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(2008) 4 JCR 474

Jharkhand High Court

Case No: None

Abhishek Kumar and Manoj Kumar		APPELLANT
	Vs	
The State of Jharkhand and Others		RESPONDENT

Date of Decision: Sept. 3, 2008

Citation: (2008) 4 JCR 474

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.
By this common order, both these writ applications are disposed of since issues involved are identical.

2. In both these writ petitions, prayer of the petitioners is for quashing the orders of the Superintendent of Police. Koderma (respondent No. 4), whereby the petitioners were informed that the Selection Committee has cancelled their candidature for their appointment on the post of police constable for which the petitioners had applied pursuant to the advertisement No. 1/04 dated 13.1.2004.

3. Both the petitioners had applied for and were issued Admit Cards bearing roll Nos. 5431 and 2827. They appeared at the selection test including the written test and physical test and were declared successful. However, by order dated 10.12.2005 issued by the D.G. Police. Jharkhand, the selection of candidates in respect of four districts namely, Hazaribagh, Giridih, Koderma and Chatra were cancelled on the allegation of large scale malpractices.

The aforesaid order of cancellation was quashed by the High Court vide order dated 10.11.2006 passed in W.P.(S) No. 7236 of 2005 along with analogous cases with a direction to the respondents to make appointment according to the select/merit list of successful candidates declared successful in the four districts of Hazaribagh, Koderma, Koderma and Chatra, excluding 932 candidates identified by the inquiry officer who were found to be beneficiaries of malpractices during the selection process. The petitioners did not figure in the list of 932 candidates. A fresh result was published by the respondents in the newspaper on 31.3.2007 indicating against the roll number of the petitioners that the matter was pending. Later, re-physical examination was held on 16.3.2006 in which the petitioners were allowed to appear and they were declared successful.

4. Dr. S.N. Pathak, learned Counsel for the petitioner in WP(S) No. 5906/07 and Mr. Delip Jcnith, learned Counsel for the petitioner in WP(S) No. 0041/07 commonly submit that the petitioners'' claim is on the basis of the results of the second selection process in which the petitioners had participated and were declared successful. The petitioners categorically assert that they do not fall within the list of 932 candidates who were identified and declared as beneficiaries of malpractices and as such, they should have been appointed as per the direction of the High Court passed in the earlier writ application. Learned Counsel argue further that by the cancellation of their candidature, petitioners have been arbitrarily denied their right of being appointed to the post of constable even without issuing any show-cause notice and without giving any cogent reason. Such act of the respondents is totally against the principles of natural justice and has been deprecated in several judgments of the Supreme Court as also by this court. Learned Counsel refer in this context to the judgment of the Supreme Court in the case of Shrawan Kumar Jha and Ors. v. Stale of Bihar and Ors. reported in 1991 Supp (1) Supreme Court Cases 330 and to the judgment of this Court in the case of Namo Narayun Singh v. State of Jharkhand and Ors. passed in W.P.(S) No. 4829 of 2007.

5. A counter-affidavit has been filed on behalf of the respondents denying and disputing the entire claim of the petitioners.

Referring to the detailed report dated 20.8.2007 submitted by the inquiry officer namely, the Superintendent of Police, Koderma-cum-Chairman, Selection Board (Annexure-A/1), learned Counsel for the respondents explains that pursuant to the order passed by the High Court in W.P.(S) No. 1242 of 2006, a fresh round of scrutiny of candidates in respect of the four districts was conducted by the Superintendent of Police-cum-Chairman, Selection Board and in course of inquiry, it was found that the petitioners bearing roll No. 5431 and. 2827 were the beneficiaries of the malpractices in as much as, in the same column in which names of the petitioners appear against names of two other candidates were found inserted in the Master Chart bearing the same roll numbers with the letter ''A'' affixed thereto. Learned Counsel explains further that under such circumstances, the petitioners could not have been considered eligible for appearing at the second round of selection process and it is apparently due to inadvertence, that fact of their being the beneficiaries of the malpractice in the earlier selection process, had escaped notice of the

concerned authorities. The petitioners cannot be allowed to take any benefit of the results of the second selection process. It is further submitted that even otherwise, the petitioners cannot claim any right as they were not served with any appointment letter.

6. From the above submissions, the facts, which emerged, are;

1. the petitioners had appeared in the second round of selection process and were declared successful.

2. their names were not included in the list of 932 candidates who were identified as the beneficiaries of malpractices and were disqualified under orders of the High Court in the earlier writ petition being W.P.(S) No. 1242 of 2006.

7. Pursuant to the orders of this court in the aforementioned writ application, the respondent authorities undertook a fresh scrutiny of all the candidates other than the excluded 932 candidates, in course of which, it came to light that the petitioners were also beneficiaries of the malpractices, as indicated in the inquiry report (Annexure-A/1).

8. Though, in the results of the second test, the petitioners were declared successful, but the Selection committee did not include their names in the final merit list, indicating thereby that the Selection Committee did not recommend the names of the petitioners for their appointment to the post. Consequently, no appointment letter could be issued to the petitioners.

9. A similar issue on identical facts was earlier raised before this court vide W.P.(S) No. 4829 of 2007 by one Namo Narayan Singh. In that case, the ground advanced by the respondents for cancellation of his selection was that the name of another candidate was inserted in the same column along with that of the petitioner by inserting an unnatural roll number adding a letter "A". While considering the facts of the case and the issues raised, this court had observed in its order dated 5.7.2008 in the following terms:

From the facts noticed herein-above, it is clear that the fact that no prior notice to show-cause or a chance of being heard was given to the petitioner, has not been denied by the respondents in their counter affidavit. In view of the fact that the candidature of the petitioner was cancelled by issue of Annexure-4 on the basis of some allegations against him and therefore, it was incumbent upon the respondents to give a chance to the petitioner to explain his position. But as it appears that no prior notice was issued to the petitioner before issuance of Annexure-4 and as such, I am of the view that the issuance of Annexure-4 cancelling the candidature of the petitioner was in complete violation of principles of natural justice and therefore, the same cannot be sustained. Accordingly, this application is allowed and Annexure-4 i.e. the order of cancellation of candidature of the petitioner is hereby quashed. However, it is observed that if the respondents intend to take any action against the petitioner, they may do so after complying the principles of natural justice.

10. Considering the identical nature of the facts, and the issues raised, the same ratio would apply in the case of the petitioners also. In absence of prior notice to the petitioners or giving them a chance of being heard to explain their position, it has to be deemed that there is failure of the principles of natural justice and the benefit of such failure has to be given to the petitioners.

Accordingly, these writ applications are allowed. The impugned orders (Annexure-6) and (Annexure-7) of the writ applications respectively, are hereby quashed. However, if the respondents intend to take any action against the petitioners, on any just and reasonable grounds for cancelling their candidature, they are at liberty to do so only after complying with the principles of natural justice.