

(2012) 09 JH CK 0119

Jharkhand High Court

Case No: Writ Petition (S) No. 252 of 2012

Md. Irfan Gani and Others

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Sept. 19, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Advocate: Sujit Narayan Prasad, for the Appellant; R. Bhengra, G.P. IV, for the Respondent

Final Decision: Dismissed

Judgement

Alok Singh

1. The petitioners were initially appointed as Technical Assistants in Animal Husbandry & Fishery Department, Bihar. A general order was issued on 23rd October, 1998 that appointments made by the Regional Director, are illegal, therefore, notices be issued to such appointees and thereafter their services be terminated. Thereafter, services of such Technical Assistants including the petitioners were terminated.

2. Few Technical Assistants had filed different writ petitions challenging the order dated 23rd October, 1998 and consequential termination order, before this Court. The writ petitions so filed were dismissed by this Court vide judgment dated 18.07.2001, reported in 2001 (3) Jhr C.R. 134 (Jhr), Annexure no. 5 to the writ petition. However, this Court while dismissing the writ petitions, was pleased to direct that the State Government would give age relaxation and certain weightage to those petitioners over the outsiders, as and when they fill-up the posts of Technical Assistants on regular basis.

3. Thereafter, judgment of this Court dated 18.7.2001 was challenged before the Hon"ble Supreme Court. Hon"ble Apex Court had disposed of Civil Appeals so filed, vide judgment dated 23rd July, 2003, Annexure-6 to the writ petition, upholding the termination. Hon"ble Apex Court placing reliance on the case of [Ashwani Kumar and Others Vs. State of Bihar and Others](#), was pleased to observe that appellant would be given weightage in the selection for the vacant posts. However, Hon"ble Apex Court had clarified that this case would not be treated as precedent since same was decided in the peculiar facts and circumstance of the case.

4. Initially, the petitioners had not challenged their termination order along with others. However, later on filed W.P. (S) No. 6436 of 2003 before this Court after the above referred judgments. W.P. (S) No. 6436 of 2003 was dismissed vide order dated 06.01.2004. However, this Court had observed that in view of the direction issued by the Hon"ble Supreme Court in Civil Appeal No. 5342-5343 of 2003, there was no need of issuing further direction by this Court; Claim of the petitioners would also be considered along with others in accordance with law. Judgment dated 06.01.2004 was challenged in L.P.A. No. 268 of 2004 by the State of Jharkhand, which was dismissed vide order dated 02.03.2005.

5. Mr. Sujit Narayan Prasad, learned counsel appearing for the petitioners has vehemently argued that the petitioners of the earlier case, which was decided by this Court vide judgment dated 18.7.2001, Annexure-5 to the writ petition, were given 90 weightage marks in the selection process and were given appointment while no such 90 weightage marks were given to the petitioners; Petitioners were discriminated in violation of Article 14 of the Constitution of India. Mr. Prasad has further argued that had present petitioners been also granted 90 weightage marks as granted to the others present petitioners would have also been selected. Mr. Prasad further contended that direction be issued to the Authorities to give appointment to the present petitioners as well, since similarly situated persons have already been appointed.

6. Now question arises before this Court is - As to whether direction may be issued to the Authorities to provide appointments to the petitioners since similarly situated persons have already been provided appointment by giving them weightage in compliance of directions issued by this Court as well as Apex Court in Annexure nos. 5 and 6 to this petition?

7. Constitution Bench of the Hon"ble Supreme Court in the case of [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), in paragraph nos. 5 & 54 has held as under:

5. This Court has also on occasions issued directions which could not be said to be consistent with the constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom ? Equity for the handful of people who

have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

54. It is clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

8. In the humble opinion of this Court direction of this Court in the judgment dated 18.7.2001, Annexure no. 5, as well as of the Hon"ble apex Court in the judgment dated 23.7.2003, Annexure no. 6, should not be extended in favour of the present petitioners in view of observations of Apex Court in paragraph no. 54 of Uma Devi's case, as reproduced herein above. Moreover, Hon"ble Apex Court in its order dated 23.7.2003, Annexure no. 6, has also clarified that directions shall not be treated as precedent.

9. Hon"ble Apex Court in the case of [State of U.P. and others Vs. U.P. State Law Officers Association and others](#), has observed as under:

Who come to be appointed by arbitrary procedure can hardly complain if termination of their appointment is equally arbitrary. Those, who come by the back door have to go by the same door.

10. Hon"ble Supreme Court in the case of [Tirumala Tirupati Devasthanams Vs. K. Jotheeswara Pillai \(D\) by LRs. and Others](#), has observed as under :

(A) writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

11. In view of the dictum of Apex Court in the case of U.P. State Law Officers Association (supra) as well as in the case of Tirumala Tirupati Devasthanams (supra), no mandamus should be issued in favour of the petitioners to provide them appointment by giving weightage to them in the absence of any Rule, Regulation or statutory Scheme. They have to go out since their initial appointment was found to

be totally illegal.

12. On the facts also, order impugned dated 14.11.2011, Annexure no. 13 to the petition, reveals that all the selected candidates have secured more marks than the petitioners. It further reveals that even if weightage marks given to the selected candidates are not taken into consideration then also those employees have secured higher marks than the petitioners. Therefore, on the facts also petitioners are not entitled for any relief. In view of the discussions made herein above, present petition fails and is, accordingly, dismissed.