
(2011) 07 JH CK 0264

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 2102, 2997, 3052, 2691, 3170, 6325, 6338, 6339, 6344, 6348, 6349, 6352, 6362, 6384, 2346, 2362, 2423, 2464, 2599, 2613, 2639, 2718, 2772, 2724, 2751, 2752, 2754, 2795, 4035, 2591, 3037, 3038, 3039, 3040, 3041, 3089, 2347, 3872, 20

Sur Singh Hasda etc.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Constitution of India, 1950 — Article 41, 51(A)

Citation : (2012) 1 JCR 187

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Judgement

1. Heard counsel for the respective parties.
2. The petitioner is aggrieved on account of failure on the part of the respondents to give appointment as Assistant Teacher In "Ho" language for which he/ she was duly selected and the Jharkhand Public Service Commission recommended his/her case along with a list of 187 candidates after due selection for the language "Ho" and name of the petitioner figures in the list.
3. Prayer is to issue writ, order or direction for quashing the order dated 6th October, 2009 passed by respondent No. 3 whereby the Director, Primary Education, Human Resources Development Department. Govt. of Jharkhand, Ranchi, declined to appoint the petitioner even after due selection for the reasons that he/she did not possess the training in "Ho" subject by a duly recognized Institution, namely, National Council for Teachers Education (N.C.T.E.).
4. Learned counsel submits that when the advertisement was issued in the year 2002 the requirement of trained teacher in the particular subject was not an essential qualification and consequently, duly filled forms were accepted and he/ she was permitted to appear in the selection process. It is only at subsequent date, certain Government orders were passed by the State of Jharkhand under

the provisions of Primary Education Appointment Rules, 2002. The Government orders making the training in the particular subject from N.C.T.E. was Implemented vide G.O. No. 2912 dated 13.11.2003, G.O. No. 404 dated 16.02.2004 and G.O. No. 746 dated 27.03.2004. It is subsequent to the issuance of these Government Orders, the respondents did not proceed to issue his/her appointment letter despite selection. The petitioner was neither served any notice nor any publication by way of an explanation was issued. Petitioner was kept completely in dark.

5. Counsel appearing on behalf of the respondents vehemently supported the impugned order and submits that since the petitioner lacks basic requirement i.e. training from a Government Institution in "Ho" language, therefore, he/she is not entitled for appointment In case appointment letter is issued that will be against the own settled rule of the Government.

6. After hearing the respective counsels and also going through the records, I am in agreement with the first submission of the learned counsel appearing on behalf of the petitioner that at the time when advertisement was made and the petitioner was permitted to appear in selection process, this requirement was not in existence and it has been made effective only at a subsequent date by means of Government orders, which cannot be given retrospective effect. The State has not come forward with any such order that it has been applied with retrospective effect. There can be no presumption that it was to be implemented retrospectively. It is also brought to my notice that the language "Ho" is one of the subjects prescribed in Std. I to IV in the district of West Singhbhum, the Government Schools are offering this subject. The State of Jharkhand is also publishing text books in the said language, but there is no teacher to teach the subject "Ho" language in the institution. The stand taken by the State that training in "Ho" language is essential from a Government Institution, If accepted then, we have to examine whether there is any such Government Institution imparting training in the subject "Ho" within the country or not. Specific question was put to the State Counsel and he was not able to point out even a single such Institution. I can also not overlook that as per directive principles enshrined in Article 41 to be read with Fundamental Duties, as stated in Article 51(A) of the Constitution of India, it is an obligation upon the State Government to retain its rich, heritage and culture and, therefore, "Ho" language being a rich, heritage and culture of this State, ought to be taught properly to the students of atleast Primary level. Though, the State is offering one of the subjects as a "Ho" language, there is not a single teacher for this language in the State of Jharkhand.

7. In the facts and circumstances, I am of the considered view that the claim of the petitioner stands fully justified. A direction is given to the respondents that such selected candidates in the subject "Ho", who have qualified and were recommended by the Jharkhand Public Service Commission and the list was published, which is also a part of the records, are entitled for their appointment.

Admittedly such institution functioning in the district of West Singhbhum was devoid any such teacher and, therefore, teaching is very essential in all those Institutions. The Government shall take steps within a period of four months and issue appointment letters to such candidates, who were duly selected and recommended by the Jharkhand Public Service Commission and to ensure that within time frame fixed by this Court is adhered to and the appointment letters are issued to them. The respondents shall not insist for a trained certificate in "Ho" language from N.C.T.E.

8. With the aforesaid observations and directions, all these writ petitions stand disposed of.