

(2011) 10 JH CK 0059

In the Jharkhand High Court

Case No : L.P.A. No's. 236 and 237 of 2011

The State of Jharkhand and Ors

APPELLANT

Vs

Chandra Shekhar Choubey

RESPONDENT

Date of Decision : 11-10-2011

Acts Referred:

Citation : (2011) 10 JH CK 0059

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The post of constable was advertised by issuing Advertisement No. 3/2007 and first select list was published in the month of February, 2009 and second select list in the month of September, 2009. The name of the respondent-writ petitioner was not even in the second select list. The petitioner then challenged the action of the respondents of not giving appointment with the plea that his name in the second select list; was very much there though below the number of the last candidate who had been given appointment. Before the learned Single Judge, it appears that the facts were not placed by the State and it was only contended that there is no vacancy and therefore, no appointment can be offered to the writ petitioner. Before the Single Bench, a supplementary affidavit was filed on 6.04.2010 and along with the said supplementary affidavit, a document was produced by the writ petitioner issued from the office of the Senior Superintendent of Police, Ranchi written to the Director General of Police, Hazaribagh showing 55 vacancies for unreserved category. The petitioner was a candidate in the unreserved category i.e., general category. In view of the supplementary affidavit and the document produced along with the supplementary affidavit, learned Single Judge held that since there exist vacancy and the petitioner is equal in all respect with the last selected candidate, he be given appointment.

2. The State, after committing mistake of not placing relevant materials before

the learned Single Judge, faced contempt proceedings and according to the learned counsel for the respondent-writ petitioner even in contempt proceeding, false plea was taken by the State that the appointing authority was not available in India and, therefore they cannot offer appointment to the writ petitioner. Thereafter, a Civil Review No. 35 of 2011 was submitted before the learned Single Judge, wherein it has been stated that the last appointee was from the select list standing at serial no. 502 whereas the writ petitioner was at serial no. 607, which is 105 number below the last selected candidate. All the candidates from serial nos. 503 to 607 secured the same number for the purpose of merit and candidate whose name was at serial no. 502 since was the older in age, he was given appointment. The Review Petition filed by the State was dismissed by the order dated 28.06.2011 by saying only that there is no force in the Review Petition.

3. In view of the above, the State has preferred these two appeals - one to challenge the order passed in W.P. (S) No. 192 of 2010 dated 13.12.2010 and another the order passed in the Review Petition No. 35 of 2011 dated 28.6.2011.

4. Learned counsel for the State candidly admitted that serious mistake was committed by the State in conducting the case before the learned Single Judge where the relevant material facts were not placed, that caused the confusion resulting into passing of the order by the Single Bench in the writ petition under the assumption that the writ petitioner secured the same merit number as was secured by last selected candidate having his name at serial no. 502 and if there is vacancy, then the writ petitioner could have been given appointment. The State failed to draw the attention of the Single Bench that as per the Rules, which are not in dispute, if any appointment is not given on the vacant post within a period of six months from declaration of the select list, then that post goes and requires to be advertised in the next selection process. In this case also, after expiry of six months the vacancies were included in the subsequent issued Advertisement No. 1 of 2010. It is submitted that after expiry of six months no appointment could have been given and in fact, no appointment has been given. It is also submitted that the petitioner also did not disclose that from the select list the last candidate selected was at serial no. 502 and the petitioner's number was at serial no. 607 and, therefore, unless there would have been at least 105 vacancies, the petitioner could not have got appointment. It is also submitted that, if the writ petitioner is given appointment ignoring the claim of other candidate from Serial No. 503 to 606 from select list, then they may also claim their right to be appointed on the simple plea that a person having below in select list to them was appointed and, therefore, they are entitled to be appointed against the said 55 vacancies.

5. Learned counsel for the respondent-writ petitioner vehemently submitted that there is no illegality in the order passed by the learned Single Judge as the said order was passed on the basis of the materials which were available before the learned Single Judge and even if the contention of the learned counsel is

accepted as has been subsequently submitted in the Review Application, then also none of other candidates from serial no. 503 to 606 has approached this Court seeking appointment. In view of the above reasons, if the others failed to agitate their right, the petitioner cannot be made to suffer and they have in fact abandoned their claim and, therefore, if the petitioner is given appointment by the order of the learned Single Judge, that will be legal and just.

6. We have considered the submissions of learned counsel for the parties and perused the facts of the case. This fact is not in dispute that the writ petitioner as well as the selected candidate whose number is at Serial No. 503 were equal in all respect except that the person who has been given appointment was older in age and the petitioner was younger and that was the right procedure by which the appointment could have been given in a situation of tie and older persons is to be offered appointment. This position is not in dispute and even has not been disputed by the writ petitioner.

7. The supplementary affidavit filed by the writ petitioner was considered by the learned Single Judge and it was found from the supplementary affidavit and the document, Annexure 1, that the department itself has disclosed that there were 55 vacancies in general category. This fact may be correct but the Rules were not brought; to knowledge of the learned Single Judge which provides that in case, the vacancies are not filled up within six months, then those vacancies are required to be added in the subsequent recruitment process. Admittedly, after six months these vacancies already included in next selection process. Furthermore, another fact which the State failed to place before the learned Single Judge was that even if all the 55 vacancies are filled up, the writ petitioner may not have got appointment because his name was falling even much beyond the 55 number of vacancies and appointment could have been given to the candidates up-to serial No. 558 and petitioner's name was at serial no. 607.

8. In view of the fact that a mistake of fact resulted into rendering of the judgment, then that could have been corrected by entertaining the Review Petition by the learned Single Judge and when the foundational fact resulting and affecting the result of the case is found to be wrong, then the impugned judgment cannot be sustained.

9. In view of the above reasons, both the L.P.As are allowed and the order dated 28.06.2011 dismissing the Review Petition and the order dated 13.12.2010 allowing the writ petition No. W.P.(S) No. 192 of 2010, are set aside and the writ petition of the writ petitioner is dismissed. No order as to costs.