

(2015) 09 JH CK 0132

In the Jharkhand High Court

Case No : L.P.A. Nos. 340 and 345 of 2015 and I.A. Nos. 4228, 4229, 5103 and 5104/15

Uday Prasad and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Citation : (2015) 4 JLJR 261

Hon'ble Judges : Virender Singh, C.J;P.P. Bhatt, J

Bench : Division Bench

Advocate : Anil Kumar Sinha, Senior Advocate and Binod Singh, for the Appellant; Rajesh Kumar, G.P. V., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J—Challenge herein is the judgment dt. 19.05.2015 passed in W.P.S No. 1225 of 2015 whereby the writ petitions filed by the appellants for direction upon the respondents to appoint them to the post of Assistant Trained Teachers in the New Upgraded Secondary School of the State of Jharkhand in view of the selection list published on 24.10.2014, has been dismissed.

2. Both the appeals are arising out of a common judgment and involve same issues, hence they are being decided by this common judgment.

3. Facts giving rise to filing of these appeals are that pursuant to an Advertisement No. 93/2011 published on 12.10.2011 for filling up the post of teachers in New Upgraded Secondary Schools in the State of Jharkhand the appellants herein who were the students of B. Ed Course in the recognized Institution and University in Session 2011-12/Session 2010-12 applied and appeared in the examination for appointment on the post of teachers. Thereafter, the Secretary, Jharkhand Academic Council (in short J.A.C) issued Advertisement No. 54 of 2014 on 07.09.2014 directing therein that the candidates who took part in the examination for appointment on the post of B.Ed. Trained Teachers

are required to submit their certificate/result with speed post/registered post up-to 22.09.2014 at 5.00 pm at Jharkhand Academic Council otherwise their candidature shall be cancelled. The appellants submitted their certificates and mark-sheets within the stipulated time and the final selection list of successful candidates was published on 24.10.2014 wherein the name of the appellants was also included. Further the Secretary, JAC issued Advertisement No. 75 of 2014 dt. 15.11.2014 directing all the candidates whose results were kept pending, to send their eligibility certificate relating to qualification. Again by Advertisement No. 78 of 2014 dt. 25.11.2014 the regional language candidates/scheduled tribe language candidates, who had not appeared for execution of examination result dt. 25.11.2014, were directed to appear with required documents at J.A.C, Ranchi on 27.11.2014. On 20.01.2015 the Secretary, J.A.C came with an Advertisement No. 04/2015 stating therein that some defects appeared in the appointment of Assistant Teachers in New Upgraded Secondary School in the State of Jharkhand and for removal of said defects the candidates whose roll numbers were given had been directed to appear on the prescribed dates with all documents relating to educational qualifications from 27.01.2015 to 30.01.2015 otherwise their candidature shall not be considered. The appellants appeared in the office of J.A.C and filled up the application form and thereafter, the Secretary, JAC published the revised selection list on 18.03.2015 but their names were deleted from the said list.

4. The appellants, thereafter, filed writ being W.P.S No. 1225 of 2015 which was heard with W.P.S No. 1770 of 2015 and dismissed on 19.05.2015 by holding that since the petitioners admittedly were not candidates who had completed B. Ed course by cut-off date 25.11.2011 as prescribed under the relevant clause 3(Ga) (ii) under Adv. No. 93/2011, the action of the JAC in not including their names in the results published on 18.03.2015 cannot be found fault with.

5. Heard the learned Senior Counsel M/s. Anil Kumar Sinha with assisting counsel Mr. Binod Singh, Adv. appearing for appellants, Mr. M. Sohail Anwar Senior Advocate and Rajesh Kumar, Adv. appearing for JAC and Mr. Ashish Kumar, Adv. J.C to Sr. S.C-I appearing on the behalf of State.

6. The learned Senior Counsel appearing for the appellants, Mr. Anil Kumar Sinha, assailed the impugned judgment on the ground that the learned Single Judge has failed to consider the fact that the appellants were the duly qualified candidates as per the advertisement No. 93/2011. It is further submitted the JAC by publishing subsequent selection list dt. 18.03.2015, has committed, irregularity and manipulation with oblique motive for personal gain. It is further submitted that the appellants are duly qualified candidates and some of them are more qualified. It is further submitted that the Secretary, JAC has erroneously eliminated and removed 170 candidates including the present appellants from the final selection list of candidates published on 24.10.2014 who are successful candidates in test examination conducted by the JAC, Ranchi and duly qualified.

7. In support of his submission Mr. Sinha relied upon a judgment of Hon''ble

Supreme Court, Naushad Anwar & Ors. Vs. State of Bihar & Ors., Civil Appeal No. 4270 of 2014, and stated that when selection process continued for more than four years on account of delay of the authorities and a candidate has become eligible in due course of time, could not be denied consideration in the recruitment process when vacancies remain unfilled.

8. Per contra, the learned counsel appearing for the respondent-JAC submitted that admittedly the appellants were the students of B.Ed. course in the session 2011-12 and session 2010-12. It is further submitted that in normal course Session 2011-12 was to start from July 2011 and complete in June 2012 and the Session 2010-12 was to complete normally in June, 2012 and as such it could not be possible for the appellants to complete the course till 25.11.2011 (the cut-off date for furnishing the application form). It is further submitted that in the selection list dt. 24.10.2014 the name of the appellants and many other candidates were included inadvertently and when the list was sent to the Secretary, Human Resources Development Department, Government of Jharkhand the same was not accepted. Further a letter bearing No. 2339 dt. 29.12.2014 was sent to JAC and directed for removal of the defects in the selection list. Consequently the JAC withdrew earlier recommendation and by Notification No. 04/2015 directed all the candidates to appear in the office of JAC with their certificates for verification. It is further submitted that after verification of the documents of the appellants, it revealed that they had not completed B.Ed. course prior to 25.11.2011 i.e. the cut-off date for furnishing the application form. It is further submitted that the JAC thereafter published a fresh merit list on 18.03.2015 after curing the mistakes appeared in the earlier merit list dt. 24.10.2014. It is further submitted that the respondent-JAC inquired from the different Universities conducting B.Ed course and came to know that in Kolhan University the session of 2011-12 was completed in September 2012, in Government Teacher Training College, Hazaribag the session was completed on 31.07.2012 and in Ranchi University the session was completed in May 2012.

9. From the above it appears that the respondent-JAC has denied the appointment of the appellants on the ground that they were not the appearing candidate as has been laid down in Clause 3(Ga)(ii) of the advertisement as a condition precedent for filing of the form.

10. Thus, before coming to the issue we are going through the Clause 3(Ga)(ii) of the Advertisement No. 93/2011:-

11. From bare reading of the aforesaid clause in the context of this case it is clear that a person who has completed his B.Ed course and is going to appear in the examination is eligible for filling of the form with a rider that he will have to submit his training certificate before the publication of the result on the date fixed by the Commission. In the case in hand the dispute is not with regard to submission of certificate before the publication of result but the dispute is as to whether the appellants, at the time of filing of the form, were the appearing candidates as had been enshrined as a condition precedent in the Advertisement

itself. No any cogent evidence has been produced in favour of the appellant to show that their course had been completed by 25.11.2011. The appellants of L.P.A No. 340 of 2015 are claiming that they had completed their B.Ed course till the cut-off date and in support of their contention, in the supplementary affidavit dt. 14.09.2015, they have filed certificates issued to them by their respective colleges. We have perused the said certificates and found that no were in the certificates it is mentioned that their courses were completed till 25.11.2011. Rather, we find force in the submission of the respondent-JAC that it was not possible for a person, who was ensuing B.Ed course in session 2011-2012 to complete their course till 25.11.2011 and as such the condition precedent for filing of the form is not fulfilled in the case of appellants and an such they were rightly deleted from the second final selection list. Only because the petitioners' applications had been entertained and their names have been included in the panel does not clothe them with any legal right in as much as they could have been considered for appointment alongwith all other eligible candidates who fulfilled the criteria laid down therefore. As evidently the appellants were not the appearing candidates on the last date of filling of the application, their applications could not have been entertained.

12. So far the allegation of fraud, irregularity and manipulation with oblique motive for personal gain by the respondent-JAC, the law in this regard is well settled that the burden of proving mala fide is very heavy on the person who alleges it and party making such allegations is under the legal obligation to place specific materials before the Court to substantiate the said allegations. In the case in hand, the appellants have failed to produce any cogent evidence to prove any fraud alleged to have committed by the respondent-JAC, hence the same cannot be accepted.

13. We do agree with the view of the learned Single Judge that if the interpretation suggested by the appellants will be accepted, it would lead to an inequitable result as those who did not apply on the basis of such lack of eligibility on the cut-off date, would be denied equal opportunity to participate.

14. In Naushad Anwar (Supra.), the Hon'ble Supreme Court had noticed some considerable confusion about the eligibility criteria laid down in the Rule and only thereafter applied the rule liberally so as to prevent injustice to the petitioners. However, in the present case the eligibility criteria were laid down in a very clear and explicit term and as such the judgment cited by the appellants will not be applicable to the facts and circumstances of the present case.

15. For the reason as aforesaid, we do not find any infirmity with the judgment of the learned Single Judge, thus it needs no interference. Ordered accordingly.

16. The net result is that both the appeals are dismissed without any order as to costs.