

(2020) 10 JH CK 0048
In the Jharkhand High Court
Case No : Writ Petition(S) No. 2740 Of 2015

Pradip Mishra And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Citation : (2020) 10 JH CK 0048

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Anjani Kumar Verma, S. Garapati

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties through V.C.

2. The instant writ application has been preferred for following relief:

" i) For direction to the Deputy Commissioner, Deoghar (Resp.No.5) to consider for appointment of the petitioners on vacant Class-IV posts, as per Letter No. 272 dated 5.5.2012 (Annexure-16) issued the Commissioner, Santhal Pargana Division, Dumka (Resp.No.4), as per the Select List/District panel dated 3.2.2009 (Annexure-7) published by the District Level Selection Committee after revise/updating of the earlier Merit List/District Panel retaining the seniority of the selected left over selected candidates of earlier panel as per the Govt. Letter dated 26.5.1987 (Annexure-2) following the Order dated 6.2.2002 (Annexure - 14) passed in C.W.J.C. No. 1951/2002 Gyani Prasad Vrs. The State and others as well as Order dated 20.11.2010 (Annexure-14/A) passed in W.P.S No. 4487/2010 by this Hon'ble Court.

ii) For quashing of the Memo No. 325 dated 7.5.2012 (Annexure-17) issued by the Resp. No.5, by which in most illegal and arbitrary manner he has rejected the representations filed by the petitioners in pursuant to the Order dated 28.2.2012 (Annexure-15) passed in W.P.S. No. 5273/2004 and other analogous cases by

this Hon'ble Court, instead of considering the cases of the petitioners for their appointment on available vacant Class-IV posts in Deoghar District as per Letter No. 272 dated 5.5.2012 (Annexure-16) by the Commissioner, Santhal Pargana Division, Dumka (Resp. No.4) only with a view to override the Order passed by this Hon'ble Court.

iii) For grant of such other relief/reliefs for which the petitioners would be entitled in the facts and circumstances of the case."

3. From records it appears that this is the second round of litigation. The petitioner, at the initial stage, had prayed for seeking a direction upon the competent authority to appoint the 50 successful candidates who were found to be successful in the selection process, but they have not been appointed. So the petitioners being aggrieved has approached this Court by filing a writ petition being W.P.(S) No. 6719/2010 (Kanhya Prasad @ Kanhya Prasad Lal and Anr. Vs. Government of Jharkhand and Ors.) and analogous cases. The said writ petition was disposed of on 28.02.2012.

4. In the light of the order passed by this court in the earlier writ application being W.P.(S) No. 6719/2010, the Divisional Commissioner, Santhal Pargana Division, Dumka vide his letter dated 05.05.2012, requested to the Deputy Commissioner, Deoghar to take a personal interest in the matter and appoint all successful candidates, whose names are in panel in the final list as contained in its memo no.7 dated 16-12-2008. Even thereafter, since the selection were not made and therefore, the petitioners have again knocked the door of this Court seeking direction upon the competent authority i.e. Deputy Commissioner, Deoghar to take appropriate decision.

5. A Counter-affidavit has been filed by Medical Officer, I/C Deoghar wherein it has been stated, inter alia, that due to delay in roster clearance, the appointment of all the candidates could not be made except 25 candidates who have already been appointed however, when the roster has cleared, the period of one year has lapsed and as such, the life of panel expired.

6. The matter was heard by this Court on 28.11.2018. Relevant paragraph of the said order is quoted as under:

"Mr. Anil Kumar Verma, learned counsel for the petitioner has although filed no response to the counter-affidavit, but has vehemently opposed stand taken in the counter-affidavit by submitting that since the Divisional Commissioner had requested the Deputy Commission, Deoghar to engage successful candidates who have been empanelled by virtue of the decision of the competent authority and as such, the petitioner ought to have been appointed. So far as the issue of roster clearance is concerned, that is a misleading statement because the question of clearing the roster is always before publication of advertisement and not after the advertisement. So far as the question with regard to lapse of force of the panel is concerned, Mr. Verma, has submitted that the subsistence of panel will not come in the way since the selection process had initiated in the

year 2002 and this Court has passed the order on 28.02.2012 in a writ petition being W.P.(S) No. 6719/10, in terms thereof, the Divisional Commissioner, Santhal Pargana Division, Dumka had requested Deputy Commissioner, Deoghar wherein no reference of roster has been taken by the Divisional Commissioner, Santhal Pargana Division, Dumka, now, in the counter affidavit plea of roster and laps of the force of panel after expiry of one year, are being taken which is not proper."

7. On the aforesaid argument of the learned counsel for the petitioner, the respondent State was directed by the Court to seek instruction on the argument adduced by the counsel for the petitioners. Pursuant to the aforesaid order, two supplementary counter affidavits dated 14.12.2018 and 18.12.2018 have been filed by the respondents. Paragraph No. 7, 8 and 9 of the supplementary counter affidavit dated 14.12.2018 are reproduced herein below.

"7. That it is humbly stated and submitted that the petitioner submitted written claim on 10.06.2010 and the Deputy Commissioner, Deoghar to comply the order of the Hon'ble Court in its true letter and spirit disposed of the representation of the petitioner vide order contained in Memo No. 571/Est dated whereby and whereunder claim of appointment of the petitioners on the basis of panel which lost its life on 03.02.2010 hence it was rejected. The petitioners have assailed the said order by filing the present writ application.

8. That it is humbly stated and submitted that the matter was taken up on 28.11.2018 and the Hon'ble Court has directed to file the detailed supplementary counter affidavit regarding the rest 25 persons who were not given appointments only on the grounds that the panel has lost its life.

9. That it is humbly stated and submitted that by the panel dated 03.02.2009 was prepared on the basis of minimum educational qualification 8th class pass and the Finance Department vide resolution no. 1859 dated 02.09.2011 made it crystal clear that the minimum qualification of Class IV employee shall be 10th pass and pursuant to the said resolution no new panel has been prepared and old panel is expired on 01.09.2010."

8. Similar stand has been reiterated in the supplementary counter affidavit dated 18.12.2018. Relevant paragraphs of the said affidavit is quoted as under:

"5. That the respondent states that the matter relates with the appointment on class IV posts in Deoghar District from published panel of 50 candidates pursuant to the notice issued by the Deputy Commissioner, Deoghar in daily newspaper "Prabhat Khabar" on 13.02.2008.

7. That the respondent further states that vide office letter no. 8873 dated 05.12.2018, Deputy Commissioner, Deoghar has been directed to do the needful in this context.

8. That the respondent further states that regarding the validity of a panel prepared for appointment on Letter No. 3/Mi.-107/97-Ka.-3577 dated 25.04.1997

issued by the Department of Personnel & Administrative Reforms, Government of Bihar, which categorically states that "appointments shall be made, as per vacancies, from the panel prepared in accordance with the process laid down in Circular No. 16441 dated 03.12.1980 issued by Department of Personnel & Administrative Reforms. This panel shall be valid for only one year and on the end of the year the panel shall automatically loose its life."

9. Learned counsel for the respondents reiterated its stand that the panel has lapsed and as per the Circular No. 16441 dated 03.12.1980 issued by Department of Personnel & Administrative Reforms the life of panel is only one year and as such, the claim of the petitioners cannot be considered. He further referred to a judgment passed in L.P.A. No. 336 of 2013.

10. Having heard learned counsel for the parties and after going through the averments made in the affidavits, it appears that the only plea taken by the respondents is that the life of the panel dated 03.02.2009 has expired on 03.02.2010, as such the claim of the petitioners cannot be considered. At this stage it is pertinent to mention here that though Circular No. 16441 dated 03.12.1980 issued by Department of Personnel & Administrative Reforms, the life of panel was only one year, but by the Government letter No. 6098 dated 28.05.1986 issued by the Department of Personnel & Administrative Reforms under memo No. 3/7-452/84-11 dated 26.05.1987 (Annexure-2), a direction was issued that the district panel prepared for appointment on class-IV posts in pursuance to para 6 & 7 of the Circular No. 16441 dated 03.12.1980 will be used as waiting list and after having vacancies of class-IV post in District Collectorate the appointment will be made from the empanelled list and the panel will remain effective for one year and in the next year the panel will be revised and left over candidates of the earlier panel will be empanelled in the revised panel without losing their seniority. Thus, the plea taken by the respondent State that the petitioners cannot be granted any relief on the ground of lapse of one year life time is contrary to their own direction.

11. The issue of lapse of panel is now no more res integra. The Hon'ble Apex Court in the case of STATE OF U.P. Versus RAM SWARUP SAROJ reported in (2000) 3 SCC 699, has laid down the law in paragraph 10 as under:

"10. Similarly, the plea that a list of selected candidates for appointment to the State service remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalized in the month of November 1996 and the writ petition was filed by the respondent in the month of October 1997, i.e., before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled by the High Court. We may place on record that during the course of hearing of the SLP before this Court, on 29-9-199 we had directed the learned Additional Advocate General for the State of U.P. to bring on record on affidavit the status of present

recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the affidavit of the Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4-11-1999 and filed before this Court it is stated that as on 14-10-1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh."

From perusal of the aforesaid judgments it is clear that the claim of the candidates included in the panel cannot be defeated because currency of the panel has expired during the pendency of the litigation when the candidate has staked his claim during currency of the panel.

12. It further appears that the respondents have also taken a plea that the minimum qualification of Class IV employee shall be 10th pass and pursuant to the relevant resolution no new panel has been prepared after the old panel has expired on 03.02.2010. This argument of the respondent State also has no legs to stand because the said resolution of the Finance Department came in the year 2011, which is not applicable in the case of the petitioner for the panel dated 03.2.2009.

13. The judgment which has been relied upon by the learned counsel for the respondents passed in L.P.A. No. 336 of 2013 is not applicable in the instant application as the petitioners of W.P.(S) No. 4369 of 2012 approached this Court after expiry of one year of life time of the panel, that too in the year 2012 as is evident from the order dated 12.8.2013 passed in the said writ petition. However, in the instant case the petitioners approached this court during life time of the said panel dated 03.2.2009; as such, plea taken by the State respondent that petitioners cannot be granted any relief on the ground of lapse of one year life time of the panel is contrary to the judgment referred to herein above..

14. In view of the cumulative facts and circumstances stated hereinabove, I hold that the ground of lapse of panel has no legs to stand and as such, the same shall not come on the way of these petitioners. The impugned order issued under Memo No. 32555 dated 7.05.2012 (Annexure-17) by the Resp. No.5, whereby the representations filed by the petitioners pursuant to the Order dated 28.2.2012 has been rejected, is hereby, quashed and set aside. The Respondent No.5 is, hereby, directed to look into the matter afresh and consider the case of these petitioners on vacant Class-IV posts and pass an appropriate order in accordance with law by considering the aforesaid finding and in the light of judgments passed by the Hon'ble Apex Court in the case referred to herein above and also the Government letter No. 6098 dated 28.05.1986 issued by the Department of Personnel & Administrative Reforms under memo No. 3/7-452/84-11 dated 26.05.1987 (Annexure-2) as these petitioners were amongst the 50 successful candidates, who were found successful in the selection process.

15. It is made clear that the entire exercise shall be taken within a period of 4 months from the date of receipt/production of copy of this order.

16. With the aforesaid observation and directions, the instant writ application is disposed of.