

(2009) 08 JH CK 0099
In the Jharkhand High Court

Union of India (UOI)

APPELLANT

Vs

Ram Nandan Singh and Another

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Citation : (2009) 08 JH CK 0099

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—By this writ petition, the petitioner, Union of India, Central Ground Water Board Division has challenged the order dated 15.5.2008 passed by the Central Administrative Tribunal, Patna Bench (Circuit Court, Ranchi) in O.A.No.194/2005, whereby the Tribunal allowed the application filed by the respondents and issued direction to the petitioner to complete the process of selection initiated under Notification dated 2/8th January, 1999 for the post of Technical Operator and Cleaner and if the respondents have been found suitable, they should further be considered for appointment to the post in question.

2. The facts of the case lie in a narrow compass.

The petitioner, by advertisement published in the year 1999, invited applications from eligible candidates for appointment to the post of technical operator and cleaner. After screening of the applications the respondents and other candidates were interviewed. However, in the meantime, by letter issued by the Central Headquarter, Central Ground Water Board, Faridabad, the recruitment of the above posts were withdrawn. Hence further recruitment process was kept in abeyance. The respondents approached the Tribunal by filing O.A.No.232/2001, which was disposed of on 18.9.2003 with a direction to the petitioner to reconsider their respective cases. By subsequent application filed by the respondents, liberty was given to approach the Tribunal by filing a fresh application. Therefore, the respondents moved the Tribunal again by filing the

aforementioned O.A.No. 194/2005.

3. The case of the petitioner, Union of India is that the Central Authority put a ban on filling up all the vacant post without the approval of Ministry of Finance. Subsequently by letter dated 16.4.2004 the Central Headquarter informed that all the vacant posts pertaining to the period prior to 16.5.2000 were abolished by the Ministry and formal order was issued on 1.4.2004. The respondents were accordingly informed in 2004 about abolition of the post. The Tribunal held that the petitioner simply stopped the further process of appointment, already initiated and persons were interviewed. Accordingly, the Tribunal issued direction by the impugned order to publish the result and to make appointment. For better appreciation concluding para 6 of the impugned order is reproduced herein below:

6. Coming to the reliance place by the respondents on Government of India, Ministry of Finance, Department of Expenditure, Office Memorandum dated 5.8.1999, we note that the ban was put on creation of Plan and Non-Plan Posts by Para 1 of the said OM. However, para 2 of the said OM, which stipulates with "Ban on filling up of vacant posts", clarifies that till the review as desired under the said OM was completed, no vacant posts should be filled up except with the approval of the Ministry of Finance (Department of Expenditure). It is thus evident from the reading of the above said OM dated 5.8.1999 that the process of selection which was started by the respondents, on their own showing on 2/8 January 1999, could have been very well continued with the approval of Ministry of Finance. Admittedly, this has not been done by the respondents in the present case and they have simply stopped the further process of appointment which was initiated under the said notification dated 2/8 January 1999 before the OM dated 5.8.1999 by the Ministry of Finance was issued. In the circumstances, we quash and set aside the impugned order dated 7.5.2004 which has been passed by the respondents pursuant to order dated 18.09.2003 passed by this Tribunal in OA No. 24/2002 and 232/2001 filed by both the applicants respectively. We further direct the respondents to complete the process of selection initiated under the Notification dated 2/8 January 1999 for the post of Technical Operator (M) and Cleaner, as far as, two posts meant for the general category are concerned by publishing the result and in case the applicants are found suitable and fit, they should be further considered for formal appointment to the post in question. This exercise shall be done within a period of three months from the date of receipt of certified copy of this order.

4. We have heard Mr. Mokhtar Khan, learned Standing counsel Central Government, appearing for the petitioner and Mr. Rajiv Ranjan, learned Counsel for the-respondents.

5. In the background of the aforesaid fact, the only question that falls for consideration is as to whether the Tribunal was justified in issuing such direction upon the respondents for publishing the result and for making appointments.

6. The law with regard to the aforesaid question is no longer res integra. A

candidate, making application for a post pursuant to an advertisement, does not acquire any vested right of selection and a court or Tribunal cannot issue mandamus directing the authority to make appointment.

7. In the case of Union Territory of Chandigarh Vs. Dilbagh Singh and others, the Supreme Court observed:

12. If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. ..

8. In the case of All India SC and ST Employees Association v. A. Arthur Joon AIR 2001 SCW 1720 the Supreme Court observed:

10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in Shankarsan Dash Vs. Union of India, of the said judgment reads thus:

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in The State of Haryana Vs. Subash Chander Marwaha and Others, Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others, or Jatinder Kumar and Others Vs. State of Punjab and Others, .

9. In the instant case, it appears that the Government of India, Ministry of Personnel Department, elaborately assigned reasons for putting ban on appointment to such post. It further appears that the petitioner earlier

approached the Tribunal for the self same relief and the Tribunal in stead of issuing any direction for making appointment, simply directed the petitioner to look into the matter and take a decision by intimating the concerned local officers for communication to the candidates. In compliance of the aforesaid direction the petitioner, Union of India, by assigning reasons, informed the officers of the concerned Department that appointment could not be made without the approval of the Finance Department. In such circumstances, we are of the view that the Tribunal exceeded its jurisdiction in issuing direction to the petitioner, Union of India to complete the process of selection and to make appointment. Hence, the said direction given in the impugned order cannot be sustained in law.

10. For the reasons aforesaid, this application is allowed and the impugned order passed by the Tribunal is set aside. However, it is observed that in the event any advertisement is made in future for appointment to the said post, the cases of the respondents shall also be considered along with others.