

(2004) 04 JH CK 0084

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2103 of 2002

Sona Ram Soren and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 413

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Rajendra Krishna, for the Appellant; A.K. Mehta, J.C. to S.C II, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The petitioners have prayed for direction to the respondents to issue the appointment letters to the petitioners in view of the recommendation made by the Bihar Public Service Commission prior to coming into force of Bihar Re-organization Act, 2000, which according to the petitioners could not be issued in their favour because of mistake on the part of the respondents themselves.

2. The facts, which are not in dispute, are that on the basis of the advertisement published by the Bihar Public Service Commission for appearing in Second Primary Teacher Examination, the petitioners appeared in the Preliminary Test examination and successfully passed the same. Therefore, the petitioners also appeared and passed the main examination conducted by the Bihar Public Service Commission on 18.7.1999. The result of the said main examination was published on 20.11.1999 and a merit list of 311 candidates were prepare in which name of the petitioners appeared at Serial No. 235 and 276 respectively. Thereafter the said list was forwarded by the Bihar Public Service Commission to the concerned authorities for issuing of appointment letters on the basis of the merit list.

3. The grievance of the petitioners is that the letters of the appointment in their favour could not be issued by the District Superintendent of Education, Jamshedpur on account of fact that their original application forms were not forwarded with recommendation.

4. It is stated that the District Superintendent of Education, Jamshedpur by his letter dated 22.3.2000 addressed to the Bihar Public Service Commission, requested that the application forms of the petitioners be sent immediately so that the appointment letter can be issued in favour of the petitioners and the Deputy Secretary of Bihar Public Service Commission by his letter dated 27.12.2000 sent duplicate application forms of the petitioners to the Deputy Commissioner, East Singhbhum Jamshedpur, as it appears from the Annexure-5 to the present writ petition. It further appears that District Superintendent of Education, East Singhbhum, Jamshedpur vide letter dated 19.4.2001 again wrote to the Bihar Public Service Commission that instead of sending the original application form, the duplicate application forms of the petitioners have been sent by the Bihar Public Service Commission and therefore, necessary direction be issued in this regard. The Bihar Public Service Commission by its letter dated 23.5.2001 replied to the District Superintendent of Education, East Singhbhum Jamshedpur (Annexure-7) that the duplicate application forms of the petitioners had already been sent and therefore, necessary action in this regard may be taken.

5. However, the District Superintendent of Education, Singhbhum East, Jamshedpur by his letter dated 24.7.2001, sought direction from the Director, Primary Education, Government of Jharkhand stating therein that all other candidates have already appointed on the basis of the recommendation made by the Bihar Public Service Commission except the petitioners because the original application forms were not made available and therefore, no appointment letter could be issued to them.

6. The petitioners states that they were not issued the appointment letters by the District Superintendent of Education inspite of representation tiled by them.

7. On the other hand, the Director, Primary Education, respondent No. 3 has filed counter affidavit stating therein that duplicate applications of the petitioners were made available in the office of the Deputy Commissioner, East Singhbhum by the Bihar Public Service Commission vide its letter dated 27.12.2000 i.e. after the creation of the State of Jharkhand. It has further been stated in the said counter affidavit that the similar matter decided by this Court on 7.12.2001 passed in W.P. (S) No. 2368 of 2001 which has been annexed as Annexure-A to the counter affidavit. On the basis of the said order passed by this Court it is stated by the respondents that the present case is fully covered by the said judgment and therefore, no relief can be granted to the petitioners and as such writ petition is liable to be dismissed.

8. The learned counsel for the petitioners has submitted that the Judgment/order

passed by this Court in W.P. (S) No. 2368 of 2001 is not applicable in the case of petitioners in view of the decision in the case of Ramesh Kumar v. State of Bihar and Ors., reported in 2002 (3) JCR 173 (Jhr) because of the fact that the recommendations were made by the Bihar Public Service Commission prior to 15.11.2000 i.e. prior to coming into force of the Bihar Re-organization Act. The said recommendations were sent by the Bihar Public Service Commission and was received by the Government of Jharkhand prior to 15.11.2000 and, therefore, because of fault/mistake committed by the respondents themselves the petitioners cannot be denied the appointment. It is further stated that since on the basis of the recommendation made by the Bihar Public Service Commission prior to 15.11.2000 the other candidates whose names were in the merit list prepared by the Bihar Public Service Commission have already been appointed and therefore, it is clear that the recommendation made by the Bihar Public Service Commission has been acted upon and as such now the respondent cannot refuse/deny the appointment to the petitioners as the recommendation made by the Bihar Public Service Commission which has already been acted upon and received by the State of Jharkhand prior to coming into force of the Bihar Re-organization Act, 2000.

9. From perusal of the order of this Court in W.P.(S) No. 2368 of 2001 (Annexure-A to the counter affidavit) it appears that in the said case though the recommendation was made prior to 15.11.2000, but was not even acted upon and no appointment was made of any candidate on the basis of the said recommendation and in the meantime the State of Jharkhand was bifurcated, after coming into force of Bihar Re-organization Act, 2000 i.e. on 15.11.2000. Whereas in the present case there is no dispute that the recommendation was made by the Bihar Public Service Commission and received by the State of Jharkhand prior to coming into force of the Bihar Re-organization Act i.e. 15.11.2000 and on the basis of the said recommendation and from the merit list so prepare appointments have already been made of all the candidates from the said merit list sent by the Bihar Public Service Commission, except of the petitioners. Even the persons below in the said merit list to the petitioner were given appointment.

10. To decide the controversy in this writ petition it is relevant to notice the decision of the Division Bench of his Court in the case of Siddhu Kanhu University etc. Vs. Dr. Arjun Prasad Sinha and Others, It appears from the said judgment that the matter was being considered by the Division Bench as to whether the recommendation made by the Bihar State University Service Commission and Bihar College Service Commission after 15.11.2000 i.e. coming into force of the Bihar Re-organization Act, 2000, whether the State of Jharkhand is bound to act pursuant to the said recommendation made by the said commission.

11. While dealing with the subject the Division Bench also considered notification issued by the Government of Jharkhand on 10.9.2001 wherein it was specifically mentioned that with regard to the appointment, on the basis of the

recommendation of the Bihar State University Service Commission and Bihar College Service Commission, the recommendation made by the Commission and received by the State of Jharkhand after 14.11.2000 cannot be given effect to.

12. Accordingly the Division Bench held that the recommendation made by the Bihar State University Service Commission and received by the State of Jharkhand after 14.11.2000, the State of Jharkhand was not bound to act on the said recommendation and further that in view of the notification of the Government of Jharkhand dated 10.9.2001 because those recommendations were made and received after 14.11.2000 by the State of Jharkhand.

13. Therefore, so far as, the aforesaid cases are concerned it appears that the recommendations were made by the Bihar State University Commission and Bihar College Service Commission after 14.11.2000 or received by the State of Jharkhand after 14.11.2000 and therefore it was held that the same cannot be given effect to. Therefore, the facts and points for consideration before the Division Bench in the case of Siddhu Kanhu University v. Dr. Arjun Prasad Sinha (supra) was different. In the present case the recommendation was admittedly made prior to 14.11.2000 and was received also prior to the date by the State of Jharkhand. Further that from the merit list sent by the Bihar Public Service Commission with the recommendation, all the candidates have already been appointed, except the petitioner, therefore, in my view the respondent-State of Jharkhand cannot refuse the said benefit to the petitioners and the State of Jharkhand has to give effect to, the recommendation made by the Bihar Public Service Commission. Even the notification dated 10.9.2001 issued by the Government of Jharkhand which has been noticed by the Division Bench in the case of Siddhu Kanhu University (supra), does not create any bar in that regard.

14. The facts of the case decided by this Court in the case of Smt. Chhaya Singh and Kajal Kumari and Ors. In W.P.(S) No. 2368 of 2001 contained in Annexure-A to the counter affidavit are quite different and therefore, it is not applicable in the facts and circumstances of the present case.

15. In the case of Ramesh Kumar v. State of Bihar and Ors. reported in 2002 (3) JCR 173 (Jhr) this Court in a similar matter as that of the present case in which the recommendation of the Bihar Public Service Commission was of the year 1999 and no appointment letter was issued to the petitioner and the same objection was taken In that case also that after coming into force of Bihar Re-organization Act, 2000 the recommendation made by the Bihar Public Service Commission cannot be given effect to, this Court directed respondents-State to issue the appointment letter in favour of the petitioner. Therefore, my view is also supported by the order of this Court In the case of Ramesh Kumar (supra).

16. In view of my discussions and findings above, I hold that respondents are bound to issue letters of appointment in favour of the petitioners pursuant to the recommendation made by the Bihar Public Service Commission i.e. Annexure-3.

17. Accordingly this writ petition is allowed and the respondents are directed to

issue the letter of appointment in favour of the petitioners within period of one month from the date of the receipt/production of a copy of this order.