
(2014) 12 JH CK 0056
In the Jharkhand High Court
Case No : W.P.(S) No. 130 of 2006

Violet Kerketta and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Citation : (2015) 1 AJR 406 : (2015) 1 JLJR 339

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : M. Sohail Anwar, Sr. Advocate, Afaq Ahmad and Shadab Bin Haque, Advocates for the Appellant; Saket Upadhyay, J.C. to A.A.G, Advocates for the Respondent

Judgement

Aparesh Kumar Singh, J.—By Court Heard learned counsel for the parties.

2. Though these two petitioners had pursued their grievances in the present writ petition, but since the petitioner No. 1 has already superannuated in 2009, the petitioner No. 2 is only prosecuting his cause of action.

3. Essentially the grievances of the petitioners is in relation to the appointment of the respondent Nos. 9 and 10, who were appointed as Director Extension Education and Chief Scientist Dryland respectively under the Adv. No. 01/2005. The main ground for the petitioner No. 2 to be aggrieved is that he being the Scheduled Case Candidate was entitled to the benefit of reservation in the matters of appointment in view of the provisions of the statute of University specifically Rule 14.8 which permits such reservation in all appointments in the University which has been denied. It is further backed by the submission that even as per the minutes of the Board of Management of the University, reservation is to be granted to senior posts in the University. Further reference has been made to the judgment rendered in connection with the earlier Adv. Nos. 1/97 and 01/98 for appointment to various posts under the respondent-University in CWJC No. 2505 of 1998 (R). The learned Single Judge of the Patna High Court vide judgment dated 16.12.1999 had been pleased to quash the

advertisement for appointment to the post of Senior Scientist-cum-Associate Professor as it was held that there are plurality of the cadre of Senior Scientist-cum-Associate Professor and reservation cannot be denied on the ground that it is a single post. Following the said judgment in CWJC No. 2688 of 1998 (R) in the case of first petitioner herein, the learned Single Judge vide judgment dated 10.04.2000 was also pleased to quash the advertisement so far as it related to the post of Director, Extension Education and Director Student Welfare. It appears that a contempt petition was pursued by the petitioner No. 1 thereafter and the University had also preferred Letter Patent Appeal being aggrieved by the judgment of the learned Single Judge. The judgment passed by the Division Bench of this Court on 12.12.2002 in LPA No. 20 of 2000 is at Annexure-B and the last operative paragraph of the judgment is worthy of being quoted hereinunder:--

"The appeal is disposed of as withdrawn. The appellants are given the liberty, if they contemplate filling up the posts, to issue fresh advertisements in accordance with law and rules as are presently applicable, uninhibited by any observation/directions contained in the impugned judgment. But it is made clear that any advertisement if to be issued now would conform with the law, rules and regulations as are presently applicable."

4. From perusal of the observations made by the learned Division Bench, it obviously becomes clear that the appellant-University was given liberty to fill up the post by issuing fresh advertisement in accordance with law and Rules as are presently applicable, uninhibited by any observation/directions contained in the impugned judgment. Under the present advertisement which is of 2005 several posts have been advertised and the terms and conditions at clause-12 indicate that candidates claiming reservation must submit attested caste certificate duly issued by the competent authority. However, against the post the petitioner was interested i.e. the post of Director, Extension Education and Chief Scientist Dryland there were only one post advertised. Other post such as Assistant Professor-cum-Junior Scientist were 10 in number.

5. The contention of the petitioner, however, is that the posts are interchangeable in the University and the advertised posts of Director, Extension Education and Chief Scientist Dryland should be treated as one of plurality of the cadre where reservations are permissible. Learned counsel for the petitioner has also referred to the minutes of the Board of Directors at Annexure-8 to the rejoinder to the counter affidavit of the respondent Nos. 2 and 4. As per the said decision of Board, person holding the post of Dean or Director can be transferred to the other post held to be equivalent, provided the Educational Qualification and other criteria of person holding the post is also similar.

6. This decision of the Board, however, appears to be of no help to the case of the petitioner as it is in respect to the transfer of incumbents holding the post of Dean to that of Director or vice versa in the given circumstances and may be required in administrative exigencies, such as when the posts are vacant. The

main issue involved in the present writ petition, however, is whether the posts, which were advertised are single post and whether the provisions of reservation can be held to apply to such single post in the University.

7. Though the learned counsel for the petitioner has vehemently argued that since the respondent-University has been posting the officers holding such posts from one faculty to another faculty, meaning thereby that there is plurality of the cadre, but the fact remains that in the University there is only one substantive post of Director, Extension Education and also one post of Chief Scientist Dryland as is the definite case of the respondent-University.

8. The law in this regard is settled as laid down by the Constitution Bench of the Hon"ble Supreme Court in the case of Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, and (1998) 4 SCC 1. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the cadre, such an exclusion of the general members of the public and cent per cent reservation for the backward classes is not permissible within the constitutional framework. Until there is plurality of posts in a cadre, the question of reservation will not arise. The opinion of the Hon"ble Supreme Court at para-35 of the judgment in the case of Post Graduate Institute of Medical Education & Research, Chandigarh (Supra) is quoted hereinunder:--

"35. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of Single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bounds to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society."

9. The provisions of statute i.e. Rule 14.8 relied upon by the petitioner cannot be in derogation of the law laid down of the Hon"ble Supreme Court on the aforesaid subject.

10. In such circumstances, if the post in question of Director, Extension Education and Chief Scientist Dryland advertised under the said advertisement are only single post then any claim for reservation is legally unsustainable on the part of the petitioner. Therefore, the challenge to the appointment of the respondent Nos. 9 and 10 on that ground by the petitioner cannot succeed.

11. Accordingly, the writ petition is dismissed.

I.A. Nos. 1416 of 2006 and 2686 of 2012 are closed.