

(2013) 10 JH CK 0063
In the Jharkhand High Court
Case No : Writ Petition (S) No. 730 of 2011

Smt. Nirmala Besra

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2014) 1 JLJR 117

Hon'ble Judges : Aparesh Kr. Singh, J

Bench : Single Bench

Advocate : Din Dayal Saha and Vishal Kumar Tiwary, for the Appellant; Sumir Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kr. Singh, J.—Heard learned counsel for the parties. The petitioner an Aanganwari Sevika, participated in the exercise for appointment of Lady Supervisor under the Department of Social Welfare, Women and Child Development, Government of Jharkhand under advertisement issued on 28.11.2007 (Annexure-3), The eligibility criteria for such Aanganwari Sevika laid down at clause 2 of the said advertisement was that those having qualification of Graduate were required to have at least 10 years of qualifying satisfactory service as Sevika and those having qualification of Matric were required to have 15 years of qualifying satisfactory service. As per clause 3 the age relaxation of 5 years was to be granted. Clause 8 prescribed the process of appointment. Clause 8(ii) laid down that for such appointment to the post of Lady Supervisor, the applicant-Aanganwari Sevika has to face written examination comprising two part i.e. General Knowledge and Integrated Child Development Scheme (ICDS). Both the papers should have 100 marks each. Based upon such examination, on the recommendation of the selection committee constituted at the divisional level the Divisional Commissioner in turn was empowered to take decision in the matter of such appointment. In such circumstances, the petitioner after facing the written examination fetched 130 marks. Incidentally, four others Aanganwari

Sevikas also fetched 130 marks. Amongst all those 5 persons whose names are enclosed in the chart indicated at para 7 of the counter affidavit filed by Respondent No. 2 on 13.6.2011, four such candidates elder in age to the petitioner were appointed against the vacant posts. In these circumstances, the petitioner approached this Court for redressal of her grievances.

2. It is the contention of the petitioner that such appointment was made without any Rules specifying the criteria or norms contained in the advertisement. The grant of appointment on the basis of seniority in age to such persons having same marks to the petitioner is discriminatory and violative of Article 14 of the Constitution of India.

3. Respondents were allowed time to file response as to what are the norms under which such course has been adopted. They were asked to disclose if there are any further vacancies available under the respondent-department for appointment to the post of Lady Supervisor. The respondents in their reply to I.A. No. 800 of 2012 have disclosed that there are no further vacancies. They have also indicated that by the notification issued on 2.12.2011 issued under the relevant provisions of Jharkhand Staff Selection Commission Act of 2008 in para 5 thereof provision have been made to take care of such eventuality when more than one candidate have same marks. In that situation selection has to be made on the basis seniority in date of birth. It is however not in dispute that the said selection exercise took place in the year 2010 before coming into force of the said notification.

4. In such circumstances, petitioner prayed that respondents be directed to accommodate the present petitioner who is similarly placed with four other by creating new post. The course adopted by selecting the persons elder in age to the petitioner in the absence of any specific rule is discriminatory and bad in law. It is also submitted that petitioner was senior than two others such persons having 130 marks, so far as length of service as Aanganwari Sevika is concerned. Therefore, that fact should have been taken into account if further preference is given to other candidates.

5. I have heard counsel for the parties at some length and gone through the relevant materials on record. The exercise for appointment to the post of Lady Supervisor has been undertaken vide Annexure-3, advertisement dated 28.11.2007 where it has been laid down that the appointments are to be made on the basis of written test faced by the applicant. The written test was of two subject having 100 marks each. Based upon the written test the selection committee prepared merit list to make recommendation to the Divisional Commissioner. The eligibility criteria as prescribed under the said advertisement have been indicated already in the earlier part of the judgment. The eligibility criteria itself prescribed that for a Graduate Aanganwari Sevika there was requirement of 10 years of qualifying satisfactory service for applying for the post of Lady Supervisor while the Sevika having qualification of Matriculation are required to have 15 years of satisfactory service as Aanganwari Sevika. Apart

from above stipulation for having eligibility to participate, no other weightage was accorded to the qualifying service as Sevika so far as appointment to the post of Lady Supervisor is concerned. The appointment to the post of Lady Supervisor was to be based upon the result in the written examination. However, admittedly, neither there are any rules under which such eventuality was to be taken into account when more than one incumbent are having equal marks nor the advertisement contains such stipulation. In such circumstances, when more than one candidate have fetched same marks i.e. 130 and there are no Rules, Regulations or Executive Instruction to take care of such situation then by adopting a criteria which conforms to reasonableness and which does not depend upon fortuitous circumstances, the person elder in age is obviously to be given appointment ahead of the person lower in age. The respondents seems to have adopted this course which cannot be found fault with. In such circumstances, the course which has been adopted by the Respondents also finds strength from the judgment rendered by the Hon"ble. Apex Court in the case of D.P. Das Vs. Union of India (UOI) and Others,

6. Accordingly, no ground for interference is made out by the petitioner in the writ petition. The writ petition is dismissed and I.A. No. 800 of 2012 is also stands disposed of.