

(2012) 01 JH CK 0036

Jharkhand High Court

Case No: L.P.A. No. 67 of 2011

Ganesh Pandey

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Jan. 3, 2012

Citation: (2012) 2 JCR 82 : (2012) 1 LJLR 155

Hon'ble Judges: Prakash Tatia, J; P.P. Bhatt, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. Heard the learned counsel for the parties.

2. The petitioner-appellant is aggrieved against the order dated 04th November, 2010 passed in W.P. (S) No. 3451/2010 by which, the writ petition of the petitioner-appellant has been dismissed. The petitioner-appellant's claim, in the writ petition, is that the respondents be directed to appoint him as Computer Operator in the office of the District Rural Development Agency, Lohardaga as the petitioner had been engaged by the respondents to do the work from 6th September, 1998 and since then he has been working regularly. The petitioner's writ petition was dismissed on the ground of coming into force of the new Rule, which provides for only contractual appointment.

3. Learned counsel for the appellant-petitioner submitted that before coming into force of the new decision of engaging Computer Operators on contractual basis, there was a decision of the Central Government, communicated vide communication dated 8th September, 2006, wherein, it has been directed that the service conditions of the employees of the DRDA including the matters relating to appointment, promotion, posting, transfer, pension, gratuity etc. are decided and regulated by the governing body of the DRDA with the approval of the respective State Governments. In pursuance of the said decision through communication of

the Central Government, dated 8th September 2006, the State Government agreed for regular appointment of such employees like the writ petitioner and this decision was taken on 3rd March, 2008, copy of which was placed on record as Annexure-8 of this LPA.

4. According to the learned counsel for the appellant, along with this decision dated 3rd March, 2008, names of seven persons were recommended for appointment on the post of the Lower Division Clerk-cum-Computer Operator and one another person, whose name was rejected by the State Government, approached this Court by preferring writ petition being W.P. (S) No. 451 of 2010 wherein, the learned Single Judge of this Court vide order dated 19th May, 2010, after considering the letter of the Central Government as well as the plea of the State with respect to the coming into force of the decision of the Central Government to appoint the Computer Operator on contractual basis, held that seven persons have already been given regular appointment on the post of Typist-cum-Computer Operator and the writ petitioner of that petition has been left out, which is arbitrary action. The writ petition was allowed against which, L.P.A. was preferred being L.P.A. No. 336 of 2010 which was dismissed by the Division Bench of this Court vide order dated 28th November, 2011, therefore the petitioner's case is similar to the case of the writ petitioner of W.P. (S) No. 3451 of 10 (Viveka Nand-versus-The State of Jharkhand and others) decided on 19th May, 2010 and, therefore, similar order may be passed.

5. Learned counsel of the State submitted that the petitioner was posted at Lohardaga whereas the decision dated 3rd March, 2008 (Annexure-8) is only with respect to the employees engaged in the Districts of Deoghar, Dhanbad, West Singhbhum, East Singhbhum, Garhwa, Saraikella and Godda. It is also submitted that in the case of Viveka Nand (Supra) out of employees of 1997, one alone was left out, whereas the petitioner was directed to be regularized/absorbed.

6. We considered the submissions of the learned counsel for the parties and perused the facts of the case. It is not in dispute that the appellant-petitioner was appointed under the same contract and with same service conditions as well applicable to the other persons whose services have been regularized or have been given appointment on the post of Typist cum-Computer Operator and are working under the DRDA. The decision was taken by the State Government itself with respect to the decision of the Central Government of the year 2006 and the decision dated 3rd March, 2008 is not with respect to the districts as suggested by the learned counsel for the respondents and it appears that the said argument has been raised on the basis of the availability of names of the above districts in the order dated 3rd March, 2008 but the names of those districts have been given only to refer the letters of those districts sent to the State Government. What has been approved is the Central Government's communication dated 8th September, 2006, which is apparent from Annexure-9 itself.

7. Be that as it may, the appointment order of 1997 or 1998 has no relevance and cannot make two separate and distinct class in any manner when the State itself has decided to appoint similar persons and give appointment to other persons working in the DRDA by giving appointment on the post of Typist-cum-Computer Operator then the petitioner could not have been discriminated by rejecting his claim on the ground of coming into force of the policy decision taken subsequent to the claim of the writ petitioner which became mature and by not allowing the petitioner to join, authority will not dis-entitle the writ petitioner from the similar treatment as has been given to other employees, therefore, this L.P.A. is allowed. The order dated 4th November 2010 passed in W.P.(S) No. 3451/2010 is set aside. The respondents are directed to regularize/absorb the petitioner on the post, where he is still working within four weeks from today.