

(2015) 05 JH CK 0016

In the Jharkhand High Court

Case No : L.P.A. No. 194 of 2015 and I.A. No. 2072 of 2015

Satish Chandra Kumar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 16
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 60

Citation : (2015) 05 JH CK 0016

Hon'ble Judges : Virender Singh, C.J;P.P. Bhatt, J

Bench : Division Bench

Advocate : Rajiv Ranjan, Senior Advocate and Mithilesh Singh, for the Appellant; Jai Prakash, A.A.G. and Debolina, J.C. to A.A.G., Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. The appellant being aggrieved and dissatisfied with the judgment and order dated 13th March, 2015, passed by the learned Single Judge in W.P. (S) No. 1895 of 2013, whereby and whereunder the writ petition filed by the petitioner has been dismissed by the learned Single Judge.
2. Heard Mr. Rajiv Ranjan, learned senior counsel appearing for the appellant as well as Mr. Jai Prakash, learned Additional Advocate General appearing for the Respondent-State Government.
3. Perused the judgment and the order delivered by the learned Single Judge in W.P. (S) No. 1895 of 2013 and other relevant materials placed on record.
4. The short question, which arises for consideration before this Court is as to whether the appellant is having any right of reappointment under the Act, namely. The Persons with disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995, which provides for appointment of

Commissioner for persons with disabilities for the purpose of Act under Section 60. The Commissioner within the State has the power to co-ordinate with the State Government for the programmes and the schemes for the persons with disabilities and other matters, which is provided under Section 60 of the Act.

5. Section 60 of the Act reads as under:-

"Section 60. Appointment of Commissioners for persons with disabilities - (1) Every State Govt. may, by notification appoint a Commissioner for persons with disabilities for the purpose of this Act.

(2) A persons shall not be qualified for appointment as a Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(3) The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Commissioner shall be such as may be prescribed by the State Govt.

(4) The State Govt. shall determine the nature and categories of officers and other employee requires to assist the Commissioner in the discharge of his functions and provide the Commissioner with such officers and other employees as it thinks fit.

(5) The officers and employees provided to the Commissioner shall discharge their functions under the general superintendent of the Commissioner.

(6) The salaries and allowances and other conditions of service of the employees provided to the Commissioner shall be such as may be prescribed by the State Govt."

6. It appears that the powers vested in the State Government under Section 73(i) of the Jharkhand Disabled Persons (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2003 was framed and under Rule 46, provisions were made for appointment of Disability Commissioner with a condition that persons to be appointed as Disability Commissioner should have proper and special knowledge in the field with respect to the disabled persons. It appears that the appellant was appointed as Disability Commissioner vide Notification dated-11.09.2007, considering his experience in the field. It also appears that the appointment of appellant was not a tenure appointment earlier and after the appellant's appointment, the State Government, exercising its power under Section 46(Kha) of 2003 Rules, came out with Resolution No. 200, dated 19th February, 2008, whereby the tenure of the appellant was fixed for three years and subsequently the same was extended up to five years vide Resolution No. 1471, dated 05.10.2009. It is apparent from Rule 2 (Kha) that upon the satisfactory completion of the tenure of the Disability Commissioner, the Government would be entitled to reappointment for additional tenure. It appears that by virtue of the Resolution No. 1471, dated 05.10.2009, the salary of the petitioner was revised from Rs. 35,000/- to Rs. 60,000/- and the tenure

got extended upto 13.09.2012, as is evident from the salary slips issued from the office of the Accountant General, Jharkhand, which are annexed to the appeal memo vide Annexure-5 series.

7. It further appears that the appellant's tenure expired on 12.09.2012 and, therefore, the appellant relinquished his charge by informing the respondents vide memo No. 561, dated 12.09.2012 that his tenure has expired in the light of Resolution No. 200, dated 19th February, 2008 and resolution No. 1471, dated 05.10.2009. As it reveals from the record that since the appellant's performance as Commissioner of Disability was very good and satisfactory and the work done by the State of Jharkhand has been recognized at national level, initiative was taken by the Department for reappointment of the appellant under the provision of Rule 2 (Kha) of the State Disability Commissioner (Salary, Allowances and Service Condition), Rules. The Department processed the proposal for reappointment of the appellant and the said proposal of the Department of Social Welfare and Child Development was approved by the Hon"ble Chief Minister of Jharkhand on 04.01.2013 and only a formal notification was required to be issued but somehow, it could not be issued. Thereafter, on account of imposition of the President's Rule on 19th January, 2013, the matter was kept pending. It appears that the appellant meanwhile represented on several occasions and also met Hon"ble Advisor to His Excellency the Governor of Jharkhand on 12.02.2013, who accordingly, endorsed for review and examination of the matter to the Chief Secretary, Jharkhand. On 28th February, 2013, the appellant submitted a reminder in this regard in the office of the Advisor to His Excellency the Hon"ble Governor. In the meantime, on 09.02.2013, as an ad hoc arrangement, the Director, Social Welfare was appointed as Disability Commissioner till further order. It further appears that on 04th March, 2013, the Social Welfare, Women and Child Development Department came out with another Notification No. 317, whereby the Principal Secretary of the said Department was posted as State Disability Commissioner as ad hoc measure/stop gap arrangement till the appointment of full time State Disability Commissioner but no action was taken by the State Government towards reappointment of the appellant, despite the fact that the procedure of the reappointment, already stood completed in accordance with the aforesaid Rules. Being aggrieved by the inaction of the State Government, the appellant preferred W.P. (S) No. 1895 of 2013 before the learned Single Judge. In the said writ petition, the respondents filed counter affidavit, dated 22.04.2013 and at para 6 of the same, it was stated that before approval given by the Hon"ble Chief Minister on 04th January, 2013, the petitioner himself has given resignation on 12th September, 2012 from the post and therefore, it was necessary to review the situation and therefore, the Advisor of His Excellency the Governor reviewed the matter on request made by the Chief Secretary, Government of Jharkhand and decided to publish Advertisement for the post, inviting applications from the eligible persons to appoint best suitable persons for the post of Commissioner Disabilities. His Excellency, the Governor of Jharkhand has approved the aforesaid decision of the Advisor. It also

appears that the stand taken by the Respondent-State Government in para 17 of the counter affidavit, dated 22.04.2013, that the petitioner has already given resignation from the post on 12.09.2012, was subsequently clarified by the Respondent-State Government by filing supplementary affidavit, dated 15.05.2013, as it was seriously objected by the petitioner and accordingly, the word "resignation" was replaced by the word "relinquishment of charge". It further appears that vide supplementary affidavit, dated 15th May, 2013, the Respondents brought on record, the Resolution dated 14th May, 2013 vide Memo No. 678, regarding fixation of qualification, mode and term of appointment of the State Disability Commissioner and took stand that in the light of the Resolution dated 14th May, 2013 bearing Memo No. 678, the petitioner is not entitled to any relief.

8. The post of Disability Commissioner falls under the definition of "employment or appointment to any office under the State" as enumerated in Article 16 of the Constitution of India. Article 16 of the Constitution of India reads as follows:-

"16(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

9. The Respondent-State Government has filed the counter affidavit on behalf of the Respondent No. 2, wherein, it is specifically stated that vide memo No. 561, dated 12.09.2012, the appellant relinquished the charge of the post of the State Disability Commissioner, Jharkhand on completion of 5 years. The post of Disability Commissioner, is public employment, therefore, the provision of Article 13, 14 and 16 of the Constitution of India are applicable in the matter.

10. From the counter affidavit filed by the State, it appears that recommendation made by the then Chief Minister for reappointment of the appellant as State Disability Commissioner vide noting dated 04.01.2013 was reviewed by His Excellency the Governor. The said review of the recommendation made by the then Chief Minister was done in the light of the fact that the post of State Disability Commissioner is a superior post and transparency should be maintained in appointment of all eligible candidates on the said post and for that, it would be desirable that it may be allowed to be done by way of procedure adopted in any public employment as required under Article 16 of the Constitution of India and therefore, appointment should strictly be made through public advertisement and not by way of nomination. His Excellency, the Governor of Jharkhand has also recommended for appointment of the State Disability Commissioner by way of open public advertisement through selection by a competent Committee strictly in terms of the Rule made in this regard, in prescribed format and no appointment is to be made by way of nomination. It is also stated that in the light of the aforesaid review, the Chief Secretary, Government of Jharkhand has decided to appoint the Disability Commissioner by publishing advertisement for the said post inviting application for the eligible candidate to appoint best suitable person for the said post, as post in question is an important higher post i.e. a post of the rank equivalent to the Secretary of

any Department and financial power is vested with the said post, as such, the said public post must be filled up cautiously and with utmost transparency. It is also stated that under the provisions of Persons with disabilities (equal opportunity, protection of right and full participation) Rules 2003, Government of Jharkhand has framed a memorandum regarding fixation of qualification mode and terms of appointment of the State Disability Commissioner which has been approved by the Hon"ble Governor of Jharkhand. The Department vide Memo No. 678 dated 14.05.2013 issued the aforesaid memorandum by the order of the Hon"ble Governor and direction has been issued to publish it in the official Gazette.

11. It also appears that after order dated 13.03.2015 passed in W.P. (S) No. 1895 of 2013 Department has reviewed the matter of selection and has decided to publish fresh Advertisement for the post of State Disability Commissioner, Jharkhand. The Department has already published the Advertisement for post of State Disability Commissioner, Jharkhand in various Newspapers on 22.04.2015, inviting application from the suitable persons for the post. Last date for sending the application for the above post has been fixed as 15th May, 2015.

12. Therefore, now in view of the above-stated facts and circumstances of the case, we are of the view that there is no infirmity in the judgment and order delivered by the learned Single Judge, and the selection process is required to be made in accordance with the provision as enshrined in Article 14 and 16 of the Constitution of India.

13. However, it is expected from the State Government that the observations made in Annexure-6, 7 and 8 will be considered in proper perspective. The relevant abstract of the above-referred certificates and letters are reproduced hereinbelow:-

8th National Meeting of State Commissioners for Persons with Disabilities

CERTIFICATE

This is to certify that Jharkhand has been ranked to be the Second among the States in the country in implementation of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 on the basis of the report and the presentation made during the 8th National Meeting of the State Commissioners for Persons with Disabilities to review the status of implementation of the Act held at Vigyan Bhawan Annexe, New Delhi on 16th and 17th December, 2008.

Sd/- Dr. Manoj Kumar

Dated: 17th December, 2008

Sarojini House, 6, Bhagwan Dass Road, New Delhi - 110001

(Annexure-6)"

"OFFICE OF THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES
Ministry of Social Justice and Empowerment, Govt. of India

No. 14-1 [Good Practice]/CCD/2005/R1808

Dated: 12.03.2012

To

Commissioner, Disabilities [All States/UTs]

Sub:- Good Practice for Replication: Redressal of grievances by the O/o Commissioner, Disabilities, Government of Jharkhand

2. State Commissioner, Disabilities, Government of Jharkhand has informed that after the Mobile Court organized by the office of CCPD at Ranchi on 22.01.2007, State Commissioner has held 22 Mobile Courts in the districts across the State within a period of 3 years from 31/07/2008 to 22/07/2011. Out of the total of 8226 cases, 5079 cases (62%) were registered in the mobile courts as may be seen from the enclosed details.

3. It is observed that the State Commissioner, Disabilities, Jharkhand has registered/disposed off the highest number of complaints in the last 3 years. Considering the immense usefulness of mobile courts/camps, the Commissioner, Disabilities of other States may also like to organize such mobile grievance redressal camps/courts at District/Block/Panchayat level.

Encls: as above

Yours faithfully, Sd/- T.D. Dhariyal, Dy. Chief Commissioner (Annexure-7)"

14. As stated by Mr. Rajiv Ranjan, learned senior counsel at the bar that the appellant has already applied for the post of Commissioner, Disability, pursuant to the fresh advertisement notice, for which the last date is 15th May, 2015, only i.e. today, it is expected from the State Govt. that while considering the candidature of the appellant, fair and objective assessment will be made and due weightage will be given to the past performance and experience of the appellant, undoubtedly, in accordance with law while making final selection/appointment for the post.

15. With these observations, the instant Letters Patent Appeal stands disposed of along with interlocutory application i.e. I.A. No. 2072 of 2015.