

(2010) 04 JH CK 0019
In the Jharkhand High Court
Case No : L.P.A. No. 54 of 2009

Sanwariya Sarkar Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Citation : (2010) 04 JH CK 0019

Hon'ble Judges : G.S. Misra, C.J.;D.K. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.S. Misra, C.J.—This appeal has been preferred against the judgment and order dated 22.1.2009 passed in W.P.(C) No. 5214 of 2008, by which the writ petition filed by the petitioner-appellant herein claiming admission into the B. Ed, course was disposed of, directing the petitions to file representation before the concerned authority of the respondent-University stating his claim and the grounds thereof, and within two months of the receipt of the representation, the Vice Chancellor was directed to decide the claim of the petitioner.

2. This appeal has been preferred by the Appellant on the ground that the appellant had a clear case in his favour and yet the learned Single Judge directed him to file a representation before the Vice Chancellor.

3. Before we deal with the merits of the matter, we deem it appropriate to recode that we have consistently been noticing a trend that even though the petitioner, many a times, has a clear case in his favour, he is directed to file a representation before the concerned authorities, who had failed to grant the relief sought, in spite of the fact that he had a clear case in his favour. The instant matter is one such example where the petitioner-appellant had filed a writ petition for issuance of a writ of mandamus to the respondents to grant him admission in B. Ed course for the Sessions 2008-09 at A.S. Maha Vidyalaya, Deoghar, which constituent College of Sidhu Kanhu Murmu University, Dumka.

4. The appellant had come up with a case that in response to advertisement, he applied for Admission into the B. Ed. course which was to be determined by awarding different points on the basis of the certificates obtained by a candidate and the merit list was prepared on the basis of the result-sheets of various examinations that the candidate had taken, up to the graduate level or post graduate level.

5. At this stage, it may be relevant to mention that in the impugned order passed by the learned Single Judge, the order indicates that the petitioner-appellant had appeared at the competitive test, but it was clarified by counsel for both sides that the selection was to be made only on the basis of academic record of the candidates at various levels, right from high school up to the gradual or post graduate level, as the case may be. After preparation of the merit list, which was published, the petitioner-appellant was placed in the selection list of successful candidates in Hindi Section. The selection list of the candidate for the Hindi Section was prepared, which included 11 names, including the name of the appellant, as shown at serial No. 8 and thereafter he was also called upon to take admission into the course vide letter dated 8.8.2008 as contained in Annexure-B to the courier affidavit. In response to this letter, the appellant approached the Admission Section for depositing fee etc. and to complete the formalities for admission, but he was denied admission on the ground that the selection list, which was prepared for admission, had been cancelled and the list had been revised. Thereafter, a revised list was prepared by the University containing seven names in which the appellant's name disappeared from the selection list, which offered a cause to the appellant to file a writ petition before the learned Single Judge. The writ petition was heard and finally disposed of by the impugned judgment and order dated 22.1.2009.

6. The learned Single Judge although accepted the plea of the petitioner-appellant, he did not grant relief to the petitioner-appellant merely on the ground that he had filed writ petition without filing any representation before the University challenging the cancellation of the selection list. The writ petition, therefore, was disposed of by granting liberty to the appellant to move the Vice Chancellor seeking redress of his grievances.

7. Assailing the judgment of the learned Single Judge, it was first of all submitted by the counsel for the appellant that the appellant had an unimpeachable case in his favour, yet he did not get any relief from the University and it is the University itself which had denied the genuine and just relief to the petitioner-appellant and, therefore, he did not expect any justice from the respondents and had he approached the University, much time would have been wasted and if the relief had been denied, ultimately he would have been compelled to challenge the same before the court of law.

8. The question, therefore, which we are confronted with, at this stage is whether the appeal should be entertained by the Division Bench, although the learned Single Judge had directed the petitioner to approach the University

authority by filing a representation.

9. We have deliberated over this aspect of the matter as to whether the appellate forum should entertain an appeal against the order disposing of the we petition directing the petitioner to approach the authority by v ay of a representation.

10. It is no doubt true that in an appropriate situation, such a direction may be issued by the Court to approach the authority for the desired relief. But, this cannot be done routinely, especially in a circumstance when the petitioner comes out wit an unimpeachable case in his favour. The Courts have to bear in mind that the hapless litigants having suffered at the hands of the executive, approaches the court of law for seeking justice and in that process if he comes out with a case in his favour, it would not always be prudent and correct to direct the litigant to once again approach the authority by way of a representation, which as a matter routine is mostly rejected and only in exceptional case, the relief is granted. The Courts, therefore, have to bear in mind that if the matter is crystal clears and injustice is reflected c n the face of it, it would not be appropriate to direct the litigant to approach the authority once again by filing a representation specially in are educational matter, relating to admission cases, where the time factor is extreme important Since the candidate may lose his chance of getting the desired relief of grant of admission.

11. When we tested the case of the petitioner-appellant in the light of his view we deemed it appropriate to examine the case of the petitioner as to whether it was just and proper to direct him to file representation before the Vice Chancellor. We also deem it appropriate to record at this stage, that although the provisions under the writ jurisdiction to the effect that petitioner should file a writ petitioner exhausting all the alternative remedies that are available to him, it will not be just and appropriate for the Court to routinely direct him to approach the authority by way of a representation, especially, if the order under challenge smacks of arbitrariness and illegality. Therefore, in a given case, although the representation may be justified, a petitioner cannot mechanically be directed to approach the authority by way of a representation before he comes to the Court of law seeking justice. In the intent matter, when the appellant was confronted with a situation as he had been denied a admission inspite of the fact that his name found place in the section list and he approached for admission, the list was canceled without assigning any reason to him. It was only subsequently when he came up before the court of filing a writ petition that the respondent came up with the plea that the earlier list had been cancelled as there were violation of the rules in preparing the merit list. This also is an extremely lame excise which had been offered by the respondents. In the first place, when the respondents were already aware that the reservation policy had to be followed while preparing a merit list, then what prompted the respondents not to bear this in mind and prepare a list ignoring the claim of the reserved category, is also beyond the comprehension of this Court, so as to take a plea that in the previous list, the reservation policy had not been is followed due to which the list was

cancelled. The respondent-authority was duty bound at the first instance to take care of the quotas for the various categories of candidates when the merit list was prepared but for the reasons, best known to them, they had violated this Rule also and prepared a list violating the Reservoir policy, due to which the list was cancelled. So far so good, but when the said list was cancelled and a revised list was prepared, the name of the Petitioner-appellant suddenly vanished from the merit list and this obviously made the petitioner appellant to move the High Court for a writ of mandamus seeking admission, but was directed to approach the authority for redress of his grievance and his writ petition stood disposed of, only on the ground that he had not filed a representation before the authority, which we cannot appreciate as it was not just and legal to direct him to file a representation since filing of a representation was not a statutory requirement so as to reject his claim on this ground.

12. The question now to be considered by this Court is as to whether the petitioner-appellant could be denied a seat in the B.Ed. course, although he was higher in the merit list of the unreserved category than the candidate who has been granted a seat. Admittedly, two selected candidates out of the merit list did not take admission into the Course and automatically those seats, which were vacant, had to be offered to the candidates just below them and the last selected candidate who had been offered a seat had secured 20 points. The appellant had secured only 15 points but in between the just selected candidates, who had scored 20 points and the appellant who had scored 15 points, there was no candidate in between them either in the merit list which was prepared originally or in the revised list. In spite of this, the appellant was not allotted any seat in the unreserved category and when he filed a writ petition before the learned Single Judge of this Court, his writ petition was dismissed only on the ground that he had not filed any representation before moving the High Court, clearly missing that it would have defeated the cause of the petitioner.

13. The question, on merit, therefore, arose as to how the petitioner-appellant could be denied a seat when his name appeared higher in the selection list right from the very beginning and he had also been offered admission to a seat at one time for no reason to him. Thereafter, when the list was revised, it is difficult to appreciate as to how the name of the Appellant disappeared from the revised list and this para is sought to be justified by the respondents by filing an additional affidavit with an additional annexure, indicating that the petitioner-appellant was denied a seat as there was a candidate securing higher marks than the appellant, who had secured 21 points, therefore, a plausible argument was advanced that if a candidate was having higher points than the appellant, who has secured 21 points, the appellant's case obviously is not sustainable and as such he would not be eligible to claim a seat above a candidate who had secured higher points.

14. We, therefore, examined all the lists i.e. original list, the subsequent revised list and thereafter the third revised list which is annexed by the respondents

along with the additional affidavit. In the third list for the first time the name of one Mr. Hardeo Prasad Anand was shown at the top of the list, which is added with a hand written note in the revised list, indicating that he has secured 21 points.

15. Hence, when we questioned the counsel for the appellant as to how the appellant can be granted a seat when there was a candidate securing higher points/marks than the appellant, it was clearly explained and established by the counsel for the appellant, who submitted that Hardeo Prasad Anand was not even an applicant for the B.Ed, course, inasmuch as his name never figured put either In I the original list or in the revised list but for the first time when the respondents have been caught in the wrong box by the Court, then some how to save their skin, they have included his name in the third revised list which has been annexed with the additional afridavit.

16. This part of the argument clearly stands corroborated by unimpeachable evidence, which is clear from the original list and the revised 1st as we have noticed that the name of Hardeo Prasad Anand was never there in any of the lists from which a clear inference can be drawn that he was not even an applicant in the B.Ed, course and his name has been included showing him as securing 21 points, merely to obviate the difficulty fraught with illegality with which the respondents were confronted. We strongly deprecate this action of the respondents and the retch d in which they have tried to wriggle out of their wrong doing merely to just their illegal action.

17. From the documents on record, it is evident that the name of Hardeo Prashad Anand could not have been added in the third list when his name never figured of in any of the lists prepared by the authorities earlier, meaning thereby his name was neither in the original list nor in the revised list and for the first time his name figured out in the third list which was fled before this Division Bench as al after though obviously to somehow justify their action.

18. In fact, the respondents had not even submitted before the learned Signal Judge that Hardeo Prasad Anand had secured higher points than the appellant, no I it was submitted that he had ever applied for the post. Therefore, the submission o learned Counsel for the appellant that. totally stranger could not hav3 beer allowed to be considered for selection when he was not even an applicant, is clearly a plea fit to be rejected as an afterthought and it is not difficult to infer that the name of Hardeo Prasad Anand was included obviously to justify the exclusion of the appellant?s name from the selection list.

19. All the aforesaid facts although had been stated before the learned Single Judge, it is difficult to appreciate what prompted the learned Single Judge to dispose of the writ petition, Directing the appellant to approach the Vice Chancellor for redressed of his grievance instead of granting him the relief inspite of a clear case in his favour, is not dear as we have already held that when petitioner comes up with clear case, it would not or legally just and proper to

drive out the petitioner directing him to approach the authorities by filing a representation, as we have already indicated that representation would be justified only when the case of the petitioner is ambiguous which requires determination at the level of the departmental authority. As already indicated, the case of the petitioner-appellant unambiguously does not fall into that category since the action of the respondents refusing to allot a seat to the appellant into the B.Ed, course by including the name of a third person who was not even an applicant of the B.Ed. Course, was fit to be struck down as illegal and arbitrary.

20. A technical difficulty still arose as to whether an adverse order could I passed against Hardeo Prasad Anand, as he has not even been impleaded in the appeal, to which the counsel for the appellant submitted that the respondents for the first time has come up with a case that they had offered a seat to one Hardeo Prasad Anand who was not even an applicant. However the fact remains, that the respondents had denied a seat to the appellant even as per the revised list which was prepared by the respondent concerned, since two seats which fell vacant on account of non joining of the two of the selected candidates, namely, Jagat Kumar Yadav and Ranjit Kumar, who are at serial Nos. 1 and 3 respectively even in the revised list and the appellant was just below the list of selected candidates the action of the respondents not offering any seat to the appellant is fit to be quashed and set aside.

21. However, the relief sought by the appellant cannot be granted at this belated stage, as it is informed that the B.Ed, course is of one year only, which is already over.

22. However, we have noticed that the learned Single Judge had also granted liberty to the petitioner-appellant herein to file a representation before the Vice Chancellor, who was directed to decide the appellant's claim after adjusting him against any possible vacancy by passing a reasoned order and communicate the same to the appellant. In spite of this, the appellant has been denied a seat in the B.Ed course, in spite of the merit of his claim as discussed hereinbefore and therefore, there was no reason why the Vice Chancellor had failed to grant him a seat. Since the appellant has successfully established that he had a legal claim against one seat for the B.Ed. Course for the Session 2008-09 which he was illegally denied and now the Session of 2008-09 is already over, the appellant will be deprived of a seat into the course.

23. In order to obviate this impediment, counsel for the appellant relied upon an authority of the Hon'ble Supreme Court in the case of Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, . Confronted with a situation of similar nature wherein the appellant had succeeded in establishing his claim for a seat into the M.S. Course and although the court was over, he was compensated by the learned Judges of the Apex Court direction the Medical Council of India to create two additional seats for the appellant therein.

It has, therefore, been submitted that merely because the Session of the year 2008-09 is over, the appellant should not be denied a seat inspite establishing his old claim and he should be permitted to claim a seat in the one Session i.e. 2010-11 for the B.Ed course.

24. In view of the aforesaid facts and circumstance of the case and in view the aforesaid authority of the Supreme Court referred to hereinbefore, the appalled who has succeeded in establishing his case for a seat into the B.Ed. Course the same cannot be denied to Mm merely because the earlier Session is over. Hence we direct the respondents to grant a seat into the B.Ed. Course for the Session 2010-11 of increasing one seat. The appellant however is also directed to apply to the B.Ed. Course of Session 2010-11 in order to avail the additional seat.

25. The appeal, accordingly, is allowed but without any order as to costs