

(2009) 01 JH CK 0018

Jharkhand High Court

Case No: Writ Petition (S) No. 1291 of 2003

Sikander Pandey, Raghunath
Prasad and Shankar Sao

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Jan. 22, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2009) 57 BLJR 1121 : (2009) 1 JCR 559

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Advocate: A.K. Das and Sandeep Jha, Delip Jerath, for the Appellant; I. Bhadur, J.C. to G.A.,
for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ajit Kumar Sinha, J.

The present writ petition has been preferred for the following reliefs:

- For issuance of an appropriate, writ/order or direction from this Hon'ble Court directing the concerned respondents to show cause as to why and under what authority the concerned respondents have provided appointments to Sri Chandreshkhar Prasad and Krishna Ballav Kumar (respondent Nos. 7 & 8 respectively) out of the panel dated 6.7.1994 ignoring the cases of the petitioners whose position is much higher than that of respondent Nos. 7 & 8 in the said panel,
- For issuance of a further writ/order or direction for canceling the appointment of the respondent Nos. 7 & 8,

iii) For issuance of a further writ/order/direction directing the concerned respondents to immediately and forthwith without any further delay give appointment to the petitioners whose position is much higher in the said panel.

2. The facts in brief are set out as under:

In the year 1986 respondent Nos. 7 & 8 along with others preferred a writ petition C.W.J.C. No. 1573 of 1986 (R) praying for regularization of their services and the said writ petition was disposed of by order dated 21.11.1986 with a direction to file representation before the Chief Conservator of Forests who was directed to dispose of the same. Respondent Nos. 7 & 8 accordingly filed a representation before the concerned respondent authorities and the Chief Conservator of Forests passed an order for their appointment. The aforesaid order of appointment was challenged by similarly situated persons vide C.W.J.C. No. 861 of 1989 (R) and this Hon"ble Court vide a detail speaking order directed the State Government to fill up the vacant post in accordance with the policy decision and in compliance with the requirements of Article 16 of the Constitution of India. It was specifically directed as under:

It is, however, made clear that the said respondents shall be entitled to apply for their appointment against the said posts and in that event their cases may be considered along with all other eligible candidates.

Pursuant thereto an Advertisement No. 5-7/91 was Issued for the post of Assistants and several eligible candidates applied against it along with the petitioners herein and Respondent Nos. 7 & 8 and after going through the selection process a panel of successful candidates was prepared by the respondent authorities which gave appointment to forty-four persons committing various irregularities and favoritism and the said appointment was again challenged before this Hon"ble Court in a series of writ applications. This Court vide its judgment dated 5.4.1994 cancelled all the appointments and directed the concerned respondents to reinitiate the process of appointments. Pursuant thereto a fresh panel was prepared wherein the names of the petitioners appear at serial Nos. 45, 50 and 53 respectively, whereas, the names of private respondent Nos. 7 & 8 appear at serial Nos. 54 and 58 respectively.

3. The respondent authorities appointed respondent Nos. 7 & 8 to the post of Sub-Divisional Clerk ignoring the rightful claim of the petitioners who were placed above them in the panel vide its impugned order dated 10.10.2002 and in compliance thereto the Regional Chief Conservator of Forests, Palamau, directed the Forest Conservator to issue appointment letters to respondent Nos. 7 & 8 vide its Impugned letter dated 27.11.2002 which is sought to be challenged in this writ petition.

4. The main contention raised by the counsel for the petitioner is that the entire action of the respondent authority is on the face of it arbitrary, illegal and malafide. The second contention raised by the petitioner is that the panel of 1994 subsequently prepared in compliance to the order passed by this Hon"ble Court has

attained finality and they were placed at a higher rank / serial in the panel and ignoring the rightful claim of the petitioners, respondent Nos. 7 & 8 who are lower in rank and place in the panel have been illegally appointed and thus the impugned order deserves to be set aside being violative of Article 14 and 16 of the Constitution of India.

5. It is further submitted that the respondent authority cannot act at their own whims and fancies and adopt discriminatory and double standard practice. Immediately thereafter, a representation was also filed followed by the present writ petition without any delay.

6. The respondent authorities in their counter-affidavit have submitted at para-16 that the appointment of respondent Nos. 7 & 8 was made in compliance to the direction / order issued by this Hon"ble Court in C.W.J.C. No. 1573 of 1986 (R) and C.W.J.C. No. 861 of 1989 (R).

7. The counsel for private respondent have submitted that respondent Nos. 7 & 8 were appointed earlier and their services were initially terminated on 8.7.1983 and again on their representation vide order dated 8.6.1985 it was decided to regularize their services by way of regular appointment and when the order dated 8.6.1985 was not complied with they preferred C.W.J.C. No. 1573 of 1986 which was disposed of vide order dated 20.11.1986 with a direction upon the petitioner to make a fresh application before the Chief Conservator of Forest.

8. It is further contended that no decision was taken by the respondent on the representation which compelled the petitioners to file a Contempt Application and only thereafter appointment letters were issued on 16.1.1988 vide letter No. 241 to implement the order dated 8.6.1985 and inform the competent authority and respondent Nos. 7 & 8 were accordingly appointed vide Office Order dated 21.3.1988 and 31.5.1988 and these orders of appointment were challenged in C.W.J.C. No. 861 of 1989 (R). This Court vide a detail speaking order clearly held that "every citizen of India in view of Article 16 of the Constitution is entitled to be considered for appointment if he is eligible to hold the post." The backdoor appointment without advertisement was deprecated and finally the Hon"ble High Court disposed of the matter directing that the adhocism should come to an end and the respondent should fill up the post by way of regular process of selection considering the other eligible candidates including the respondents herein. It was also directed therein that Respondent Nos. 7 to 10 therein shall be allowed to continue on adhoc basis till the final selection was made without any right to be appointed against the said posts.

9. I have considered the rival contention and the pleading and the documents on record including the orders passed by the Hon"ble Court. At the very outset order passed in C.W.J.C. No. 861 of 1989 (R) clearly deprecated such appointment against Constitutional mandate of Article 14 & 16 of the Constitution of India and specifically

directed to make regular appointment considering all other eligible candidates and in the same order it was specifically observed that respondent Nos. 7 & 8 herein and other respondent therein will continue on adhoc basis till the regular appointment on the said post was made. In compliance to this order and direction, advertisement was issued and final selection took place and a panel was prepared finally in the year 1994. Respondent Nos. 7 & 8 have neither challenged the order passed by the learned Single Judge in C.W.J.C. No. 861 of 1989 (R) nor have questioned the correctness of it till date and the same has thus attained finality.

10. The petitioners have contended that the respondent authorities, while preparing the panel provided appointment to 44 person and committed various irregularities, favouritism and illegality which led to the same being challenged before this Court in a batch of writ petitions and finally this Court vide its judgment and order dated 05.04.1994 cancelled all the appointments and directed the concerned respondents to re-initiate the process of appointment. Accordingly a fresh panel was prepared wherein the name of the petitioners appeared at serial No. 45, 50 & 53. Private Respondent No. 7 & 8 were placed at Serial No. 58 & 54. The respondent authorities in a most arbitrary and illegal manner recommended Respondent No. 7 & 8 for the post of Sub-divisional Clerk ignoring the case of the petitioners who are ranked high in the panel and issued the impugned order dated 10.10.2002 and in compliance thereof the appointment letters were issued to respondent No. 7 & 8 vide Office order dated 27.11.2002.

11. I have also considered the written submission filed by respondent No. 7 & 8 and it will be relevant to reiterate that by the judgment dated 05.04.1994 this Court held that the selection process was vitiated and the appointments and selection was condemned as a whole and were accordingly cancelled and the authorities were directed to re-initiate the process of appointment within a period of four months vide its judgment and order dated 05.04.1994 and that is how the panel of July, 1994 was finally prepared.

12. The fact remains that the said order has been acted upon once Respondent No. 7 & Respondent No. 8 participated in the selection process in compliance to the direction issued by the High Court and they were also declared successful and their position in the final panel of July, 2004 was below the petitioners herein.

13. At this stage the claim based on their appointment made vide order dated 21.3.1988 and 31.5.1988 is of no consequence, nor sustainable in the eyes of law since the same was set aside. While allowing the writ petition a direction to make appointment as per the policies and in accordance with the requirements of Article 16 of the Constitution of India it was specifically directed that such adhoc appointment of respondent Nos. 7 & 8 herein were to be allowed to continue only till final appointment against the said post after considering all the eligible candidates was completed.

14. Once it has been completed they have no legal vested or accrued right to be appointed based on the earlier illegal appointment letter which in any case was set aside while allowing the writ petition. Even otherwise Estoppel by conduct will apply against them.

15. Considering the aforesaid facts and circumstance of the case if the vacancy was there in 2002 as admitted and the appointment were to be made from the panel of July 1994 the petitioners being admittedly higher in rank and place should have been first considered instead of respondent Nos. 7 & 8 who were lower in rank and place in the panel prepared on merits.

16. This writ petition is accordingly allowed with no order as to cost. The appointment of respondent Nos. 7 & 8 is set aside and the respondent authorities are directed to consider the case of the petitioners in accordance with law for appointment to the post of Class-III. However, the respondent authorities are at liberty to consider the case of the private respondent Nos. 7 and 8 for any future appointment, if the vacancy still survives.