
(2010) 01 JH CK 0121
In the Jharkhand High Court

Renu Jaiswal

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Citation : (2010) 01 JH CK 0121

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred mainly for the reason that though the petitioner was selected for the post of Lady Supervisor in the Welfare Department of the State of Jharkhand and though she was ordered to join the post vide letter dated 26th April, 2008 (Annexure 4 to the memo of petition), she was not allowed to join the post and, therefore, immediately, this writ petition has been preferred on 12th May, 2008 i.e. just within couple of days. Neither any reason nor any letter nor any communication was received by the petitioner from the respondents that why the petitioner, after her selection though advertisement, was not allowed to join the post.

2. Learned Counsel for the petitioner submitted that in pursuance of a public advertisement dated 13th November, 2007, the petitioner applied for appointment to the post of Lady Supervisor. The respondents conducted examination on 27th January, 2008 and the petitioner appeared successfully in the said examination and in the merit list, the petitioner was placed at serial No. 1. These are the admitted facts, even as per the respondents. Thereafter, vide letter dated 26th April, 2008, the petitioner was directed to join the post of Lady Supervisor, but, the concerned Deputy Commissioner, Gumla, did not allow the joining of the present petitioner. It is also submitted by the learned Counsel for the petitioner that now for the first time in the counter affidavit vide Annexure A, the respondents are coming with a plea that the appointment of the petitioner was cancelled by the Commissioner, South Chotanagpur Division, Ranchi, on 5th

May, 2008. No opportunity of being heard was given to the petitioner before canceling the appointment of the present petitioner. This decision is arbitrary, unilateral and violative of the principles of natural justice. The reason, given in the said order dated 5th May, 2008 is absolutely whimsical and de-hors of law. Had an opportunity of being heard been given to the petitioner, it would have been pointed out by the petitioner to the said officer of the Government that the reason, which the respondents are alleging against the petitioner for cancellation of her appointment, is no reason in the eyes of law. Previous appointment of the present petitioner on some other post was within eighteen years and, therefore, a fresh new and independent selection of the present petitioner for the post of Lady Supervisor has been cancelled. It is also submitted by the learned Counsel for the petitioner that the post of Lady Supervisor is not a promotion of the petitioner from the post of Anganbari Sevika, but, on the basis of a separate and independent advertisement dated 13th November, 2007 (Annexure 3 to the memo of petition), a public examination was conducted on 27th January, 2008 and the petitioner has proved her merits and has been placed at serial No. 1 of the merit list. Thus, the advertisement, examination, selection and appointment for the post of Lady Supervisor has no cogent connection with the appointment of the petitioner as Anganbari Sevika and, therefore, the alleged reason, given in the impugned order dated 5th May, 2008 that initially when the petitioner was appointed on some other post, she was below 18 years of age and, therefore, a fresh new and independent selection of the petitioner is hereby cancelled, is absolutely no reason in the eyes of law and, therefore, also there is a thoroughly non-application of mind by the respondents and, hence, the said order deserves to be quashed and set aside and the petitioner may be directed to be appointed as Lady Supervisor forthwith.

3. Learned Counsel for the petitioner has also relied upon a decision, rendered by the Hon'ble Supreme Court in the case of Maharashtra State Road Corporation and Ors. v. Rajendra Bhimrao Mandve and Ors. as reported in 2002(1) J.C.R. 301 (jhr), and has submitted that after the selection process is over, no selection can be cancelled of any candidate, by adding any condition of a candidature.

4. I have heard learned Counsel appearing for the respondent-State and other officers, who has submitted that it is true that the petitioner was selection on the post of Lady Supervisor, in pursuance of an advertisement dated 13th November, 2007 and she was directed to join the post vide letter dated 26th April, 2008, but, it has been brought to the notice of the respondents that when the petitioner was appointed as Anganbari Sevika, in past, she was below eighteen years of age and, therefore, her selection and appointment on the post of Lady Supervisor has been cancelled vide order dated 5th May, 2008 (Annexure A to the counter affidavit).

5. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) In pursuance of a public advertisement dated 13th November, 2007

(Annexure 3 to the memo of petition), the present petitioner had applied for appointment to the post of Lady Supervisor in Welfare Department of the State of Jharkhand;

(ii) Thereafter, examination was conducted on 27th January, 2008 and the petitioner was placed at serial No. 1 in the select list, looking to the marks obtained by the petitioner;

(iii) Thereafter, a direction was given to the petitioner vide letter dated 26th April, 2008 (Annexure 4 to the memo of petition) to joint the duties as Lady Supervisor and if the petitioner will not joint the duties on or before 25th May, 2008, her appointment will be cancelled;

(iv) When the petitioner approached the Deputy Commissioner, Gumla, she was not allowed to resume/join the duties. No reasons were ever assigned by any authorities of the State Jharkhand to the petitioner. The petitioner was not knowing why she was not allowed to joint the duties as Lady Supervisor. Neither any show cause notice was issued to the petitioner nor any opportunity of being heard was given to the petitioner before cancelling her appointment and, therefore, the petitioner has immediately preferred this writ petition on 12th May, 2008. For the first time, in the counter affidavit as Annexure-A, a letter dated 5th May, 2008 has been annexed, cancelling the appointment of the present petitioner;

(v) Thus, it appears that no show cause notice was given for the reasons, stated in the cancellation order, nor any opportunity of being heard was ever given to the present petitioner, before passing the impugned order of cancellation and, thus, there is a violation of the principles of natural justice;

(vi) Now, looking closely to the cancellation order, passed by the respondents dated 5th May, 2008 of the appointment of the present petitioner, it appears that the reason, which has been given in the-cancellation order, is thoroughly a baseless reason. It is no reason in the eyes of law for cancellation of the appointment of the petitioner, as Lady Supervisor, mainly for the reason that:

(a) The present post of Lady Supervisor is absolutely an independent post from the post of Anganbari Sevika;

(b) Anaganbari Sevika is a post, who has something to do with giving knowledge to the village people about the schemes of the government, whereas, the present post is a post of Lady Supervisor, for which a separate independent advertisement was published on 13th November, 2007 (Annexure 3 to the memo of petition);

(c) For the post of a Lady Supervisor, examination was conducted by the Government on 27th January, 2008 and the petitioner was arranged in a seriatim number, as per the marks obtained by the candidates and the petitioner was placed at serial No. 1 in the said select list for the post of Lady Supervisor;

(d) The petitioner was directed to joint the post of Lady Supervisor on 26th April, 2008;

(e) Thus, the post of a Lady Supervisor is absolutely independent of the post of Anganbari Sevika. The post of Lady Supervisor is not a promotional post at all. It is alleged by the respondents that, in past, when the petitioner was appointed, absolutely on another post (for which government is paying a very minimal honorarium), she had not attained the age of eighteen years. This is no reason in the eyes of law for cancellation of selection and appointment of the petitioner as a Lady Supervisor, especially when there is altogether a separate advertisement and examination was also conducted. No condition can be attached for the selection after the selection process is over and select list is already published.

(vii) Even otherwise also, before putting any aspersion upon anybody, at least, a show cause notice ought to have been given and an opportunity of being heard ought to have been given before selection and appointment of the petitioner is being cancelled and, thus, there is a gross violation of the principles, of natural justice by the respondents and unilaterally arbitrarily an order of cancellation of selection and appointment of the petitioner has been passed by the respondents dated 5th May, 2008 (Annexure A to the counter affidavit, filed by the respondents);

(viii) It has been held by the Hon"ble Supreme Court in the case of Maharashtra State Road Corporation and Ors. v. Rajendra Bhimrao Mandve and Ors. as reported in 2002 (1) J.C.R. 301 (jhr), especially in paragraph Nos. 5 and 6, relevant portion of which are as under:

5. ...Instead, it would have been well open to the High Court to have declared that the criteria sought to be fixed by the Circular dated 24.6.1996 as the sole determinative of the merit or grade of a candidate for selection long after the last date fixed for receipt of application and in the middle of the course of selection process (since in this case the Driving Test was stated to have been conducted on 27.11.1995) cannot be applied to the selections under consideration and challenged before the High Court. It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.

6. We have held that the Circular Orders dated 24.6.1996 will have no relevance or application to the selections in question, undertaken pursuance to the advertisement issued on 20.9.1995....

(Emphasis supplied)

(viii) In view of the aforesaid decisions also, once the selection process is over, selected candidate"s selection cannot be cancelled by adding a condition, later on. Subsequently added conditions as qualification and/or eligibility is not permissible in the eyes of law.

(xi) Thus, the highest stand taken by the respondents while passing an *ex parte* and unilateral order, without giving any opportunity of being heard to the petitioner, is also not tenable at law, because the present post of a Lady Supervisor is not a promotion post, but, it is a separately advertised post for which a separate examination was conducted and there was a separate selection.

6. As a cumulative effect of the aforesaid facts and reasons and judicial pronouncements, I hereby quash and set aside the order, passed by the concerned respondent authority dated 5th May, 2008 (Annexure A to the counter affidavit) and I hereby direct the respondents to permit the present petitioner to joint the duties as Lady Supervisor, forthwith.

7. This writ application is, accordingly, allowed and disposed of.