

(2018) 10 JH CK 0021
In the Jharkhand High Court
Case No : Writ Petition(S) No. 150 of 2012

Umar Farooque @APPELLANT@Hash Birsa Agriculture University

Date of Decision : 12-10-2018

Acts Referred:

Birsa Agriculture University Act, 2010 — Section 19

Citation : (2018) 10 JH CK 0021

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Saurav Arun, Laksham Kumar, A. Allam, Nehala Sharmin, Priya Shrestha, Mayank Sahay

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J.

1. In the captioned writ application, the petitioner has inter alia prayed for direction upon the respondents to consider the case of the petitioner and appoint him on the post of Pashu Sevak and further prayer has been made to quash order dated 04.08.2011, which has been passed in violation of Section 19 of the Birsa Agriculture University Act, 2010.

2. The facts, as delineated in the writ application in brief is that in pursuance to Advertisement No. 01/2008 published by Birsa Agriculture University for appointment on various posts, including the post of Pashu Sevak, the petitioner applied against the unreserved category for the post of Pashu Sevak and accordingly he appeared for interview on 11.03.2011. Thereafter, a panel of selected candidates in order of merit for appointment on the post of Pashu Sevak as per vacancy was prepared and through reliable sources, the petitioner came to know that the name of the petitioner finds place at serial no. 18, out of total 32 candidates. It has further been submitted that later the petitioner also came to know that persons whose names

appear at serial no. 1 and 14 did not join as Pashu Sevak; thereby before lapse of panel two persons at serial no. 17 and 18 ought to have been

considered for appointment, but even after representation dated 21.06.2011 submitted by the petitioner well within time with a request to appoint him

as Pashu Sevak on the ground that his name found place at serial no. 18 in the said select panel and he has been working as Seasonal Casual worker,

no decision was taken till date.

3. Heard Mr. Saurav Arun, learned counsel for the petitioner and Mr. A. Allam, learned senior counsel for the respondents-University.

4. Learned counsel for the petitioner submitted that before lapse of currency of panel i.e. before lapse of one year of issuance of select list, the

petitioner approached this Court for redressal of his grievance; hence the plea that since now more than one year has elapsed the panel became

divested has no leg to stand. In support of his argument, learned counsel for the petitioner referred to the decision rendered in the case of State of

U.P. Vs. Ram Swarup Saroj as reported in (2000) 3 SCC 699. Even otherwise also, the petitioner submitted representation staking his claim for

consideration of his appointment on the ground, as made in the writ application before lapse of one year which is ordinarily the validity of selection list;

hence right of consideration still survives in view of the decision rendered in the case of Bharat Sanchar Nigam Limited & Ors Vs. Abhishek Shukla

& Anr as reported in (2009) 5 SCC 368.

5. Learned counsel for the petitioner submitted that the respondents on the strength of order dated 04.08.2011 issued by Principal Secretary, His

Excellency Governor-cum-Chancellor, wherein it has been stated not to proceed ahead with any appointment related with BAU till further order, are

now disputing the legitimate claim of the petitioner but the order dated 04.08.2011 is violative of Section 19 of the Birsa Agriculture University Act,

2010 as no such power has been vested with the Governor-cum-Chancellor for cancellation, stoppage or not to proceed with further appointment, as

has been done in the case at hand; hence the order dated 04.08.2011 is liable to be quashed. Learned counsel for the petitioner further submitted that

the writ Court in W.P. (S) No. 3213 of 2014 and analogous cases (Annexure 6 to the writ application) and L.P.A. No. 147 of 2016 and analogous

cases (Annexure 6/1 to the writ application) was also aware of the letter dated

04.08.2011 as evident from the order itself. To clarify his argument, learned counsel for the petitioner submitted that as a matter of fact, out of same vacancies/Advertisement No. 01/2008, 53 persons challenging the termination order moved this Court by filing W.P. (S) No. 3213 of 2014 and other analogous cases, which was allowed vide order dated 19.02.2016 and further the order passed by writ Court was affirmed in appeal and the petitioners in that case have been reinstated and now they are working on the post in question.

6. As against this, learned counsel for the respondents-University submitted that in the second page of Advertisement it has clearly been mentioned that the University reserves its right not to appoint the selected candidate. Here, 16 unreserved posts were there for Pashu Sevak and admittedly petitioner's name was found place at serial no. 18. Even though two candidates did not join, the University due to some reasons and after finalization of the appointment of successful candidate, the matter cannot be re-opened at this belated stage. Furthermore, working as seasonal casual work does not create any right to the petitioner for appointment on the post in question. However, petitioners in W.P. (S) No. 3213 of 2014 and other analogous cases are concerned, they were reinstated in service subject to de novo enquiry. It has further been submitted that although the power of vice-chancellor is to appoint the teaching and non-teaching staffs but the Hon'ble Chancellor being the highest authority of the University has further right to inspect the records and annul any proceeding in connection with the University. Learned counsel for the respondents-University submitted that after efflux of time, major amendment has been made in the Statute of Birsa Agricultural University and as per the amendment the process of appointment has to be made by the Jharkhand Staff Selection Commission so far non-teaching staffs are concerned and so far teaching staffs are concerned, Jharkhand Public Service Commission has to be conducted examination. Learned counsel for the respondents submitted that a person does not acquire a legal right to be appointed for the reason his name appears in the select list. The authority has every right to fill up all the posts or not to fill them up. And only in the case of discrimination, the candidate concerned will have legal right for consideration of his case of appointment. In the case at hand, it is not the case that any candidate who

scored less marks or below in select list has been appointed. Hence, the matter needs no interference by this Court. In support of his submission, learned senior counsel for the respondents referred to the decision dated 10th July, 2018 rendered in the case of Dilip Kumar Sinha Vs. Jharkhand Gramin Bank & Ors in L.P.A. No. 149 of 2017.

7. After bestowing my anxious consideration to the pleadings available on record and on close and objective scrutiny of the documents on record, I am of the considered view that the petitioner has been able to make out a case for interference due to following facts, reasons and judicial pronouncements:

(i).Admittedly, the name of petitioner figured at serial no. 18 in the select list for appointment on the post of Pashu Sevak. The petitioner falls under unreserved category and in that category 16 candidates were to be appointed but out of them candidate figuring at serial no. 1 â?" Tulsi Mahto and at serial no. 14 â?"Israfil Haque did not join thereby two seats remained vacant. Hence, the petitioner who figured at serial 18 stakes his claim for consideration for appointment on the ground of non-joining of two candidates.

(ii).It is also an admitted fact that the petitioner well within time represented before the authority staking his claim and also approached this Court within a period of one year; hence right for consideration subsists as per the law laid down by Honâ??ble Apex Court in the case of State of U.P.

(Supra) and in the case of Bharat Sanchar Nigam Limited (Supra).

(iii).In this regard, though reference has been made by respondents to the Clause mentioned in the impugned Advertisement wherein it has been said that â??University reserves its right not to appoint the selected candidate against any categoryâ?. But, this clause shall not swallow the â??Right of Considerationâ?? for appointment.

(iv).This Court is not oblivious of the law laid by the Honâ??ble Apex Court in the case of The State of Haryana Vs. Subash Chander Marwaha & Others as reported in (1974) 3 SCC 220 that mere findings oneâ??s name in the select list/panel does not give any indefeasible right for appointment or entitle oneâ??s to get the writ of mandamus that he be appointed.

But, on the other hand, the Honâ??ble Apex Court in the case of Shankarsan Dash Vs. Union of India as reported in (1991) 3 SCC 47 has held that

there must be valid reason for denial for consideration of the case. For better appreciation, relevant portion of paragraph 8 of the said judgment is

quoted herein below:

“In this background it was observed that it is, of course, open to the government not to fill up all the vacancies for a valid reason, but the

selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and,

there must be conscious application of mind by the government and the High Court before the number of persons selected for appointment is

restricted.”

(Own emphasis)

(v).In the case at hand, the respondents-University at paragraph 9 of the counter affidavit has dealt with the reasons, which is quoted herein below:

“That it is stated that even two candidates did not join the post of Pashu Sevak, the University had reserved its right to stop further

appointments due to several reasons and also due to policy decision. Moreover, due to certain hue and cry by those candidates who were not selected

out of the said advertisement and they also filed complaints before the Hon’ble Chancellor the Governor of Jharkhand, an enquiry was set up by

His Excellency to enquiry into the matter of appointment by the OSD Judicial. Hence, the Principal Secretary to His Excellency directed the

University vide letter dated 04.08.2011 not to proceed in the appointment matters at Birsa Agricultural University. Due to this reasons also, further

appointment after finalization of the appointment of successful candidates, cannot be re-opened in view of Advertisement No. 01/2008.

(Own emphasis)

(v).In the backdrop of decision rendered in Shankarsan Dash (Supra) holding therein that there must be valid reason and conscious application of mind

in not fill up all the vacancies; it appears that the respondents-University has assigned mainly two reasons:

(i).due to several reasons and also due to policy decision, which is a vague one;

(ii).the Principal Secretary to His Excellency directed the University vide letter dated 04.08.2011 not to proceed in the appointment matters.

From plain reading of letter dated 04.08.2011, it appears that it was issued in

different context as in the letter itself it is averred that in view of the allegations received regarding irregularities and favoritism in new appointments at Birsa Agricultural University, Kanke as well as appointments which are still under process till further orders the University will not proceed ahead with any appointment related with BAU. In the case at hand, ground of irregularities or illegalities have been taken by the respondents. Moreover, this Court in W.P. (S) No. 3213 of 2014 and analogous cases and in L.P.A. No. 147 of 2016 and batch case has taken cognizance of the said letter dated 04.08.2011 and thereafter quashed the impugned order of termination. Hence, this Court does not find any cogent reason for denial to consider the case of the petitioner for appointment.

8. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the respondents are directed to consider the case of the petitioner for appointment on the post of Pashu Sevak and take a decision thereof within a period of eight weeks from the date of receipt/production of copy of this order. It is made clear that order dated 04.08.2011 shall not come on the way of respondents in passing appropriate order, as stated above.

9. With the aforesaid observations and directions, the writ petition stands disposed of.