

Rubi Kumari Vs The State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: Sept. 18, 2013

Citation: (2014) 1 AJR 576 : (2013) 4 JLJR 422

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S. Chandrashekhar, J.

The petitioner has approached this Court seeking a direction upon the Respondents specifically made a prayer for

grant of benefit as extended to other similarly situated persons in view of the judgment and order dated 27.11.1999 passed in C.W.J.C. No. 2338

of 1998(R) as modified by order dated 16.12.1999. The brief facts of the case are that, the petitioner was appointed on 6.9.1995 and her

services were terminated on 29.8.1998. Similarly situated persons approached this Court in C.W.J.C. No. 2338 of 1998(R) and by judgment and

order dated 27.11.1999, the writ petition was disposed of with a direction to the Respondent-State of Bihar to take necessary steps for filling up

the vacant post in "Road Construction Department". The said order was modified by order dated 16.12.1999, whereby benefit of the age

relaxation was granted and it was also pointed out that the length of past service of such persons should be taken into consideration for grant of

appointment.

2. An advertisement was issued on 11.4.2006 in compliance of the order passed by the Court in C.W.J.C. No. 2338 of 1998(R) and the

petitioner also duly applied for appointment on the Class-IV post. However, the petitioner was not granted an appointment and therefore, the

petitioner made representation to the respondents, however, as the representation of the petitioner was not decided, the petitioner has approached

this Court by filing the present writ petition.

3. A counter-affidavit has been filed by the respondents in which it has been stated that pursuant to the direction of this Court in C.W.J.C. No.

2338 of 1998(R) an advertisement was issued and appointments were made. It has also been stated that there were only 9 posts vacant in the

Mechanical Circle, Ranchi and therefore, the petitioner could not be appointed.

4. A stand has been taken in the counter-affidavit which is extracted below:--

9. That it is stated and submitted that one Etwa Oraon and others filed a writ application being C.W.J.C. No. 2338 of 1998(R) before this

Hon"ble Court praying inter alia therein for issuance of an appropriate writ in the nature of Mandamus commanding upon the respondent

authorities particularly the respondent authorities particularly the respondent Nos. 3 and 4-Engineer-in-Chief, Road Construction Department and

the Chief Engineer (Mechanical), Road Construction Department to regularize the services of the petitioners in said C.W.J.C. No. 2338 of

1998(R) on the ground that they have been working on the different sanctioned and vacant post for more than several years and this Hon"ble

Court presided over by Hon"ble Mr. Justice M.Y. Eqbal by an order dated 27.11.1999 as contained in Annexure-2 to the writ application was

pleased to dispose of the said writ application with a direction to the respondents including the State of Bihar to take necessary steps for filling up

all those posts lying vacant in the Road Construction Department.

10. That it is stated and submitted that subsequently the aforesaid order dated 27.11.1999 passed in said C.W.J.C. No. 2338 of 1998(R) was

modified by an order dated 16.12.1999 as contained in Annexure-3 to the writ application to the extent that while filling up the vacant posts the

respondents shall also consider the cases of the petitioners and giving relaxation in the age for the reason that they have served the department for a

long time.

11. That it is stated and submitted that in compliance with the aforesaid direction of this Hon"ble Court a total number of 9 persons were

appointed in Class-IV post in Mechanical Circle on the basis of the recommendation made by the Deputy Commissioner, Ranchi in the light of the

recommendation of the District Level Establishment Committee.

12. That it is stated and submitted that it is pertinent to mention here that at the time of aforesaid appointment only 9 (nine) post were vacant in the

Mechanical Circle, Ranchi.

5. Heard learned counsel appearing for the parties and perused the documents on record.

6. Mr. Saket Upadhaya, learned counsel appearing for the petitioner has contended that the petitioner who was initially appointed on Class-IV

post was illegally terminated from service. As the services of other similarly situated persons were also terminated, they had approached the Court

by filing the writ petition which was disposed of by the Court giving a direction to fill up the vacancies on Class-IV post in the "Road Construction

Department". In the said order the Hon"ble Court has noticed that even after issuing an advertisement in the year, 1997, the respondents did not

proceed with the matter and did not make regular appointment on the Class-IV post and therefore, a direction was issued to the respondents for

making appointment on the Class-IV post. Taking note of the fact that the petitioner and other similarly situated persons had worked for a

considerable period, a direction was issued by the Court for taking into consideration the length of service rendered by such employees. Further

direction was issued by the Court for granting age relaxation to such persons. He has further contended that the respondents have not denied that

the petitioner was not qualified rather a plea has been taken by the respondents that since only 9 posts were vacant in the Mechanical Circle,

Ranchi, therefore, petitioner was not given appointment. Relying on the advertisement dated 11.4.2006, wherein it has been clearly mentioned that

there were 103 vacant posts the learned counsel for the petitioner has contended that only to deny the claim of the petitioner, a false statement has

been made in the counter-affidavit.

7. Reiterating the stand taken by the respondents in the counter-affidavit, the learned counsel for the respondents has submitted that since there

were 9 posts vacant and therefore, the petitioner was not given appointment on Class-IV post.

8. The learned counsel appearing for the petitioner has relied on a decision in East Coast Railway and Another Vs. Mahadev Appa Rao and

Others, wherein the Hon"ble Supreme Court has held as under:--

14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination

or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to

disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State"s decision

not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found

to be arbitrary, appropriate directions can be issued in the matter.

15. To the same effect is the decision of this Court in UT of Chandigarh vs. Dilbagh Singh where again this Court reiterated that while a candidate

who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the

same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a mala fide manner. That was also a case

where the selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious

manner in which the select list of candidates for appointment as conductors in CTU was prepared by the Selection Board. An inquiry got

conducted into the said complaint proved the allegations made in the complaint to be true. It was in that backdrop that action taken by the

Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for cancelling

what was described by this Court to be as a "dubious selection".

9. In R.S. Mittal Vs. Union of India (UOI), the Hon"ble Supreme Court has held as under:--

10. The Tribunal dismissed the application by the impugned judgment on the following reasoning:--

(a) The selection panel was merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The

recommendations of the Selection Board were directory and not mandatory and were not therefore enforceable by issue of a writ of mandamus by

the Court.

(b) The letter of Ministry of Home Affairs dated 8.2.1982 which extends the life of panel till exhausted is not relevant in the present case. In the

circumstances the life of the panel in this case cannot go beyond 18 months and as such expired in July 1989.

It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a

right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the

appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping

in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to

appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason

whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in

accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and

thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.

11. On the facts of this case, it is not necessary for us to go into the question of applicability of various instructions relied upon by the Tribunal.

Even if there are any instructions which provide that a select panel shall remain operative for one and a half years, the said period in our view is

sufficient for the Central Government to exhaust the select panel of the type with which we are concerned in this case. We have already indicated

the time-bound procedure to be followed in dealing with the select panel of this type.

10. On a consideration of the materials on record and having heard learned counsel for both the parties, I find that in the advertisement, it was

clearly mentioned that there were 103 vacant posts and nowhere in the advertisement it has been mentioned that appointment would be made

circle-wise and/or division-wise. A classification has sought to be made and a criteria has been laid down by the respondents for making

appointment circle-wise, which is neither indicated in the orders passed by the Court nor in the advertisement and therefore, I find that the claim of

the petitioner has been rejected by the respondents, arbitrarily. In the counter-affidavit which has been filed by the respondents, it has not been

denied that the petitioner is not qualified for being appointed on the Class-IV post. It has also not been denied by the respondents that the

petitioner was initially appointed on 6.9.1995 and she continued to work till 29.8.1998 when her service was terminated. Nothing adverse has

been brought on record by the respondents against the petitioner. A perusal of the order dated 27.11.1999 and 16.12.1999 passed by the Court

in C.W.J.C. No. 2338 of 1998(R), would also indicate that the Court has given a direction to the respondents to grant age relaxation as well as to

consider the length of service which was rendered by the employees in past. The Respondents have not stated anywhere in the counter-affidavit

that the petitioner's past service was not satisfactory. I am of the considered opinion that the claim of the petitioner has been denied on wrong

factual basis and on a mis-construction of the direction issued by this Court. Accordingly, I find that the claim of the petitioner is justified and this

writ petition deserves to be allowed. The respondents are directed to grant appointment to the petitioner on Class-IV post within a period of 8

weeks from the date of communication of this order.