
(2009) 11 JH CK 0065
In the Jharkhand High Court
Case No : Cont. Case (Civil) No. 182 of 2009

Sanjay Kumar Sinha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Constitution of India, 1950 — Article 320

Citation : (2010) 58 BLJR 316

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : Vikash Kishore Prasad, for the Appellant; G.A. and Sanjay Piperwall, for the Respondent

Judgement

D.G.R. Patnaik, J.—This contempt application has been filed by the petitioner for initiating contempt proceeding against the respondents / opposite parties, by contending that the respondents have not complied with the order dated 10.09.2008 passed by this Court in W.P.(S) No. 3068 of 2008.

2. The grievance of the petitioner, as raised in the writ application, was that the benefit of reservation for the physically handicapped candidate was wrongly denied to him in the matter of selection and appointment on the post in the Government job. After considering the contentious issue involved in the writ application, this Court vide its order dated 10.09.2008, had issued the following directions, to the respondents.

10. In the light of the above discussions, the respondent State shall consider the possibility of absorbing the petitioner by appointing him against any existing vacancy, if the petitioner is found eligible, in accordance with the merit list and if such vacancy does not exist, then to consider the petitioner's candidature against the future vacancies on the basis of the same merit list, if it still survives.

3. In the show-cause replies of the opposite party No. 3 namely, the Principal Secretary, Department of Personnel, Administrative Reforms & Rajbhasha,

Government of Jharkhand, Ranchi, it is sought to be explained that the State Government is bound to appoint only on the basis of the recommendation made available by the Jharkhand Public Service Commission. As such, the Joint Secretary, Department of Personnel and Administrative Reforms, Jharkhand, had requested the JPSC by his letter dated 28.11.2008 to act in accordance with the order passed by this Court. It is stated that if the JPSC recommends the name of the petitioner, against the post of Deputy Collector which was advertised, the Government would certainly act upon such recommendation.

4. In the show-cause replies filed on behalf of the respondents JPSC, it is sought to be explained that the JPSC being a Constitutional Body created under Article 320 of the Constitution of India its only function is to select the suitable candidates and submit recommendations for their appointment to the various postings, on the basis of the requisition received from the concerned department of the State Government and the selection process comes to an end after making the final recommendation. It is further sought to be explained that the final selection process along with the final recommendation against 172 posts, on the basis of the requisition of the State Government, was already made and concluded on 13.4.2008. For filling up future vacancy, if any, it would be for the State Government to forward a requisition to the JPSC for conducting a fresh selection process and in absence of such requisition, except for those candidates who have been inadvertently left out while making earlier recommendations, although they had secured the same marks / cut off marks in the respective categories, JPSC does not have any authority to make any further recommendation of candidates after submission of the final recommendation.

5. Counsel for the petitioner submits that the vacancy does still exist, therefore the respondent State Government was obliged to appoint the petitioner since even as per the show-cause replies of the JPSC, the petitioner was declared successful under the General Category Candidate (physically handicapped) in the first and revised results of the written examination.

6. As it appears, though in the results of the written test the petitioner was found successful, but admittedly, in the final merit list, declared after the interview of the candidates was held, the petitioner's name did not figure. The thrust of the directions to the State Government was to "consider the possibility of absorbing the petitioner by his appointment against any existing vacancy". Thus, consideration for a possible absorption of the petitioner was to be made against any existing vacancy in accordance with the merit list, if such merit list did still survive. As per the show-cause replies of the JPSC, the process of selection has concluded and the appointment on the basis of the recommendation made by the JPSC, have already been completed. Any left over vacancy can be filled up as per the Rules only by adopting the procedure for selection afresh. Even if, any left over vacancy does still exist, the procedure laid down by law has to be adopted. The petitioner cannot therefore expect the respondents to adopt any procedure against the Rules, for his absorption against any existing vacancy.

7. I am satisfied with the show-cause replies that the direction as contained in the order of this Court passed in W.P.(S) No. 3086 of 2008, has been complied with and there is no further reason to retain this contempt application on Board. Accordingly, this contempt application is dropped.