

(2016) 04 JH CK 0020
In the Jharkhand High Court
Case No : L.P. A. No. 361 of 2015

Pritam Kumar, Roy

APPELLANT

Vs

State of Jharkhand, through the Principal Secretary,
Jharkhand Public Service Commission

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Citation : (2016) 3 AIRJharR 313 : (2016) 2 JCR 627

Hon'ble Judges : Virender Singh, C.J. and Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Rajeev Kumar, Advocate, for the Appellant; H.K. Mehta, A.A.G,
Sharad Kaushal, J.C. to A.A.G and Sanjay Piprawall, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. Refusal by the respondents to accept the caste certificate produced by the appellant-writ petitioner (hereinafter referred to as the petitioner), compelled the petitioner to approach the Writ Court with the following prayers :

"(i) For a declaration that valid caste certificate issued in requisite format issued by competent authority of the Jharkhand State, deposited along with application form along with residential certificate and, accepted by the respondents cannot be refused after publication of result of Preliminary Examination just prior to interview though the petitioner has had such original certificates (copy where of was produced prior to interview) at the time of interview resulting in declaration of result in general category (Annexure-7).

(ii) For a declaration that respondents cannot change the parameters of caste certificate from the 1st Advertisement for taking Main Examination thereby reducing the zone of consideration midway the recruitment processes as has been sought to be done by Annexure-4 and letter dated 28.08.2012 (Annexure-5).

(iii) For a consequential declaration that the petitioner who could have been

considered for appointment having secured more marks (in total) than last candidate selected and recommended for appointment (as is apparent from the result annexed as Annexure-8) has been deprived of having chance of equal consideration by arbitrary rejection of valid caste certificate vide order dated 28.8.2012.

(iv) For issuance of a writ of or in the nature of mandamus commanding the respondents concerned (no.1) not to act upon the recommendation of respondent nos. 2 & 3 in respect of the candidates in Other Backward Class (OBC) having secured lesser marks than the petitioner, and/or at least keep one vacancy unfilled because the petitioner has secured 6 marks more than the last candidate in O.B.C category but was erroneously placed in general category."

2. The Writ Court dismissed the writ petition mainly on the ground that the petitioner failed to furnish the residential certificate or the caste certificate issued by the competent authority under the Government of Jharkhand along with his application for the Mains Examination. Challenging the impugned order dated 21.05.2015 in W.P. (S) No. 114/2013, Mr. Rajeev Kumar, the learned counsel for the petitioner submits that the finding recorded by the Writ Court that the petitioner failed to furnish the residential certificate or the caste certificate is an error of record whereas, the information supplied to the petitioner through the RTI reveals that the petitioner had submitted the temporary residential certificate, a copy of which has been filed vide, Annexure-8 series (at page 9) to the supplementary affidavit dated 22.09.2015 filed in the present proceeding.

3. Controverting the plea raised on behalf of the petitioner that he submitted requisite certificate along with the Mains Examination form, Mr. Sanjay Piprawall, the learned counsel appearing for the Jharkhand State Public Service Commission submits that the petitioner failed to submit requisite certificates in prescribed format in terms of Clause 28 of the Instructions within the stipulated time that is, by 09.03.2012. It is contended that after the petitioner accepted his candidature as a general category candidate, he cannot turn around and challenge the conditions contained in Clause 28 of the Instructions.

4. It is not in dispute that pursuant to Advertisement No. 07/2010 for 4th Combined Civil Services Examination-2010, the petitioner submitted his application with a caste certificate issued by the Sub-divisional Officer, Sadar, Hazaribagh dated 17.05.2008 and in the Preliminary Test Examination, the re-revised result of which was published on 03.02.2012, the petitioner was declared successful. A Press Notice for Mains Examination for the 4th Combined Civil Services Examination was issued by the Jharkhand Public Service Commission on 04.02.2012 whereby, the candidates were required to submit fresh applications in terms of the Instructions issued for the same. In terms of Clause 28 of the Instructions, the candidates seeking benefit of reservation were required to submit certificates of residence and caste in prescribed format issued by the competent authority of the Government of Jharkhand. Admittedly, the petitioner did not submit a certificate in the prescribed format rather, he again attached a

copy of the caste certificate which he had annexed along with the application for Preliminary Test Examination which admittedly was not issued in terms of Clause 28 of the Instructions. Considering the aforesaid facts, the learned Single Judge has rightly held that the petitioner did not furnish the certificate of residence and caste issued by the competent authority along with his Mains Examination form on 09.03.2012. The finding recorded by the learned Single Judge is not an error of record, inasmuch as, in paragraph no. 7 of order dated 21.05.2015, submission of temporary residential certificate along with the Mains Examination form has been noticed by the learned Single Judge.

5. Throwing a challenge to the condition under Clause 28 of the Instructions, Mr. Rajeev Kumar, the learned counsel for the petitioner submits that after this Court quashed Circular dated 27.09.2001 in the case of "Prashant Vidyarthi v. State of Jharkhand & Ors." reported in 2003 (1) JCR 3 (jhr) (Spl.B), the requirement under Clause 28 of the Instructions was liable to be ignored and the petitioner cannot be compelled to submit certificates issued under the Circular dated 27.09.2001. It is further submitted that after the process for selection commenced by holding Preliminary Test Examination, a new condition vide Clause 28 of the Instructions cannot be incorporated, as it would amount to changing the rules of the game, mid-way.

6. In the counter affidavit filed before the Writ Court, the respondent-JPSC has taken a stand that after the petitioner submitted his Mains Examination form, he was informed by the Controller of Examination vide, letter dated 28.08.2012 that he would not be given the benefit of reservation, as he had failed to furnish certificates of residence and caste within the "cut-off date". The petitioner thereafter, appeared as a general category candidate in the Mains Examination and faced the interview as unreserved category candidates. The learned counsel for the petitioner submits that subsequently, the petitioner submitted the requisite certificates issued in prescribed proforma and therefore, the delay in issuance of certificates by the authorities should not have been a ground to rob the petitioner of his claim for consideration as a reserved category candidate. We do not find force in the aforesaid submissions. The petitioner consciously participated in the Mains Examination as well as in the interview as a general category candidate and after he did not find himself in the list of selected candidates, he approached the Writ Court throwing challenge to Clause 28. At no point in time, the petitioner made a grievance of delayed issuance of the certificates by the authorities and no such prayer was made by the petitioner in the writ petition. The decision in Prashant Vidyarthi's case (Supra) also does not lend support to the case of the petitioner. In the said case, this Court has held as under;

"55. In view of the discussions and findings given above, I am of the opinion that:

(i) a person who is a nonresident not a local person or is outsider, is not prevented from applying for consideration of his case for appointment against any Class-III or IV posts in the State of Jharkhand, if otherwise eligible;

(ii) the part of the Resolution No. 05/Vividh-09/2001-Ka-4737 dated 19th August, 2002, giving preference to "local persons" who are familiar with the local conditions such as local language, customs etc. is valid being constitutional and within the ambit of State Government to frame such guidelines/rules; and

(iii) the definition of "local persons" and guidelines prescribed for determination of "local persons" vide Resolution No. 05/Vividh- 09/2001-Ka-4737 dated 19th August, 2002, both are unjust, unreasonable, unworkable, arbitrary, discriminatory and ultra vires to Articles 14 and 16 of the Constitution of India."

(Emphasis Supplied)

7. Submission of a residential certificate and a condition that one must be a permanent resident of the State of Jharkhand are two different issues. The petitioner himself admitted that he was issued residential certificate and caste certificate in prescribed format in terms of Clause 28 of the Instructions which he submitted on 13.08.2012 and thus he cannot have a grievance as to incorporation of conditions contained in Clause 28.

8. The fact that the petitioner was permitted to appear in the Preliminary Test Examination as a Backward Class candidate would not entitle him to claim benefit of reservation, if he has failed to submit requisite certificates within the cut-off-date. The plea raised by the petitioner that the rules of the game have been changed mid-way, in the facts of the case, is misconceived.

9. Viewed thus, we find no infirmity in the impugned order dated 21.05.2015 passed by the Writ Court in W.P.(S) No. 114/2013. Resultantly, the instant Letters Patent Appeal stands dismissed.