
(2009) 01 JH CK 0092

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5214 of 2008

Sanwariya Sarkar Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Citation : (2009) 57 BLJR 1106 : (2011) 2 JCR 73

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : Prashant Pallava, for the Appellant; Sanjay Piprawal, for the Respondent

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed for the issuance of a mandamus commanding upon the respondents to admit the petitioner to the B.Ed. Course for the Sessions 2008-09 at the A.S. Mahavidyalaya, Deoghar, which is a constituent college of the Sidhu Kanhu University, Dumka, against vacant general seats/unfilled reserved seats.

2. The petitioner had appeared at the competitive test which was held by the respondent college for selection of candidates for admission to the B.Ed. courses in the College. By the first merit list published on 9.8.2008, the petitioner was declared successful and was placed at serial No. 8 in the merit list against the subject of Hindi. He received a letter from the respondent college asking him to deposit the requisite fees and other documents for admission to the aforesaid course in between 12.8.2008 to 20.8.2008.

A notice was published by the college on 14.8.2008 cancelling the merit list published on 9.8.2008. Subsequently, by letter dated 24.8.2008, the respondent University intimated the petitioner that his selection for the session 2008-09 has been cancelled as per the direction of the University since the vacancies have been kept reserved for the Scheduled Castes/Scheduled Tribes candidates.

A second merit list was thereafter published by the College. The petitioner learnt

that two general category candidates did not take admission and as such two seats in the General Category remained vacant. Later, one of the seats was filled up by one Sudha Kumar Mishra whose name had figured at Serial No. 7 of the merit list. The petitioner also learnt that the seats reserved for SC/ST candidates were also vacant on account of non availability of candidates in the said categories.

The grievance of the petitioner is that instead of filling up the single vacant seat of General Category by allowing admission to the petitioner and instead of filling up the vacant reserved seats by his admission from the selected candidates of General Category, the respondent authorities have illegally and arbitrarily denied the petitioner's claim for admission to the course.

3. A counter affidavit has been filed on behalf of the respondent University.

4. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

Sri Prasad, learned Counsel for the petitioner has challenged the respondents action of cancelling the merit list published on 9.8.2008 as being illegal and mala fide. The learned Counsel submits that when even according to the 2nd merit list, two general seats remained vacant on account of the general candidates above the petitioner not opting for admission and after having filled up one vacancy by admission of the candidate named above the petitioner in the merit list, the petitioner was the only candidate whose name had figured immediately after the last candidate placed at Sl. No. 7 of the list and the petitioner should have been given admission, but instead of doing so, the respondents have been attempting to allot the seat arbitrarily to some candidates of their choice. Learned Counsel argues further that even as per the settled principles of law as declared by the Supreme Court in several cases, if seats in reserved categories remain unfilled in absence of candidates belonging to reserved SC/ST/OBC categories, then such vacant seats have to be transferred to General Category and filled up accordingly. Learned Counsel submits that instead of applying the aforesaid principles of law and allotting seat of the General Category and even unfilled reserved candidates to the petitioner, the respondents have been trying to divert the same in favour of candidates of their choice by illegally cancelling the petitioner's selection for admission to the Course.

5. Counter affidavit has been filed on behalf of the University.

6. Sri Sanjay Piprawal, learned Counsel for the University, would raise a preliminary objection as to the maintainability of the writ petition. Learned Counsel argues that the petitioner's prayer in this case is for the issuance of a direction to the University to admit the petitioner against the vacant general seat/unfilled reserved seat in the B.Ed course for 2008-09 sessions. According to the well settled principles of law, the prayer for issuance of writ of mandamus can be entertained only if the applicant has made representation before the concerned authority of the University and such representation is dismissed by the

authorities. The petitioner has not filed any such representation whatsoever claiming his admission to B.Ed. course on the basis of the result of the test. Further more, as per the petitioner's own pleadings, his selection was made for his admission to B.Ed. Course (Hindi) and the same was subsequently cancelled by order of the respondent No. 4 on the ground mentioned therein. The petitioner has not challenged the order of cancellation of his selection and as such during survival of such order of selection, his prayer for direction to the respondent University to grant him admission to the B.Ed. course cannot be maintained. Learned Counsel would further explain that the respondent University is situated in the Santhal Parganas region which is inhabited by the members of SC/ST categories and for the purpose of protection of their rights and interests, a Regional Act has also been framed. Considering the above fact and in the interest of the inhabitants of the Region, a meeting of the Selection Committee was held on 18.9.2006 under the chairmanship of the Pro V.C of the University for deciding upon the criteria for admission of candidates to B.Ed. course in different colleges. A unanimous decision was taken by members present at the meeting, including the Pro VC, Registrar, Proctor, Inspector of colleges and the Principals of the concerned colleges, that if in any Subject, candidates of Reserved Category are not available as per the reservation roster then, the vacant seats will be filled up by candidates of the same category itself transferring the seat to another discipline. Learned Counsel explains further that the aforesaid decision is based on an unintelligible differentia with a definite objective sought to be achieved.

Learned Counsel explains further that initially the petitioner was selected for admission on the reserved seat of SC category and when it was detected that the candidature of the petitioner was in violation of the above decision of the selection committee, his selection was cancelled. Learned Counsel adds further that all the vacant seats in the reserved category have been transferred to various other disciplines and all the seats have since been filled up by admission of SC/ST candidates in various subjects i.e. History, Political Science, Economics and as such there is no vacant seat available in the reserved category. Learned Counsel adds further that seats in general category have also been filled up and B.Ed. course classes have already commenced since September, 2008.

7. From the rival submissions of the counsel for the parties, it appears that the petitioner has based his entire claim on the merit list declared by the college (annexure 5) in which the petitioner has been declared successful and has been placed at the 8th position against the subject Hindi. The result indicates that against 100 seats, 10 seats each have been allotted for the different subjects.

It further appears from the petitioner's case that he had applied for admission to the Course (Hindi Subject) under the general category.

Annexure 2, which is a letter issued by the Principal of the respondent college, indicates that the petitioner was found successful at the test and was placed at serial No. 8 in the merit list and was thus selected for admission to the course in

the Hindi subject but under the SC quota and was directed to deposit the requisite fees and submit the relevant documents for verification. The letter also indicates that the selection of the petitioner was made provisionally and was subject to confirmation only after verification of the documents.

Annexure 3 which is a subsequent letter issued by the Principal of the College, informs that the petitioner's selection was cancelled as per the direction of the respondent University to keep the SC/ST/OBC quota seats reserved after "intensive verification". This letter apparently does not explain what was the "intensive verification" made and neither does it refer to any rule of procedure under any Statute.

8. Learned Counsel for the respondent University, in his attempt, would refer to the resolution adopted by the Vice Chancellor of the University at the meeting held in September, 2006 and claiming that such resolution was adopted at the meeting by all the members present, whereby a vacant seat in the reserved category in any particular Subject is to be transferred to another Subject and has to be filled up by candidates of reserved category. Supporting such purported resolution, the learned Counsel would submit that such resolution was taken in the interest of the local population for whom a Regional Act has also been framed. However, the learned Counsel has failed to produce the "Regional Act" or even the Rules of procedure made under the Statute by which the Vice Chancellor of the University could decide upon any separate and special criteria for admission of candidates to B.Ed. Course. In absence of any specific reply from the respondents as to under which Rule or Statute, could the Vice Chancellor decide upon a separate criteria whereby the vacant reserved seat in any particular Subject could be transferred to another Subject thereby increasing the number of seats beyond the specified quota in the other Subjects, the explanation offered by the learned Counsel for the Respondent University is not persuasive enough for acceptance.

9. However, as pointed out by the learned Counsel for the respondents, the petitioner's selection has been cancelled by the order of the Principal of the College which was conveyed to the petitioner vide Annexure 3. The petitioner in this writ petition has not challenged the order of cancellation of his selection. Further more, the petitioner ought to have filed his representation before the concerned authorities of the respondent to consider his candidature on the basis of the earlier decision of his selection. Apparently, no such representation has been filed before the concerned authority of the respondent by the petitioner. Learned Counsel for the respondent University informs that all the seats belonging to the Reserved Categories have now been filled up and there is no further vacancy available for the petitioner.

10. Be that as it may, the petitioner may file his representation before the concerned authority of the respondent university (respondent No. 3) stating his claim and the grounds thereof and within two months of receipt of the representation, the Vice Chancellor (respondent No. 3) shall decide on the

petitioner's claim after adjusting the petitioner against any possible vacancy by passing a reasoned order and communicate the same effectively to the petitioner.

With these observations, this application is disposed of.

Let a copy of this order be given to the counsel for the respondent university.