
(2012) 08 JH CK 0086

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4871 of 2007

Surendra Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : (2012) 3 JCR 626 : (2013) LabIC 176

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Krishna Murari, for the Appellant; Vijayant Verma, JC to GP-II, for the State, for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.—Petitioner was working as daily wager. He was terminated from service, vide office order dated 02.11.1999. Petitioner has preferred writ petition being W.P.(S) No. 5889 of 2001 challenging the order of termination as well as seeking regularisation of service. this Court, vide order dated 14.11.2003, had found the termination order illegal and had directed the authorities to consider the case of the petitioner for his regularisation and to pass appropriate order in accordance with law within a period of three months. Vide order No. 29 dated 17.03.2004 (Annexure-4 to the writ petition) passed by Divisional Forest Officer, Saranda State Trading Division, Chaibasa, regularisation sought by the petitioner was declined and it was observed that whenever vacancies against admissible sanctioned post of Class-IV arise, the same shall be advertised and the case of the petitioner along with other similarly placed persons shall be considered afresh. Thereafter, vide Advertisement No. 01/07-08, posts of Class-IV employees were advertised. Petitioner had applied and was called for interview, vide letter dated 16.04.2007. Petitioner was not given appointment, therefore, petitioner has approached this Court by way of present petition.

2. I have heard Learned Counsel for the parties and have perused the record.

3. Mr. Krishna Murari, Learned Counsel for the petitioner has vehemently argued that petitioner was from the B.C. category, therefore, his candidature was considered under the General category, since there was only two categories. Scheduled Tribes and General. He has further argued that preference should have been given to the petitioner while considering the candidature of the petitioner, in view of the order passed by Divisional Forest Officer, Saranda State Trading Division, Chaibasa, dated 17.03.2004 (Annexure-4 to the writ petition). He has further argued that Shri Bharat Nayak and Shri Anand Nayak at serial Nos. 4 and 7 respectively of the select list were not in the merit list, therefore, their appointment is illegal and in their place, petitioner ought to have been given appointment. Mr. Krishna Murari, Learned Counsel, has contended that petitioner was not given joining despite order dated 14.11.2003 passed by this Court for no fault of the petitioner. Hence, in view of order dated 14.11.2003 passed by this Court in W.P.(S) No. 5889 of 2001, petitioner shall be deemed in service, therefore, is entitled for preference in the light of order dated 17.03.2004 passed by D.F.O. as well as order passed by this Court in L.P.A. Nos. 649 of 2002 and 658 of 2002.

4. Mr. Vijayant Verma, J.C. to G.P. II while referring to paragraph-26 of the counter-affidavit has vehemently argued that, this Court in L.P.A. No. 649 of 2002 and 658 of 2002, vide order dated 24.01.2005, has directed to give preference to those who were working in the department as daily wage workmen while making the regular appointment. He further contends that all the 12 candidates appointed under the General category are those who were working in the department at the relevant time as daily wage workmen by giving preferences and relaxation. He has further submitted that since petitioner was admittedly, not working in the department at the time of Issuance of the advertisement and at the time of interview, therefore, no preference was given to the petitioner.

5. I have called for the record of (sic) Nos. 649/2002 and 658/2002. I have perused the judgment of the Division Bench of this Court dated 24.01.2005 passed in L.P.A. Nos. 649/2002 and 658/2002. The Division Bench of this Court has observed in para-7 as under:-

In the circumstances, we direct, the appellant State of Jharkhand and its Officers including the concerned Divisional Forest Offices to give preference to daily wages like the writ petitioners/respondents over outsiders, as and when Class-IV posts including the post of Forest Guards are filled up in near future and to give them age relaxation, if they are found over-age. However, this direction will be limited to only those daily wage workmen/employees who are still working under the State Government and not to those who have already been retrenched/not in service.

If so necessary, the Divisional Forest Officers in their advertisement will mention that the daily wage employees will be given preference over outsiders, if they are equally situated and age relaxation may be given in their case, if found over-age.

6. In the present case, petitioner has failed to demonstrate and point out that any of the selected candidates was not working in the department at the relevant time as daily wage workman, hence, preference was wrongly given to him.

7. In view of the specific stand taken by the respondents that all the persons appointed under the General category were those who were working in the department at the relevant time as daily wagers, no fault can be attributed to the selection.

8. Argument of Mr. Krishna Murari, Learned Counsel for the petitioner that petitioner shall be deemed in services in view of order dated 14.11.2003 passed by this Court and is entitled for the preference, cannot be accepted for the simple reason that L.P.A. Bench in L.P.A. Nos. 649/2002 and 658/2002 has clarified that direction will be limited to only those daily wage workmen, who are still working. Admittedly, petitioner was not working on the date of advertisement and interview, therefore, he was not given preference. In the firm opinion of this Court, petitioner was at liberty to take out contempt proceedings against the guilty officers for not giving joining, despite order dated 14.11.2003. Moreover, petitioner has not challenged the order dated 17.03.2004, whereby Divisional Forest Officer has declined regularisation. In view of the above, the writ petition is liable to be dismissed. Hence, it is dismissed. No cost.