
(2002) 04 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 2121 of 2002

Rajnish Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Citation : (2002) 50 BLJR 1260

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : Delip Jerath, S.N. Prasad and J. Tripathy, for the Appellant; M.M. Banerjee, A.G. and A.K. Das, for the respondent Nos. 1, 2 and 3 and Anubha Rawat Choudhary, for the respondent No. 4, for the Respondent

Judgement

1. In the instant application filed as Public Interest Litigation, the petitioner has prayed for issuance of appropriate direction upon the respondents to forthwith fill up the posts of Munsifs and Judicial Magistrates lying vacant in the State of Jharkhand, since the vacancies in these important posts are causing uncalled for misery and irreparable loss to the litigants and also to the innocent accused persons languishing in jails and they need speedy trial.

2. Petitioner's case inter alia is that as per his information, there are about 175 posts of Munsifs and Judicial Magistrate in the State of Jharkhand, which are filled up and functioning, however, 135 posts are vacant for the past several months though the pendency of the cases in the Courts of Munsifs and Magistrates have increased and there are thousands of cases are pending in each district Court. It is stated that the Governor of Jharkhand, taking into consideration the dire and urgent need of filling up the vacancies in the Jharkhand Judicial Service framed a rule called Jharkhand Judicial Service (Recruitment) Rules, 2001 after due consultation with the High Court of Jharkhand in absence of the Jharkhand Public Service Commission. The said rule was duly notified in the official Gazette in terms whereof the entire selection process would be undertaken by the High Court. It is further stated that the

process of appointment was started by the High Court and after following the procedure, selection of most suitable candidates have been made but the entire selection process has been stalled at the instance of the State on the misguided notion that the same should pass the test of its reservation policy.

3. A counter affidavit has been filed by the Registrar General on behalf of the Jharkhand High Court wherein it is stated that after the creation of the State of Jharkhand the Cadre of Judicial Officer of erstwhile State of Bihar was provisionally bifurcated which led to acute shortage of Judicial Officers in the State of Jharkhand. In the State of Jharkhand, there were 63 actual vacancies of Munsifs and shortfall of 137 vacancies on the ground of State of Jharkhand being entitled to receive 347 posts of Munsifs as against actual receipt of 210. It was stated that since there was a dire and urgent need of filling up the vacancies in Jharkhand Judicial Service, the Governor of Jharkhand in consultation with the High Court of Jharkhand framed the aforesaid rules so as to select, recruit and appoint members of Jharkhand Judicial Service. The matter regarding recruitment and appointment of Judicial Officers was considered in Full Court Meeting of the High Court on 23.8.2001, wherein the procedure for recruitment was finalised and a Committee was duly constituted to initiate and conduct the process of selection. Accordingly, selection process was set in motion and the Registrar General of the High Court issued a notification in terms of Rules 4 of the said Rules with respect to 200 number of vacancies of Munsifs which was duly published in the official Gazette. The advertisement for the post of Munsifs and duly published in several newspapers. A preliminary examination was held on 14.10.2001 in which 3532 number of candidates appeared keeping in view the number of vacancies and to ensure as much participation as was required and considered desirable, it was decided to call 1704 candidates for appearing in the main examination. It is stated that the aforesaid number was fixed apparently keeping in view the large participation of the candidates for expanding the area and domain of consideration vis-a-vis the above mentioned anticipated number of vacancies and by fixing the cut-off point with respect to the marks obtained in the preliminary examination. Out of 1704 candidates, total number of SC/ST candidates were 119. The Main (final) examination was held in which all the aforesaid 1704 candidates appeared. The result of the examination was declared on 11.2.2002. The respondent-High Court further stated in the counter-affidavit that based on the result of the main examination and keeping in view the requirement of reservation of SC/ST categories and in view of the stipulation in the rule that as against 45% marks required for general category, a provision was made that the candidates belonging to reserved categories may possess 35% marks only. But the number of persons from the reserved categories who obtained at least 35% marks in the main examination was only 5 who were accordingly eligible for viva-voce examination. Since the number of eligible candidates from the reserved categories who were eligible for appearing in viva-voce examination was much less than even the anticipated number of vacancies in the reserved categories, it was resolved in the Full Court meeting

held on 29.1.2002 that such candidates in the reserved categories who had obtained 26% or above marks in the main examination may be called for viva-voce examination, The further case of the High Court is that even after giving such relaxation, only 9 candidates belonging to reserved categories obtained 26% or above marks in the main examination and all of them called for viva-voce examination. The Selection Board after holding viva-voce test prepared select list of 126 candidates belonging to general category and 9 candidates belonging to reserved categories of SC/St. Thereafter, in terms of Rule 17 of the said Rules recommendation to the Government of Jharkhand was sent for appointment of aforesaid 135 persons as Munsifs in the Cadre of Jharkhand Judicial Service, vide letter dated 20th March. 2002 addressed to the Secretary to Government, Department of Personnel, Administrative Reforms and Rajbhasha. Government of Jharkhand, Ranchi. But till date, the High Court has not received any communication from the State of Jharkhand.

4. The State of Jharkhand has also filed a counter-affidavit, wherein it is admitted that the High Court had to conduct the examination and the entire selection process for the appointment of Munsifs and Judicial Magistrates. However, it is stated that the Registrar General of the High Court made correspondence with the Government and requested to get approval of the Governor of Jharkhand to the aforesaid rules framed by the High Court. Since, the rules framed by the High Court did not contain any provision with regard to reservation, the State Government sought for a clarification in this regard by the High Court. The High Court in reply, intimated the Government that no requirement of making specific provisions in the recruitment rules was needed because the reservation as provided in the general rules in the Government shall ipso facto and mutatis mutandis be made applicable in respect of appointment in the judicial services. In view of the specific assertions made by the High Court rules were accorded approval. It is further stated as soon as the State Government came out with a reservation policy the same was intimated to the High Court with a copy of the notification informing it that whenever any appointment is made under the provisions of Jharkhand Judicial Service Rules, the said reservation policy should be followed. It is contended that the Government received names of 135 candidates recommended by the High Court for appointment to the post of Munsifs but only 9 candidates belonging to SC/ST category have been selected, whereas according to the reservation policy the said provision for reservation has been made to the extent of 73%. Lastly it is stated that the State Government does not have any objection if the vacancies are filled up in accordance with the reservation policy.

5. Admittedly, the Governor of Jharkhand in consultation with the High Court, framed rules namely, Jharkhand Judicial Service (Recruitment) Rules. 2001, for recruitment of members of Jharkhand Judicial Service, since there is dire need of filling up the vacancies. From perusal of the rules, it appears that provision has been made for giving preference to the candidates belonging to the SC/ST and other reserved categories, which is evident from the fact that as against 45%

marks required for general category a provision was made that the candidates belonging to reserve categories may secure 35% marks only. Not only that as stated above, when it was found that eligible candidates from the reserved categories who were eligible for appearing in viva-voce examination as per the rules was much less than even the anticipated number of vacancies in the reserved categories, the Full Court by Resolution reduced the minimum percentage fixed for those candidates from 35% to 26%. Even after giving so much relaxation only 9 candidates belonging to reserved categories obtained 26% or above marks in the main examination and all of them were called for viva-voce examination. The Selection Board thereafter duly interviewed all the candidates including 9 candidates of reserved category and all of them were selected. It is, therefore, clear that the High Court in the process of recruitment has given due regards to the rules and took all possible steps for selecting maximum number of candidates belonging to reserved categories.

6. The State of Jharkhand has not denied or dispute these facts in the counter-affidavit. The only objection raised by the State is that while making selection of Munsifs and Judicial Magistrate, the reservation policy has not been followed. Learned Advocate General submitted that he does not have any objection, if the vacancies as existing today is filled up in accordance with reservation policy.

7. The constitutional scheme in the matter of recruitment to the judicial service has been discussed at length by the Supreme Court in the case of State of Bihar and Another Vs. Bal Mukund Sah and Others, . It was held that the State Legislature undoubtedly can make law for regulating the conditions of services of the officers belonging to the judicial wing but cannot make law dealing with recruitment to the Judicial service since the field of recruitment to the Judicial Service is carved out in the Constitution itself in the Chapter VI under Articles 233 to 236 of the Constitution. Their Lordships further observed:--

"It would be appropriate to notice at this stage that while in Articles 145(1), 148(5), 187(3), 229(2), 283 (1) and (2). the Constitution itself makes the provision subject to the provisions of law made by Parliament but Article 234 is not subject to any legislation to be made by the appropriate Legislature, which indicates that so far as recruitment to the Judicial Service is concerned which is engrafted in Article 234, the same is paramount and the power of the Legislature to make law under Article 309 will not extend to make a law in relation to recruitment, though in relation to other conditions of service of such Judicial Officers, the appropriate Legislature can make a law. In fact in B.S. Yadav case, on which Dr. Dhavan, appearing for the State of Bihar, heavily relied, Chief Justice Chandrachud, had noticed to the effect : SCC 545

"Whenever, it was intended to confer on any authority the power to make any special provisions of rules, including rules relating to conditions of service, the Constitution has stated so in express terms. See for example Articles 15(4), 16(4), 77(3), 87(2), 118, 145(1), 146 (1) and (2), 148(5), 166(3), 176(2), 187(3), 208, 225, 227 (2) and (3), 229 (1) and (2), 234, 237 and 283 (1) and

(2)."

The observation has been made in the contest of the question whether Article 235 confers any power on the High Court to make rules relating to the conditions of service of judicial officers attached to the District Courts and the courts subordinate thereto. The very fact that the framers of the Constitution in enacting Article 234 have made the provision, not subject to any acts of the appropriate Legislature is the clearest indication of the Constitution-makers that so far as the recruitment to the Judicial Service of the State is concerned, the State Legislature do not possess the necessary power to make law. At the cost of repetition, it may be stated that the expression "recruitment" and the expression "other conditions of service" are two distinct connotations in service jurisprudence and the framers of the Constitution have also borne that in mind while engrafting Articles 234 and 309 of the Constitution."

8. However, in view of the stand taken by the State, the matter needs hearing. This writ petition (PIL) is therefore admitted.

9. Mr. Delip Jerath, learned counsel appearing for the petitioner submitted that in view of the urgency of the situation, necessary direction may be issued to the respondents not to stall the recruitment process because of the pendency of the writ petition. Learned Advocate General has not disputed that there is dire and urgent need of filling up the vacancies because there is acute shortage of Judicial Officers in the State of Jharkhand.

10. As noticed above, after the creation of State of Jharkhand, the Cadre of Judicial Officers has been provisionally bifurcated which led acute shortage of Judicial Officers and there is immediate need of filling up 200 vacant posts of Judicial Officers in the State of Jharkhand and as against that names of only 135 selected candidates including candidates of reserved categories have been recommended by the High Court to the State Government of their immediate recruitment. Recently, the Supreme Court in the case of All India Judges Association and Ors. v. Union of India and Ors., (2002) 2 Scale 291, observed that if sufficient number of Judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of Judges has adversely been commented upon. Not only have the Law Commission and the Standing Committee of Parliament made observation in this regard, but even the Head of the Judiciary, the Chief Justice of India has had more occasions than once to make observation in regard thereto. It is therefore, our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of the cases. This can be done only by increasing the strength of the Judicial Officers and by filling up all the vacancies forthwith.

11. Taking into consideration all these facts, the respondent particularly the State of Jharkhand is directed to immediately appoint the selected candidates so

recommended by the High Court which shall be subject to the result of this petition and further subject to the seniority that may be required to be adjusted if the reservation is upheld and the candidates to fill in reserved slots are selected at any time hereafter and become entitled to appointment.

12. Respondent-State of Jharkhand must comply the direction within two weeks from today.

13. An intervention petition has been filed by Mr. Ram Kishore Prasad supporting the stand of the State Government regarding appointment of candidates belonging to reserved categories shall also be considered at the time of hearing.