
(2005) 10 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1478 of 2004

Shyam Kishore Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-10-2005

Acts Referred:

Citation : (2006) 1 JCR 237

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : Aparesh Kr. Singh, for the Appellant; Government Pleader No. III, Ajit Kumar, for Respondent No. 2, Manoj Kr. Sah, for the Respondents No. 3 and P.K. Verma, for the Respondents No. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This writ petition has been preferred by the petitioner for a direction on the respondents to consider his case for appointment to the post of Peon in the District Court, Godda. Further prayer has been made to set aside the order of appointment, issued in favour of 3rd respondent Rajesh Kumar Hansda on the ground of illegal appointment.

2. Admitted facts of the case are that the respondents issued advertisement for appointment against class IV posts of Peon and equivalent posts in different Judgeships, including the Judgeship of Godda. Petitioner alongwith others applied for appointment against Class IV post and by letter dated 5th April, 2002 he was asked to appear at viva-voce test/interview on 30th April, 2002 in which he appeared.

3. Grievance of the petitioner is that though his name is appearing at serial No. 17 of the waiting list and the persons, including those, whose names are appearing in the waiting list, have been appointed in January, 2003, no order of appointment has been issued to him. Further grievance of the petitioner is that

though the Jharkhand High Court from its Administrative side vide letter dated 23rd September, 2003 released certain more Class IV posts of Peon, Process Server, Night-guard etc. and ordered to make appointment out of the existing panel, against those posts while others have been appointed, without appointing the petitioner, 3rd respondent, Rajesh Kumar Hansda has been appointed on compassionate ground. It is alleged that one of the brothers of 3rd respondent, in the meantime, was appointed against Class IV post of Peon and thereby, the compassionate appointment of 3rd respondent was not permissible. As per the High Court 's direction from its Administrative side, the post should have been filled up from amongst the existing panel.

4. It is also alleged that the 4th respondent Sadhna Jha has been appointed on compassionate ground, though as per the Administrative order of the High Court, Class IV posts were to be filled up by direct recruitment.

5. The aforesaid submission, made on behalf of the petitioner, so far 4th respondent Sadhna Jha is concerned, cannot be accepted, as a person can be appointed on compassionate ground only against a quota, meant for direct recruitment. As per the guidelines, issued by the respondents, there being no other provision to fill up the post, except by direct recruitment and the other mode of compassionate appointment, the appointment of 4th respondent Sadhna Jha cannot be held to be illegal.

6. So far as 3rd respondent Rajesh Kumar Hansda is concerned, a counter affidavit has been filed by the 2nd respondent. District and Sessions Judge, Godda, giving detailed manner, in which 3rd respondent has been appointed and Class IV posts have been filled up from the existing panel. It appears that the persons upto serial No. 16 of the waiting list were appointed against Class IV posts and against rest of the posts, one Sri Salimuddin was adjusted on transfer from Chaibasa to Godda Judgeship, as was made vide the High Court's Order No. 2/2002, dated 27th July, 2003. Against another Class IV vacancy, 4th respondent Sadhna Jha was appointed on compassionate ground, whose husband, a Class IV employee of Civil Courts, Godda, having died in harness on 4th August, 2003. Against another vacancy, 3rd respondent Rajesh Kumar Hansda was appointed on compassionate ground after the death of his father, who was also a Class IV employee of the Civil Courts, Godda.

7. On the direction of this Court, the 2nd respondent also produced the original records relating to appointments. From the original records it appears that the name of the petitioner Shyam Kishore Prasad (Roll No. 708) is appearing at serial No. 17 of the waiting list. The original panel and the waiting list both were approved by the High Court. Subsequently, a number of Class IV posts having been created for Godda Judgeship, persons from the panel as also the waiting list were appointed. So far as compassionate appointment of 3rd respondent Rajesh Kumar Hansda is concerned, from the file It appears that one Mahanand Hansda was a Class IV employee in the Civil Court, Godda, who died in harness on 27th January, 2002, leaving behind his widow Sona Kishu, aged about 50 years, and

four sons, namely, Sant Lal Hansda (aged about 27 years), Rajesh Kumar Hansda (3rd respondent herein), Arjun Hansda (aged about 18 years) and Lakhan Hansda (aged about 15 years). Sant Lal Hansda had already applied in pursuance of the advertisement, in question, for appointment against Class IV post in the Civil Courts, Godda. His name was appearing at serial No. 16 of the merit list. Said Sant Lal Hansda alongwith sixteen others was appointed against Class IV post by Order No. 11/2003, dated 27th January, 2003, issued by the District and Sessions Judge, Godda. After about eleven months the case for compassionate appointment of the other son of late Mahanand Hansda, namely, Rajesh Kumar Hansda (3rd -respondent herein) was taken up by the Compassionate Appointment Committee. The said Committee, in its meeting held on 3rd December, 2003 noticed that Sant Lal Hansda, one of the sons of deceased employee late Mahanand Hansda, had already been appointed in the services of the District Court. In spite of the same, the Committee by its recommendation dated 3rd December, 2003 recommended to appoint the 3rd respondent Rajesh Kumar Hansda on compassionate ground, on the ground that other sons have stated that Sant Lal Hansda is not maintaining the family.

8. Admittedly, both Sant Lal Hansda and Rajesh Kumar Hansda (3rd respondents herein), two sons of late Mahanand Hansda, and two of their other brothers were dependents of Mahanand Hansda, who died on 27th January, 2002. After the death of Mahanand Hansda, one of his dependents Sant Lal Hansda was appointed against Class IV post. There is nothing on the record to suggest that a legal separation took place in between the brothers after the death of late Mahanand Hansda. In such a situation, one of the brothers being already in service, there was no occasion for the Compassionate Appointment Committee and the then District and Sessions Judge, Godda, to recommend or to appoint another son of deceased employee, on the ground of compassionate appointment.

9. In the circumstances, the appointment of 3rd respondent Rajesh Kumar Hansda cannot be held to be legal. The District and Sessions Judge, Godda, is directed to issue order of termination immediately to 3rd respondent and the 3rd respondent Rajesh Kumar Hansda is prohibited from functioning.

10. As the writ petition was filed on 12th March, 2004 i.e. during the lifetime of the panel and because of termination of the services of 3rd respondent Rajesh Kumar Hansda, the post will fall vacant, the District and Sessions Judge, Godda, is directed to consider the case of the petitioner and other similarly situated persons whose names are appearing as successful candidates in the panel/ waiting list, for appointment against the said post and to issue appropriate order within one month from the date of receipt/ production of a copy of this order.

11. The writ petition is, accordingly, allowed with the aforesaid observations and directions.

12. Let the original records be handed over to Mr. Ajit Kumar, learned Counsel for the District and Sessions Judge. Godda.