

(2012) 03 JH CK 0061**Jharkhand High Court****Case No:** WP (S) No. 3241 of 2007

Hemraj Prasad Mehta and
Mithitesh Prasad Mehta

APPELLANT**Vs**

The State of Jharkhand and
Others

RESPONDENT**Date of Decision:** March 20, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 226

Hon'ble Judges: P.P. Bhatt, J**Bench:** Single Bench**Advocate:** Binod Kr. Dubey and Abhishek Dubey, for the Appellant; J.C. to Sr. S.C.-I, for the Respondent**Final Decision:** Allowed

Judgement

Hon"ble Mr Justice P.P. Bhatt

1. Heard the learned counsel for the parties. With the consent of the learned counsel for the parties, this matter is taken up for final hearing at this stage itself. The petitioner, by way of filing this writ petition under Article 226 of the Constitution of India, has prayed for quashing the Memo Nos. 104-0 and 1041 dated 21.5.2007, whereby, respondent No. 5 has cancelled the candidature of the petitioners though he was selected for appointment to the post of constables after due physical and written tests; on the ground of filing application for two places. It is the case of the petitioner that they belong to Backward Class and working as Home Guard from 1984 and 1989, respectively and they were duly selected for the post of constable and their names have been shown in Select List (Annexure-4) prepared by respondent authorities at Sr. Nos. 103 and 444 respectively.

2. Learned counsel for the petitioners pointed out that other similarly situated persons have been given appointment though they applied for two districts also and

in support thereof, he has referred to and relied upon the averments made in paras-7 and 8 of the supplementary counter affidavit and list of selection candidates to show that out of selected candidate, Rajesh Kumar Mahto (at Sl. Nos. 22 and 23) applied for from Dhanbad and Railway Dhanbad. Similarly, Puran Mahto (at Sl. Nos. 59 & 60), Md. Hanif (at-Sl. Nos.66 and 67) and Md. Jalim(at Sl. Nos. 108 and 109) have been appointed by the respondent authorities, though they have applied for two districts. Learned counsel for the petitioner also invited attention of this Court by referring to orders dated 6.5.2011 and 21.10.2011 passed in WP(S) Nos. 2281 of 2008 and 4684 of 2008 whereby, in similar situation, this Court had an occasion to pass orders directing the respondent authorities to ensure that the petitioners are given appointment. It is also submitted that the case of the present petitioners is similar to that of the case of the petitioners in above referred two petitions and, therefore, an appropriate order may be passed directing the respondent authorities to issue appointment letters in favour of the petitioners.

3. Learned counsel for the State by referring to the counter affidavit filed on behalf of respondent No. 7 submitted that petitioner No. 1 applied for Hazaribagh and Koderma District while petitioner No. 2 applied for Koderma and Giridih District. It is also submitted that in the advertisement, it was made clear that each candidate shall apply for one district only. However, the petitioners have committed mistake and applied for two district. It is submitted that mistake came in light, at the time of preparation of final select list. Since the conditions enumerated in the advertisement were not followed by the petitioners the respondent authorities decided to cancel the selection of the petitioners. Accordingly, the order at Annexure-6 and 6/1 has been passed. Learned counsel for the State also tried to justify the orders passed by the Superintendent of Police, Koderma, kept at Annexure- 6 and 6/1.

4. Considering the aforesaid rival submissions advanced by the learned counsel for the parties and from perusal of the materials available on record, it appears that the present petitioners have been duly selected by the respondent authorities for the post of constable and accordingly, their names have been included in the select list at Sr. Nos. 103 and 444 respectively. It appears that the other similarly situated persons, who applied for two districts have been given appointment by the respondent authorities and this fact is amply clear from the supplementary affidavit filed by the petitioners and Annexure-9, annexed to the supplementary affidavit. From perusal of Annexure- 9, it appears that other similarly situated persons have been given appointment though they applied for from two districts. The State is not in a position to controvert and deny this fact in its counter affidavit. It also appears that this Court while dealing with the matter of similarly situated persons passed the orders dated 6.5.2011 and 21.10.2011 in WP(S) Nos. 2281 of 2008 and 4684 of 2008, respectively, with a direction to the respondent authorities to ensure that the petitioners in those petition have been given appointment.

5. Having regards to the facts and circumstances of the present case, in my opinion, it is also a fit case, wherein memo No. 1040 and 1041 dated 21.5.2007 are required to be quashed and set aside. Hence the same are accordingly quashed and set aside. Necessary direction be issued to the respondent authorities to ensure that the petitioners be given appointment if other parameters/conditions for appointment are satisfied within a period of six weeks from the date of receipt/production of a copy of this order. With the aforesaid observation and direction, this writ petition is allowed.