
(2018) 04 JH CK 0104

In the Jharkhand High Court

Case No : W.P. (S) No. 5985, 5232, 5249, 5250, 5751 of 2007, 2314 of 2008, 5639 , 6827 of 2011

SURENDRA PRASAD VERMA AND ORS.

APPELLANT

Vs

STATE OF JHARKHAND AND ORS.

RESPONDENT

Date of Decision : 17-04-2018

Acts Referred:

Constitution of India, — Article 14, 16, 226

Citation : (2018) 04 JH CK 0104

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Rahul Kumar, Saurabh Shekhar, Sarvendra Kumar, Kanchan Kumari, C. Prabha

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J

1. Since in the aforesaid writ applications, the relief sought for are identical/ similar, the batch of writ applications have been heard analogously and are

being disposed of by a common order with consent of the learned counsel for the respective parties.Â

2. In the aforesaid writ applications, the petitioners have inter alia sought for quashing of appointment of those candidates who were appointed having

lesser marks than the present petitioner including the respondent no.8 and further prayed for direction, commanding upon the respondents to extend

similar treatment to the petitioners and consider their candidature for appointment on the post of Technical Assistants by way of giving them

preference and weightage.

3. During course of hearing learned counsel for the petitioners have sought for

direction for appointment after granting 90 additional marks as weightage in the light of direction contained in judgment dated 28.09.2015 passed by this Honâ??ble Court in L.P.A. No.426 of 2012 and the order passed by the Honâ??ble Apex Court in Civil Appeal No.3111 of 2016 (State of Jharkhand and Ors. Vs. Md. Irfan Gani and Ors.) within a stipulated period.

4. The facts, in brief, are that the petitioners were appointed against the sanctioned and vacant posts of Technical Assistants vide office order issued by the Regional Director, Animal Husbandry, South Chotanagpur Range between 1988 to 1992. In pursuance to their appointment, the petitioners have continued working on the said post without any break and have been posted at different places. After rendering their services to the utmost satisfaction of the respondent authorities without any hassles, to the utter surprise and consternation, vide office order dated 23.10.1998 issued by the Deputy Secretary, Department of Animal Husbandry, Govt. of Bihar, direction were issued to terminate the services of all Technical Assistants with a show cause notice, on the ground that the appointment of many persons as Technical Assistants were alleged to have been made without any authority. Aggrieved by the said order of cancellation of appointments dated 23.10.1998, the petitioner preferred writ application before Honâ??ble Patna High Court vide C.W.J.C No.1799 of 1999 and analogous cases. The Honâ??ble Patna High Court in C.W.J.C. No.3503 of 1998(R) and batch of cases passed the detailed order dismissing the writ petition. The Honâ??ble Court in para 29 of the said judgment, passed the following order/observation.

Â??However, taking into consideration the fact that all the petitioner are working for about 10 years or above, the State Governments are directed to give certain weightage to these petitioner and as and when they fill up the posts of Technical Assistants on regular basis, by giving appropriate age relaxation, if so required, and weightage over the outsiders.Â??

5. The said set of identical persons moved in appeal before the Division Bench of the Patna High Court and thereafter before the Honâ??ble

Supreme Court. The Honâ??ble Apex Court directed the respondents to give age relaxation/preference to the petitioners over outsiders. Thereafter,

another batch of cases bearing C.W.J.C. No.3671 of 2000 and Ors. were disposed

of by the Honâ??ble Patna High Court on 31.03.2003. In pursuance to direction issued by the Honâ??ble Apex Court as well as Honâ??ble Patna High Court in different cases, the respondent issued advertisement for filling up the post of Technical Assistants and the petitioners made applications for appointment on the post of Technical Assistants against the advertisement issued by the respondents. The application and candidature of the petitioners were accepted. They appeared in the written test and thereafter a merit list was prepared by the respondent. After preparation of final merit list, the respondents offered appointment letter to many candidates including one Birendra Kumar, who was placed at Serial No.191 of the General Category having secured 76.250 marks, whereas petitioner in W.P(S) no.5985 of 2007 has secured 80.625 marks and has been ranked as 174. Petitioner in W.P.(S) no.5249 of 2007 has secured 90.625 and his rank is 141 andÂ petitioners in W.P.(S) no.5232 of 2007 have been placed at serial no.155, 183, 104, 150 having secured 87.500, 78.750, 98.750, 88.750 marks respectively. Petitioner in W.P.(S) no.5751 of 2007 have been placed at Serial no.101 and 88 have secured 100 and 104 marks and the petitioner in W.P.(S)5250 of 2007 having rank 168 secured 81.250 marks. It has been submitted in the writ applications that the petitioners having secured higher marks, have not been offered appointment on the post of Technical Assistants, whereas persons namely Shailendra Kumar (79.37 marks), Manoj Kumar Singh (79.37 marks), Rajan Prasad Srivastava (77.5 marks) and respondent no.8-Birendra Kumar (76.25 marks) and several others having lesser marks have been declared to be selected for appointment and have been actually appointed by the respondents. After the selection process in 2005 has been over, this Honâ??ble Court has disposed of one another similar batch of matters involved in Â C.W.J.CÂ No.11456/1998(P),Â C.W.J.CÂ No.879/1999(P)Â &Â C.W.J.C. No.3639/2000(R) wherein again this Honâ??ble Court dismissed the writ petition with observation vide order dated 26.10.2005. Against the said order, the matter has gone to the Honâ??ble Apex Court in Civil Appeal No.2018 of 2006 and 2034 of 2006 wherein the Honâ??ble Apex Court has again given protections to the persons by directing the respondents to fill up the available vacancies by giving preference of length of service to the persons. It has further been submitted that as evident from panel of

candidates/sheets mentioning the individual marks obtained by different candidates that 90 grace marks has been given to different candidates, who got the observations of the Honâ??ble Apex Court, but the petitioners and similar placed employees have only been given age relaxation, but no weightage of experience/past service have been given to the petitioners. By giving grace marks of 90 to respondent no.8-Birendra Kumar and Ors., the petitioner have been subjected to discrimination, which is violative of Article 14 and 16 of the Constitution of India. Being aggrieved by the discriminatory treatment meted out to the petitioners, the petitioners have been constrained to approach this Court under Article 226 of the Constitution of India for redressal of their grievance.

6. Learned counsel for the petitioners have strenuously urged that if the actual marks would have been the criteria for consideration, the petitioners would have been appointed. However, by virtue of 90 extra marks, the appellants before the Honâ??ble Apex Court were shown above in the merit list and thereafter they got appointment. It is the case of the petitioner that they have been discriminated while persons like Ranjan Prasad, Birendra Kumar, Bijay Kumar Srivastava and other candidates, who got lesser marks in actual than the present petitioners, in view of 90 grace marks have been appointed. Some of the aggrieved persons move this Honâ??ble Court in W.P.(S) No.252 of 2012 for quashing the purported reasoned orderÂ dated 14.11.2011 wherebyÂ their representations pursuant to order dated 23.08.2011 passed in W.P.(S) No.5528 of 2007 was rejected and for a direction upon the respondents to appoint them on the post of Technical Assistants, on the ground that candidates securing lesser marks than the marks obtained by them have been appointed on the said posts by awarding 90 extra marks by way of weightage without any rule or regulation. By an order dated 19.09.2012, this Honâ??ble Court dismissed the writ petition being W.P (S) No.252 of 2012. Aggrieved by the said order of dismissal of W.P. (S) No.252 of 2012, they preferred L.P.A No.426 of 2012. By judgment dated 28.09.2015, this Honâ??ble Court has been pleased to allow L.P.A. No.426 of 2012 by setting aside the judgment/ order dated 19.09.2012 passed in W.P.(S) No.252 of 2012 directing the concerned respondents to consider the case of those appellants in the light of aforesaid judgment. Specific contention of the petitioners are that their case also stand on similar

footing of those who are appellants in L.P.A. No.426 of 2012 but they have not been extended with the benefit of weightage of 90 marks. The order

dated 28.09.2015 passed in L.P.A. No.426 of 2012 were challenged before the Honâ??ble Apex court in Civil Appeal No.3111 of 2016 and the

Honâ??ble Apex Court vide order dated 14.12.2017 declined to interfere with the order passed in L.P.A. No.426 of 2012. The Honâ??ble Apex

Court has been further pleased to dispose of the said appeal with the observation that â??State may now consider the matter in the light of the

impugned judgment and take a decision by a speaking order within one month from today. If the respondents are aggrieved of the order which the

State may pass, the respondents are liberty to take remedy against the same in accordance with law. The appeal is accordingly disposed of.â?Â In

view of the changed circumstances and the order passed in L.P.A. No.426 of 2012 being confirmed by the Honâ??ble Apex Court in Civil Appeal

No.3111 of 2016 and the order dated 04.01.2018 passed in W.P.(S) No.5147 of 2015, learned counsels for the petitioners have sought for direction for

disposal of the instant writ applications in the light of the aforesaid order.

7. Learned counsels for the petitioners have submitted with vehemence that the case of the petitioners stand in the same footing like that of

petitioners/appellants in L.P.A. No.426 of 2012. Since the order passed in L.P.A. No.426 of 2012 has been confirmed by the Honâ??ble Apex Court

in Civil Appeal No.3111 of 2016 dated 14.12.2017 and the petitioners stand on same footing the writ applications be disposed of by extending the same

benefits to the petitioners.

8. Per contra, counter affidavit has been filed by the respondents denying the claim of the petitioners. It has been inter alia submitted in the counter

affidavit that the decision was taken to give 90 marks weightage to the appellants before the Honâ??ble Apex Court by the then Departmental

Selection Committee in its meeting dated 11.01.2005. Since the petitioners were not appellants in the Honâ??ble Apex Court, hence they were not

given weightage. 9. Learned counsels for the respondents vehemently opposed the contention of the learned counsels of the petitioners and argues

that though the Honâ??ble Apex Court has vide order dated 14.12.2017 in Civil Appeal No.3111 of 2016 declined to interfere in the order passed in

L.P.A. No.426 of 2012 dated 28.09.2015, the petitioners are within their rights to

move before the State and if they file fresh representation it will be considered in view of the order passed in L.P.A. No.426 of 2012 and also in view of the order passed in Civil Appeal No.3111 of 2016 dated 14.12.2017.

10. Having bestowed by anxious consideration to the rivalized submissions and on perusal of the record, I am of the considered view that the issue with regard to giving 90 additional marks of weightage has attained its finality and has been set at rest by the Honâ??ble Apex Court vide order dated 14.12.2017 in Civil Appeal No.3111 of 2016.

11. In that view of the matter, the petitioners are at liberty to make fresh representation along with copy of the order before the respondents within a period of 4 weeks from the date of receipt/communication of the order and on receipt of the said representation, the respondents shall do well to consider the case of the petitioners, in the light of the aforesaid orders and shall pass a reasoned order within a period of 4 weeks thereafter and the decision taken thereof be communicated to the petitioners.

12. It is needless to mention that if the grievances of the petitioners appear to be genuine and the case of the petitioners stands on the same footing like that of the appellant in L.P.A. No.426 of 2012, necessary order be passed for their appointment within a period of 4 weeks thereafter.

13. With the aforesaid direction and observation, the writ applications stand disposed of.