
(2004) 12 JH CK 0026

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2773 of 2004

Pramod Kumar Tirkey and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 BLJR 650 : (2005) 1 JCR 170

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : Rajiv Ranjan, A.K. Mishra, Faizur Rahman and Rajesh Kumar, for the Appellant; A.K. Sinha, AG, S. Piprewal and Krishna Shankar, for the Respondent

Judgement

1. This writ petition was initially preferred by three petitioners for issuance of a writ in the nature of certiorari, quashing the result of Preliminary Test, published by the Jharkhand State Public Service Commission (in short "JPSC") for appointment to Jharkhand Administrative Services and other allied services.

2. The main plea taken was that the entire process of tabulation, including publication of result of Preliminary Test by JPSC, were vitiated, the reservation and other guidelines not having been followed and the merit list having been prepared in violation of Article 14 of the Constitution of India.

3. On 21st of May, 2004 when the case was taken up, all the three petitioners were present in Court. Mr. Rajiv Ranjan, counsel for the petitioners, took main plea that though the petitioner did fairly well in their optional papers and General Studies, the JPSC has not added the marks in their respective tabulation chart. Such bald statements having been made, this Court asked the petitioners individually as to whether their statement was based on record. Two of the petitioners namely, Sunil Kumar and Madhav Kumar (petitioner Nos. 2 and 3 respectively, thereafter, withdrew themselves, from the writ petition. Mr. Pramod Kumar Tirkey, the sole petitioner, insisted to call for his answer books and tabulation chart in order to fine out as to whether his allegation was correct or

not.

4. This Court agreed to call for the answer books of petitioner No. 1 Pramod Kumar Tirkey and the tabulation chart to find out as to whether the marks, obtained by the petitioner, were added or not and, thereby, directed the Advocate General to produce the answer books of "History" and "Gen. Studies" of the petitioner and the relevant portion of tabulation chart, relating to the petitioner.

5. The Secretary, JPSC, appeared on 2nd July, 2004 and produced certain original records, including the admit card and answer books of the petitioner Pramod Kumar Tirkey as also the tabulation chart. He was also directed to produce certain other records.

6. On perusal of answer books of the petitioner Pramod Kumar Tirkey and the tabulation chart, it was found that the marks were allotted against all the questions answered by the petitioner and the total marks of both the papers were added and shown in the tabulation chart. At that stage, it was open for this Court to dismiss the writ petition of Sri Pramod Kumar Tirkey, the bald statement, given by him having been found false. But as certain discrepancies were detected in preparation of merit list, in public interest, the writ petition was not dismissed and this Court scrutinized various records of JPSC.

7. On 23rd July, 2004 this Court noticed the following infirmities in preparation of the merit list of Preliminary Test :

(i) There is no common merit list of Preliminary Test to call for the candidates for appearing at the Main Examination. Two separate merit lists have been prepared; one for the locals, who have given their local correspondence address of the State of Jharkhand and the other of outsiders, prepared on the basis of the address of correspondence.

(ii) The application forms do not contain any column for permanent address or domicile of a candidate. There is no provision made to enclose the copy of residential certificate to find out as to who are actually the locals, belonging to the State of Jharkhand and who are outsiders i.e. of other State.

(iii) There is no evidence to suggest as to which candidate enclosed and submitted relevant certificates, including caste certificate, along with the original application form.

(iv) No register in this regard seems to have been maintained.

(v) Certain other discrepancies were also found in preparation of abstract chart of the candidates, particularly with regard to their (reservation) category, to which they belong.

8. At the time of hearing, counsel for the petitioner had not challenged the Preliminary Test. After verification of records, it was found that the Preliminary Test was held properly but there were certain discrepancies cropped up while

panel(s)/merit list(s) was/were prepared.

9. Counsel for the petitioner submitted that the petitioner Pramod Kumar Tirkey is a resident of the State of Jharkhand and he belongs to Scheduled Tribe Category. It was submitted that the said petitioner forwarded the Caste Certificate along with his application. However, at the time of submitting application, as he was preparing for competition at new Delhi, he had given his address of correspondence at New Delhi and merely on the basis of the address of correspondence, the JPSC treated him as an outsider, that means he has not been treated as the resident of the State of Jharkhand.

10. Learned Advocate General, who has appeared on behalf of the JPSC, admitted that certain mistakes were committed in the matter of preparation of merit list. It was accepted that out of common Preliminary Test, there can not be two merit lists; one for the residents of the State of Jharkhand and the other for those, who are residents of other States. Such merit list will be in violation of Article 14 of the Constitution of India.

11. Learned Advocate General, appearing on behalf of JPSC, also accepted to treat the petitioner Pramod Kumar Tirkey as a candidate of Scheduled Caste Category of the State of Jharkhand. It was informed that the JPSC has been constituted recently and this was the first Combined Competitive State Services Examination and as the JPSC had no experience, certain mistakes have cropped up. It was submitted that the Preliminary Test having been conducted in a fair manner, the JPSC be allowed to reprepare the common merit list and to call for the successful candidates, as per the merit list, to appear at the Main Examination.

12. On 2nd December, 2004 this Court having heard the parties, allowed the JPSC and the petitioner to State as to whether the discrepancies can be resolved in the following manner :

(i) The JPSC will prepare a combined merit list of the candidates, appeared at the Preliminary Test, irrespective of their addresses, residences, domicile, caste, reservation etc.

(ii) The JPSC will lay down a qualifying mark for Preliminary Test of its own or in consultation with the State Government so that no person, belong the qualifying marks, is called for to appear at the Main Examination.

(iii) It will be open to the JPSC to lay down different qualifying marks for the candidates of General Category, Backward Class, Scheduled Caste and Scheduled Tribe.

(iv) It will also be open to the JPSC to call for such number of candidates to appear at the Main Examination, as it feels proper, taking into consideration the total number of vacancies. It can be called on the basis of the ratio of posts and successful candidates or on the basis of any cut-off mark, as may be fixed by the JPSC, which shall not be less than the minimum qualifying marks.

(v) Thereafter, the JPSC will publish the revised result of Preliminary Test, showing the list of candidates, allowed to appear at the Main Examination.

(vi) As suggested by the learned Advocate General on behalf of the JPSC, petitioner No. 1 Pramod Kumar Tirkey is to be treated as Scheduled Tribe candidate of the State of Jharkhand.

(vii) So far as other candidates of reserved categories are concerned, the JPSC on the basis of the applications of the candidates and enclosures, so attached, will determine as to whether the benefit of reservation should be allowed in favour of one or other candidate.

(viii) In the matter of appointment, the JPSC or the State Government will not discriminate in between the two candidates on the basis of residence/domicile, though it may give preference to the one local at the time of appointment, if two candidates are equally situated and if there is any Rule/Guideline to that effect.

13. On 15th December, 2004 when the case was taken up, learned Advocate General for the JPSC informed that a counter affidavit has been filed on behalf of the JPSC, accepting all the suggestions to resolve the problem in the manner, as observed by this Court on 2nd December, 2004 and quoted above.

14. Mr. Rajiv Ranjan, counsel for the petitioner, informed that the petitioner Pramod Kumar Tirkey has contacted some other lawyer and has given no instruction to pursue the matter. Counsel for the petitioner, accordingly, sought for and was permitted to withdraw himself from the case.

15. Sri Pramod Kumar Tirkey, petitioner, was present in the Court. When the Court asked him as to why he has not filed any affidavit, he sought for time to decide his further course of action. However, taking into consideration the fact that the case was earlier heard for more than seven days and because of the order of stay, passed in this case, the JPSC could not hold the Main Examination, this Court rejected his prayer for adjournment. Sri Pramod Kumar Tirkey, petitioner, submitted that he will agree to any order, as may be passed by this Court.

16. Having gone through the statements, made in the writ petition, and on hearing the counsel for the respondents as also for the reasons, recorded above, we feel that the suggestions, given on 2nd December, 2004 to resolve the problem, as quoted above, should be made absolute.

17. The JPSC and the State of Jharkhand are directed accordingly. They will follow the guidelines as quoted in the preceding paragraphs publish the result and on recommendation of the JPSC, the State of Jharkhand will make appointment.

18. The order of stay, passed earlier in this case, stands vacated. The result of Preliminary Test, published earlier by the JPSC, stands set aside. The JPSC will now publish fresh result of Preliminary Test and will call for the successful

candidates to appear at the Main Examination.

19. The writ petition stands disposed of accordingly, with the aforesaid observations and directions.

20. Let a copy of this order be handed over to the learned counsel for the parties for needful.