
(2008) 10 JH CK 0029
In the Jharkhand High Court

Sapan Kumar and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 10 JH CK 0029

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for issuance of an appropriate writ, order or direction, commanding upon the respondents to publish the result of the selected candidates in the examination pursuant to advertisement issued by the Department of Labour, Employment & Training, Government of Jharkhand, Ranchi, vide Advertisement No. OC-01/04, issued under the signature of Assistant Employment Officer, Sub-regional Employment Exchange, Dumka for appointment on the sanctioned vacant post of 25 Laboratory Technicians (Frozen Semen) in the district of Dumka vide advertisement No. Su-J.S.B. 900(labour-5) for which examination was held on 5.10.2001 and result/panel has been prepared and forwarded to the Secretary, Department of Animal Husbandry & Fishery, Government of Jharkhand, Ranchi for publication of result and further to quash the process of selection initiated by the respondents under Advertisement No. 02/Secretariate Animal Husbandry/06, which is in contravention of the direction passed by this Court.

2. It appears that initially an advertisement being Advertisement No. OC-01/04 was published in the year, 2004, pursuant to which the petitioners applied and according to their contention, they were selected and a panel was prepared. However, it was not given effect to and a second advertisement was issued for the same post in which the present petitioners were not allowed to appear because their experience was from private institutions whereas in the 2nd

advertisement the eligibility criteria for the post of Laboratory Technicians was indicated as "one year Frozen Semen work experience" from Government Institution.

3. The petitioners herein challenged Advertisement No. 01 Secretariat Animal Husbandry/2004-05, published in the newspaper for appointment to the post of Laboratory Technician (Frozen Semen) so far as essential eligibility clause was concerned, whereby and whereunder, while one year's experience in Frozen Semen work has been prescribed, it has been mentioned that such experience, except from Government Institution, will not be accepted as none of the private Institutions has been approved by the Animal Husbandry Department. This was the sole prayer made by the petitioners before the Hon'ble Division Bench of this Court in W.P.(S) No. 156 of 2005 and in paragraph No. 2 of the judgment dated 23.6.2006 it was recorded as under:

The only question requires for determination is whether the Secretary, Animal Husbandry and Fisheries Department, Government of Jharkhand has jurisdiction to prescribe such condition, if the guidelines issued by the State do not prohibit experience from any other Institution.

4. In the aforesaid background, the Hon'ble Division Bench of this Court by a well considered judgment directed as under:

12. In the present case, the respondents have failed to show the grounds for changing the eligibility criteria. They have also not explained the ground for not acting upon the merit list, as was prepared in pursuance of Advertisement No. O.C-01/04 nor shown any ground for classification as made between persons having experience, as prescribed by guideline dated 22nd March, 1990. Learned Counsel for the State also failed to explain as to why one year experience from a Government Institution was prescribed in the subsequent advertisement, if there is no Government Institution in the State imparting training in the subject concerned. Thus, the impugned classification made on the ground of experience between those who has experience from Government Institution and private Institution being against the guidelines, and having no nexus with the object sought to be achieved, the same cannot be upheld. The criteria of experience from Government Institution, as made in Advertisement No. 01 Secretariat Animal Husbandry/2004-05 is, accordingly, set aside. The respondents are directed to act as per guideline dated 22nd March, 1990, as was reflected in Advertisement No. O.C.-01/04 i.e. "one year Frozen Semen work experience" and will reconsider the case of petitioners and other similarly situated persons, who are otherwise eligible for their appointment to the posts of Laboratory Assistant and will complete the process of selection within four months from the date of receipt/production of a copy of this order.

5. It appears that SLP (Civil) No. 15671 of 2006 was preferred by the State of Jharkhand before the Hon'ble Supreme Court, challenging the aforesaid order dated 23.6.2006, passed by the Division Bench of this Hon'ble Court in W.P.(S)

No. 156 of 2005 and the Hon''ble Supreme Court while dismissing the Special Leave Petition, as withdrawn, gave liberty to the State (petitioner) to move the High Court limited to the only question that no candidate should obtain any appointment on the basis of forged and fabricated documents. As per the liberty granted, the petitioners again moved this Court by filing I.A. No. 2927 of 2006, wherein, the Hon''ble Division Bench vide its order dated 27.10.2006 clarified that the State need not consider the appointment of the persons/candidates whose certificates are found to be forged or fabricated but in other respect the order passed by this Court on 23.6.2006 is intact.

6. In compliance of the aforesaid order and direction, a fresh advertisement being Advertisement No. 02 Secretariate Animal Husbandry/2006 dated 21.12.2006 was issued by the Animal Husbandry & Fishery Department, wherein, the earlier bar was removed and even such candidates, who had obtained one year''s experience in Frozen Semen work from private Institutions, were also made eligible in compliance of the direction, issued by the Hon''ble Division Bench of this Court vide its order dated 23.6.2006, passed in W.P.(S) No. 156 of 2005.

7. Learned Counsel for the respondents states that pursuant to the aforesaid advertisement dated 21.12.2006 the petitioners along with others have also participated and the selection process has been completed. The petitioners herein in this writ petition have challenged Advertisement No. 02 Secretariate Animal Husbandry/2006 dated 21.12.2006 on the ground that it is in contravention of the direction, issued by the Hon''ble High Court in W.P.(S) No. 156 of 2005 vide order dated 23.6.2006. The petitioners have also prayed that the selected candidates out of the panel prepared pursuant to Advertisement No. OC-01/04 should be appointed.

8. I have heard the argument of Mr. Anil Kumar Sinha, learned Sr. Counsel appearing on behalf of the petitioners. The main contention raised on behalf of the petitioners is as to whether the respondent authorities were duty bound to publish the result/panel, forwarded to them pursuant to the examination held on 5.10.2004 with regard to Advertisement No. OC-01/04. The second contention raised by the learned Counsel for the petitioners is that the present Advertisement No. 02 Secretariate Animal Husbandry/06 was illegal and against the mandate and order, issued by the Hon''ble Division Bench of this Court vide order dated 23.6.2006. It has also been submitted on behalf of the petitioners that the entire action was violative of Articles 14 and 16 of the Constitution of India and the act of the authorities is arbitrary, illegal and amounts to colourable exercise of power.

9. Learned Counsel for the respondent-State submits that in compliance of the order dated 23.7.2003, passed by Hon''ble Supreme Court in Civil Appeal Nos. 5342, 5343, 5344, 5345, 5346 and 5376 of 2003, and the order dated 2.12.2003, passed in I.A. No. 304 of 2003, the Department decided to fill up the posts of Technical Assistant and to that effect issued Notification No. 246 dated

24.1.2004. Accordingly, criterion was fixed for selection of suitable candidates, which was communicated to the Deputy Commissioners of the concerned districts vide letter No. 608 dated 3.3.2004 and thereafter, Advertisement No. OC-01/04 was published for filling up 25 posts of Technical Assistants. The examinations were held in 2004 and the petitioners applied and appeared at the examination and, according to them, they passed at the examination but their results were not published. In the meanwhile, Contempt Petition Nos. 378-79 of 2004 and 375 of 2004 were filed before the Hon''ble Supreme Court alleging therein the non-compliance of the order passed in Civil Appeal Nos. 5342-43 of 2003 and Civil Appeal No. 5346 of 2003 respectively.

10. The Hon''ble Supreme Court adjourned the matter to ensure compliance of its order. It was in these background that a decision was taken by the Government to conduct examination centrally through the agency named the Educational Consultants India Ltd., New Delhi, a Government of India Undertaking, and the same was communicated to all the Deputy Commissioners vide letter No. 3136 dated 20.12.2004. This led to 2nd advertisement, calling for applications wherein the eligibility criterion of one year's experience in Frozen Semen work was changed and was confined to one year's experience in Frozen Semen work from recognized Government Institution. Accordingly, the examination was conducted on 9.1.2005 and this was the subject matter of challenge in W.P.(S) No. 156 of 2005.

11. I have considered the entire pleadings and heard the arguments at length. At the very outset it is relevant to clarify that the prayer in the writ petition being W.P.(S) No. 156 of 2005, preferred by the petitioners, was confined to challenging the criterion of one year's experience in Frozen Semen work from Government Institution instead of experience from any other Institution, as it existed in earlier Advertisement No. OC-01/04. The aforesaid fact stands corroborated by their own prayer as well as the issue confined for consideration before the Hon''ble Division Bench in W.P.(S) 156 of 2005, which is recorded in paragraph Nos. 1 and 2 and the same is quoted as under:

This writ petition has been preferred by the petitioners against the Advertisement No. 01 Secretarial Animal Husbandry/2004-05, published in the newspaper for appointment to the post of Laboratory Technician (Frozen Semen), as far as essential eligibility clause is concerned, whereby and where under, while one year's experience in Frozen Semen work has been prescribed, it has been mentioned that such experience, except from Government Institution will not be accepted as none of the private Institutions has been approved by the Animal Husbandry Department.

The only question requires for determination is whether the Secretary, Animal Husbandry and Fisheries Department, Government of Jharkhand has jurisdiction to prescribe such condition, if the guidelines issued by the State do not prohibit experience from any other Institution.

12. It is further relevant to clarify that even the directions issued by the Hon''ble High Court while allowing the writ petition being W.P.(S) No. 156 of 2005 was confined to setting aside the changed criterion of experience from Government Institution as made in Advertisement No. 01 Secretariate Animal Husbandry/04-05 and the same was set aside and a mandamus/direction was issued by the Hon''ble Division Bench vide its order dated 23.6.2006 to reconsider the cases of the petitioners and other similarly situated persons, who had one year''s experience in Frozen Semen work from private Institutions and were otherwise eligible for appointment to the posts of Laboratory Technicians. It specifically directed to complete the process of selection within four months from the date of receipt/production of a copy of this order.

13. It will be further clarified on reading the third i.e. Advertisement No. 2 Secretariate Animal Husbandry/06, published on 21.12.2006, which is sought to be challenged in this writ petition, that it was in continuation of the 2nd advertisement i.e. Advertisement No. 01 Secretariat Animal Husbandry/2004-05 in compliance with the direction issued by the Hon''ble High Court by including such candidates, who had completed one year''s experience in Frozen Semen work from private Institutions.

14. The order of the Hon''ble Division Bench of this Court, having been acted upon, has attained finality and thus, the petitioners cannot be allowed to raise/reopen an issue, which they have not even challenged or prayed for in the earlier writ petition being W.P.(S) No. 156 of 2005 and the same will be evident from the prayer, as quoted hereinabove. The direction issued by the Hon''ble Division Bench of this Court was specific that after removing the hurdle and making the petitioners eligible to appear at the examination, the selection process was to be completed within four months and, thus, the prayer in the present writ petition is even otherwise misconceived and unsustainable in the eyes of law.

15. The fact remains that the life of a panel in any case is for one year and being placed in the panel does not create any indefeasible, accrued or vested right in a person to be appointed more so when no such prayer was made in the earlier round of litigation by way of writ petition, preferred by the petitioners.

16. Even otherwise the petitioners having appeared for selection pursuant to the advertisement, which is sought to be challenged in the present writ petition, they are estopped by way of rule of estoppel and conduct from challenging the said advertisement, once they have appeared and participated. The law in this regard is well settled and the Hon''ble Supreme Court in the case of Dhananjay Malik v. State of Uttaranchal as reported in 2008(2) SC 328, at paragraph No. 7 has held as under:

7. It is not disputed that the writ petitioners- respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection

without any demur they are estopped from challenging (he selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

17. In the aforesaid facts and circumstances, this writ petition, being devoid of any merits, is hereby dismissed but without any order as to costs.