1990 then also the writ petition of the Petitioner suffers from delay and laches which has been submitted in the year 2005 to unsettle the position which stands settled decade ago and by the judgment of the Supreme Court delivered in the year 2004 in Sanjay K. Sinha-II's. Therefore, also the Petitioners were not entitled to any relief. In addition to above, if Petitioners want to take benefit of judgment delivered in the case of Sanjay K. Sinha-II then also these Petitioners were sitting on the fence and in view of the judgment of Supreme Court relied upon by learned Counsel for the Petitioners(though on different point) delivered in the case of State of Orissa and Another Vs. Mamata Mohanty, , the Petitioners "cannot wake up from deep slumber and claim impetus from judgment in case where some diligent persons had approached the Court within reasonable time".

9. Apart from the above, there is another relief claimed by the Petitioners that the Respondents, for the reason unknown, placed below the writ Petitioners in the seniority list for which the tentative seniority list was published on 30th November, 2004 and Petitioners have submitted their objection against that tentative seniority/gradation list. The learned Single Judge held that the State Government is bound to decide the objection of the Petitioners in finalizing seniority list. In fact, the Appellants got that relief which were sought in the writ petition as their last relief. So, there was no occasion for these writ Petitioners-Appellants to prefer Letters Patent Appeal in the light of the order issued by the learned Single Judge, as referred above.

10. So far initial grievance of the Appellants that State Government was sitting over the finalization of the seniority list inspite of the representation submitted by the Petitioner is concerned, for that now the final seniority list has been declared, as admitted by the Appellant-writ Petitioner in the supplementary

affidavit dated 7th June, 2011, and Petitioners-Appellants admitted that Government of Bihar accepted the recommendation dated 29.6.2010 of the High Level Committee and accordingly published the final gradation list on 2nd July, 2010 and copy of which has already been brought on record by the State of Bihar as Annexure-E annexed with the supplementary counter affidavit. According to the Appellants, by this seniority list dated 2nd July, 2010 the Appellant have been given relief, as prayed for in para-B & E, however, it is also submitted by the learned Counsel for the parties that several writ petitions and counter writ petitions have been filed to challenge this final seniority list dated 2nd July, 2010 and those writ petitions are pending. Therefore, also the writ Petitioners-Appellants' relief, for direction to the State Government, to consider and publish final gradation list has already stand fulfilled and if, Appellants are aggrieved against the said list, as a whole or in part, then that is a separate and independent cause of action and the scope of this litigation cannot be enlarged to adjudicate upon the seniority/final gradation list dated 2nd July, 2010 and, therefore, the present Letters Patent Appeal has become infructuous.

11. It is also another issue that whether gradation list declared by the Government of Bihar dated 2nd July, 2010 is binding upon the Government of Jharkhand and if the State of Jharkhand is not accepting this position, as contended by the Appellants that the list published by the State of Bihar is binding upon the State of Jharkhand, then that is also a subsequent cause of action and this Letters Patent Appeal cannot be converted into an entirely new lis between the Petitioners-Appellants and State of Jharkhand, which has no relation with the original reliefs, claimed by the writ Petitioners, in the light of facts pleaded by the parties.

12. Learned Counsel for the Appellants have cited several judgments of the Hon"ble Supreme Court in support of his contention that appointment beyond the number of post as well as appointment given against non existent post are absolutely illegal and can be challenged at any time by relying upon the judgments delivered in the case of Mukul Saikia and Others Vs. State of Assam and Others, , Rakhi Ray and Others Vs. The High Court of Delhi and Others, , Dr. M.S. Patil Vs. Gulbarga University and Others, , State of Orissa and Another Vs. Mamata Mohanty, But, we are of the considered opinion that in view of the judgment of the Hon"ble Apex Court in Sanjay K. Sinha-II's case (supra), the second challenge to the appointment referred above of the year 1987, in the year 2005, cannot be sustained when once the Hon"ble Supreme Court refused to entertain the said challenge.

13. In sum and substance, in our opinion, the Petitioners' challenge to the appointment was rightly rejected by the learned Single Judge because of the reasons mentioned above by us. The Appellants cannot succeed in Letters Patent and further so far their request for consideration of their representation and publication of final seniority list is concerned, that has already given and if, Appellants are aggrieved against the new final seniority list on any count,

including on the count of list published by the State of Bihar which is not treated as binding upon the State of Jharkhand, then that is a separate and independent cause of action for which in this Letters Patent Appeal as well as in original writ, no relief can be granted to the writ Petitioners-Appellants. Hence, the Letters Patent Appeal preferred by the Appellants is dismissed, for the reasons mentioned above.