

(2015) 11 JH CK 0014
In the Jharkhand High Court
Case No : W.P.(S) Nos. 298 and 306 of 2013

Rizwan Akhtar and Others	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(1), 21

Citation : (2016) 1 AJR 766 : (2016) 1 JLJR 410

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Rakhi Rani, Advocate, for the Appellant; Ajit Kumar, A.A.G., for the Respondent

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J.—In both the writ petitions, since the reliefs sought for are similar in nature, hence, with the consent of both the parties, they have been heard together and are being disposed of by this common order.

2. In the accompanied writ applications, the petitioners have, inter alia, prayed for quashing the portion of order dated 29.12.2012 issued by the Deputy Commissioner, Lohardaga, pertaining to termination of the petitioners from the post of Village Level Worker (in short "VLW") and further for reinstatement in services with all consequential benefits.

3. Sans details, brief facts, as disclosed in the writ applications, are that the petitioners, who are graduates belonging to backward class, applied for the post of VLW under Jharkhand State in pursuance to an advertisement dated 21.10.2011 published in daily newspaper including "Dainik Bhaskar". It has been stated that in the said advertisement, 58 number of vacancies were shown in Lohardaga District, out of which, 29 number of vacancies were made for unreserved category. On receipt of applications, the Department of Agriculture and Cane Development, Government of Jharkhand issued admit cards in favour

of petitioners, who appeared in written test and in pursuance to the aforesaid test, a merit list was prepared, in which, petitioners' name were put in merit list of unreserved category. Thereafter, vide memo dated 03.11.2012 appointment letters were issued in favour of petitioners and others, in which, petitioner in W.P. (S) No. 298/13 was placed at serial No. 13 whereas petitioner in W.P. (S) No. 306/13 was placed at serial No. 12 and were given posting at Senha and Kisko Block of Lohardaga district respectively. It has further been submitted that after the joining of the petitioners, they were sent for training to Krishi Vigyan Kendra, Lohardaga. But to the utter surprise, all on a sudden, an order dated 29.12.2012 was passed by the Deputy Commissioner, Lohardaga, whereby services of the petitioners have been terminated.

4. Being aggrieved by the impugned order of termination, the petitioners left with no alternative, efficacious and speedy remedy have approached this Court invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of their grievances.

5. Per contra, counter affidavit has been filed on behalf of respondents, controverting the averments made in the writ application. In the counter affidavit, it has been, inter alia, submitted that the petitioners had applied for the said post under Backward Category availing age relaxation. However, they were selected in general category according to the marks obtained. But, as per the guidelines issued by the Personnel Department, State of Jharkhand vide letter dated 31.10.2012, which says "if the candidate once get the benefit of reserve category then he will be selected only in that category, he never will be selected in general category", the petitioners, who were selected prior to 31.10.2012, the District Selection Committee has taken decision to terminate the services of the petitioners vide memo dated 29.12.2012.

6. Heard Ms. Rakhi Rani, learned counsel for the petitioners and Mr. Ajit Kumar, learned A.A.G for the respondents-State.

7. Learned counsel for the petitioner has strenuously urged that the impugned order dated 29.12.2012 issued vide Annexure 10 is not legally sustainable because of the fact that the selection process was over by 17.09.2012 and the petitioners prior to issuance of Guideline dated 31.10.2012 were selected on the post of VLWs, so the said Government instruction could not have been given retrospective effect so as to dispense with the services of the petitioners. Learned counsel for the petitioners further submitted that the impugned action of the respondents is in violation of the principles of natural justice as neither any show cause notice was issued nor any departmental proceeding was initiated prior to issuance of termination order by the respondents, which is in violation of Article 311 (2) of the Constitution of India and Article 21 of the Constitution of India.

8. In support of his submission, learned counsel for the petitioners relied upon the decision rendered in the case of Mithilesh Kumar Vs. The State of Jharkhand

and Others, , wherein the Hon"ble Court has been pleased to hold that criteria which was prevalent at the time, when the selection process started cannot be changed to the disadvantages of the applicants, therefore, said notification cannot be made applicable with retrospective effect for denying claim of petitioner for their appointment.

9. Learned counsel for the petitioner further relied upon the judgment rendered in the case of Jasmer Singh Vs. State of Haryana , wherein the Hon"ble Apex Court has held that Industrial Tribunal-cum-Labour Court while setting aside termination order was justified in directing reinstatement with full back wages since where order of termination is void ab initio, workman is entitled to full back wages.

10. Learned counsel for the petitioner further relied upon the judgment rendered in the case of Sudeshwar Sahu v. The State of Jharkhand & ors. Passed in W.P. (S) No. 2867 of 2005, wherein the Hon"ble Court has been pleased to hold at paragraph 11 as under:

"11. The Stand taken by the respondents that no candidate of reserved category can be appointed against unreserved post cannot be accepted. Other eligible person, irrespective of the caste, is eligible for consideration of his case against unreserved post. So far as maximum age limit is concerned, it has nexus with the candidate and the category to which such candidate belong. It has no nexus with the post i.e. whether it is reserved or unreserved."

Learned counsel for the petitioner further submitted that order passed in W.P. (S) No. 2867 of 2005 has already attained finality.

11. As against this, learned counsel for the respondents-State has vehemently repudiated the submissions of learned counsel for the petitioners by advancing his argument that the matter relating to relaxation of age and concession of fees, the matter as to whether relaxation of concession of fees a candidate availing relaxation of age would be treated as a reserved category candidate, if he is found to be coming within the general category was under the active consideration of the State Government and finally on 31.10.2012, the Government of Jharkhand vide Annexure "A" has been pleased to pass the order that "if the candidate once get the benefit of reserved category then he will be selected only in that category, he never will be selected in general category" and on the date of issuance of the circular, since the petitioner was selected, therefore, by referring upon the said circular, the respondents-authorities terminated the services of the petitioners, which cannot be considered to be an arbitrary exercise of power, which is legally unsustainable.

12. After having heard learned counsel for the respective parties at length and on perusal of the relevant records, I am of the considered view that the petitioners have been able to make out a case for interference due to following facts, reasons and judicial pronouncements:

(i). Admittedly, in the instant case, in pursuance to the advertisement vide Annexure 1 to the writ application, the petitioners, who were falling under Backward Category by availing the age relaxation, applied for the post of VLWs in Lohardaga district, though, there was no reserved vacancy for Backward Class in that district. Thereafter, the petitioners participated in the selection process and they were declared successful by securing their position in the merit list as unreserved candidates.

(ii). Subsequently, vide order dated 29.12.2012, the petitioners were terminated in view of the Government Circular dated 31.10.2012, which says that when selection of a reserved category candidate is done giving relaxation in age, educational qualification and number of opportunities for appearing in the written examination in comparison to unreserved category candidates, then they will be adjusted only against that reserved category. Such candidates are deemed to have been unavailable for unreserved category.

(iii). The Hon"ble Apex Court in the case of Jitendra Kumar Singh and Another Vs. State of U.P. and Others, , has elaborately dealt with the same issue. Some relevant paragraphs, as 48, 49, 52, 71, 72, 75 are reproduced herein below:

48. In view of the aforesaid facts, we are of the considered opinion that the submissions of the appellants that relaxation in fee or age would deprive the candidates belonging to the reserved category of an opportunity to compete against the general category candidates is without any foundation. It is to be noticed that the reserved category candidates have not been given any advantage in the selection process. All the candidates had to appear in the same written test and face the same interview. It is therefore quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in age did not in any manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/select list.

49. It is permissible for the State in view of Articles 14 , 15 , 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes. Reservations are a mode to achieve the equality of opportunity guaranteed under Article 16(1) of the Constitution of India. Concessions and relaxations in fee or age provided to the reserved category candidates to enable them to compete and seek benefit of reservation, is merely an aid to reservation. The concessions and relaxations place the candidates on a par with general category candidates. It is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category candidates.

52. In the present case, the concessions availed of by the reserved category candidates in age relaxation and fee concession had no relevance to the determination of the inter se merit on the basis of the final written test and

interview. The ratio of the aforesaid judgment in fact permits reserved category candidates to be included in the general category candidates on the basis of merit.

71. We are of the considered opinion that the concessions falling within Section 8 of the Act of 1994 cannot be said to be relaxations in the standard prescribed for qualifying in the written examination. Section 8 clearly provides that the State Government may provide for concessions in respect of fees in the competitive examination or interview and relaxation in upper age-limit.

72. Soon after the enforcement of the 1994 Act the Government issued Instructions dated 25-3-1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under:

"4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category."

From the above it becomes quite apparent that the relaxation in age-limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. main written test followed by interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that government orders in force on the commencement of the Act in respect of the concessions and relaxations including relaxation in upper age-limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked.

75. In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in

the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.

Applying the same principles, in the instant case, it can safely be held that the petitioners being a member of Backward Category is entitled to the benefits of maximum age limit, as prescribed for Backward Category and even there was no reserved post for that particular category, they are entitled for consideration of their case for appointment against unreserved post, irrespective of their category. So far as maximum age limit is concerned, it has nexus with the candidates and category to which they belong. It has no nexus with the vacancy/post, whether it is reserved or unreserved.

(iv).On perusal of the notification/circular dated 31.10.2012, it further appears that it will be effective from the date of issuance, meaning thereby, the notification could not have been applied retrospectively. But, in the instant case, the same has been applied retrospectively; as by 31.10.2012, the selection process was over. Hence, the impugned order of termination is not sustainable in law on this ground also."

13. On cumulative effect of aforesaid facts, reasons and judicial pronouncements, the impugned order dated 29.12.2012 is hereby quashed and the respondents are hereby directed to reinstate the petitioner in services forthwith.

14. So far as back wages are concerned, applying the principle of "no work no pay" the petitioner is not entitled for any back wages during the interregnum period i.e. from the date of termination till the date of reinstatement. However, the petitioner shall be entitled to the benefit of continuity in service so far as computation of period of pension and other retiral benefits.

15. With the aforesaid observations and directions, the writ petition stands disposed of.