
(2013) 1 AJR 533 : (2012) 4 JLJR 363

Jharkhand High Court

Case No: LPA No. 122 of 2009 and WP (S) No. 1242 of 2006

Krishnajee

APPELLANT

Vs

The State of Jharkhand
and Others

RESPONDENT

Date of Decision: July 26, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2013) 1 AJR 533 : (2012) 4 JLJR 363

Hon'ble Judges: Prakash Tatia, C.J; Jaya Roy, J

Bench: Division Bench

Advocate: V.P. Singh, A.K. Sinha, M. Kumar and A. Kumari, for the Appellant; A. Allam and N. Sharmin, for the Respondent

Final Decision: Dismissed

Judgement

1. The petitioner-appellant was one of the candidate for the post of Constable in the Police Department. In the process of selection of such candidates for four districts of the State of Jharkhand, namely, Hazaribagh, Koderma, Chatra and Giridih, the candidates were required to appear in the written test and also to undertake physical test. The petitioner was a successful candidate and his name was in the select list. However, a writ petition, W.P.(S) No. 1458/2004, was filed in the High Court relating to some dispute of the qualification and the same was finally disposed of on 13.3.2005. On disposal of the petition, Superintendents of Police of the districts were asked to fill up the available post of police constables and send them for training by 31st May, 2005. Some of the candidates joined duties but the petitioner, Krishnajee, could not join duty. Be that as it may, on 10.12.2005, an order was passed cancelling the selection of the police constables in the all above four districts. The selection was cancelled on the ground of various irregularities. Challenging the cancellation order, the petitioner himself preferred writ petition, W.P.(S) No. 1242/2006, which was heard by the Division Bench of this Court alongwith other connected writ petitions and was allowed, vide judgment delivered in the

case of Krishnaji & Ors. vs. The State of Jharkhand & Ors. reported in 2006(4) JLJR 702. In the said writ petition, it has been held that in view of the Apex Court judgment delivered in the case of [Union of India \(UOI\) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another,](#), the doctrine of proportionality can be applied in the present case and in view of the fact that in the process of selection, it was found that written test was conducted and though the written test has not been vitiated in any manner, there were irregularities and that too, either in recording of the physical standards of the candidates or their date of birth and with respect to certain certificates and therefore, it was not necessary to cancel the entire selection process. In view of the enquiry report, the Division Bench of this Court held that excluding 932 candidates, who were identified by the Enquiry Officer and found to be beneficiaries of malpractice during the selection, all other candidates be given appointment. The Division Bench also passed order for holding departmental enquiry against one Shri C.P. Kiran, the then Superintendent of Police, Chatra-cum-Chairman, Constable Recruitment Committee-3 and also against any other Officer found involved in malpractice in the said recruitment. After this judgment, the petitioner was again called for presentation of documents and thereafter, he was given appointment also. After giving appointment, vide order dated 7th July, 2007, the petitioner's appointment was cancelled on the ground that he got the appointment by manipulation in the master chart and other records, wherein it was found that his name was inserted by affixing a slip in the chart and below his name, there was the name of Binod Kumar Mishra. Therefore, his selection was cancelled. Aggrieved against the order dated 7.7.2007, the petitioner preferred the present writ petition, W.P.(S) No. 3928/2007, which was dismissed by the learned single Judge after perusing the original record and finding substance in the submission of the learned counsel for the respondents that there was manipulation in the register and petitioner's name was inserted by manipulation only. This appeal has been preferred by the writ petitioner and the learned counsel for the writ petitioner vehemently submitted that the Division Bench of this Court has finally decided the dispute in relation to the petitioner's own case, vide judgment referred above Krishnaji & Ors. vs. The State of Jharkhand & Ors. (supra). It is submitted that in the said judgment of the Division Bench, a specific direction was issued to the respondents to give appointment to the writ petitioner. Learned counsel for the petitioner drew our attention to the facts of the petitioner's own case, which has been considered in paragraph no. 9 of the above-referred judgment, wherein it was found that except the present writ petitioner, against the other writ petitioners, who were writ petitioners alongwith the present petitioner in W.P.(S) No. 1242/2006, there was allegation of manipulation and therefore, writ petitioner nos. 2, 3, 4 and 5 thereof, were denied appointment by the High Court and only the present petitioner was the successful candidate against whom there was no allegation of manipulation. In view of this finding, the respondents had no jurisdiction to reagitate the issue by finding fault in the appointment process for appointment of the writ petitioner. It is submitted that the allegation levelled against the writ petitioner was not in the enquiry report, which was submitted before the High Court in the earlier round of litigation and each individual case was duly considered by the Enquiry Officer and only 932 candidates were found disqualified in which the petitioner's name was not included

and the petitioner's writ petition was specifically allowed.

2. Learned counsel for the writ petitioner vehemently submitted that it will be clear from the reply affidavit filed by the Inspector General of Police in the writ petition, W.P.(S) No. 1242/2006, itself wherein he categorically stated in his own report, Annexure-A filed alongwith his own reply counter-affidavit, that the petitioner, Krishnaje, was a successful candidate and his roll number was 4030 and he qualified in the physical test and his name was in the list of successful candidates published in the daily newspaper. Learned counsel for the petitioner submitted that the fact that the appointment of the candidates, whose names were inserted by affixing slip in the chart, was cancelled, is also apparent from the report of the Inspector General, Annexure-A, and therefore, as back as on 28.3.2006, there was no allegation of manipulation in the register.

3. Learned counsel for the petitioner relied upon a judgment dated 5.8.2009 of the Division Bench of this Court delivered in the case of Ranjay Kumar Singh vs. State of Jharkhand & Ors. in L.P.A. No. 296/2009, in which one of us (Hon'ble Jaya Roy, J.) was a party, and submitted that when the Department wanted to deny appointment to other candidates than 932 candidates, the Division Bench in the said judgment set aside the order of dismissal-holding that in that case, the appellant was again dismissed from service on the basis of same enquiry report dated 31.10.2005, which could not have been done because of the reason that the issue had already been decided in the writ petition preferred earlier, in the case in Krishnaji's (supra) matter. The Division Bench took note of the fact that similar several writ petitions were filed, those writ petitions were allowed and cancellation of appointment were quashed by this Court. In view of the above, the said writ petition preferred by Ranjay Kumar Singh was also allowed. The case of the petitioner in this case is identical to the case of Ranjay Kumar Singh.

4. Learned counsel for the State vehemently submitted that the finding of fact recorded by the authority, who passed the order of cancellation of appointment of the petitioner, was fully supported by reasons different than that of the case of Ranjay Kumar Singh and in view of reason given in order impugned, the writ petition of the petitioner-appellant was rightly dismissed and this fact position cannot be disputed by the appellant. Learned counsel for the State was directed to produce the original record and register which he produced in the Court, which were perused and same were also shown to learned counsel for the appellant.

5. After perusal of the original registers, learned counsel for the petitioner-appellant submitted that all these registers are not signed by anybody and therefore, cannot be relied upon. It is also submitted that even if there is allegation of some manipulation, then also after giving appointment, the petitioner could have been removed from service only after holding an enquiry.

6. We considered the submissions of the learned counsel for the parties and perused the records. We are of the considered opinion that an enquiry was conducted to find out

whether there were serious irregularities in the process of selection of the candidates for the post of constables in the four districts, namely, Hazaribagh, Koderma, Chatra and Giridih. And as per the enquiry report, there were manipulation by 932 candidates and in view of this report, the Division Bench held that the entire selection process could not have been cancelled and only the selection of 932 candidates could have been cancelled and therefore, set aside the order of cancellation of the entire selection process and directed the State Government to give appointment to other candidates and the petitioner is admittedly in the category of other candidates and not in the 932 candidates who obtained selection by manipulation.

7. However, it appears that thereafter a fresh enquiry was ordered and the respondents found from the original registers that in both the registers there was manipulation and by manipulation only the name of the present petitioner was inserted. Learned single Judge also perused the records and we also perused the records containing the names of all candidates in the chart and in one of the registers, in the last column a slip has been affixed inserting the name of the petitioner in the register. In another register, in the bottom, the name of the petitioner has been inserted by a different handwriting in a different ink and that insertion appears to be only done after recording the entries in the register in serial and in order. It is true one report was submitted before this Court under the signature of the Inspector General of Police alongwith the affidavit certifying that four persons were the writ petitioners with the present writ petitioner, Krishnaje, and against names of theirs, remark is that either they have pasted some slip of name or page has been changed; there is creation of two columns in the register for inserting the name of the person by giving roll number, like 3043A, but so far as present petitioner is concerned, such remark is not there and it is stated that he appeared in the physical test and allegation that he did not appear in the test is wrong and his roll number was published in the newspaper and therefore, he was a selected candidate. Now question arises what is the value of report which report is contrary to the original chart as well as the original register. In our opinion, no report, which may be given by any person of high rank, can have any value against original record. Normally reports are believed because of faith in enquiry officer's credibility. Such belief can be disproved by evidence and best evidence is original record if the enquiry report is based upon the record. When there is conflict between enquiry report and original record, original record is to be accepted. Enquiry report contrary to record is liable to be rejected.

8. We cannot accept the argument of the learned counsel for the petitioner-appellant that this chart since bears no signature, it may not be relied upon. We cannot presume that the Department, to harm a person, can prepare such a big register and chart. The register was not doubted by the learned single Judge and we have also no doubt. Therefore, the report, which has been given by a public servant and can be only on the basis of the record, if goes contrary to the original record, then that report cannot be accepted. The report of the Inspector General, as we have already stated, was filed along with the affidavit in the Court on 12th April, 2006 and the report is dated 28th March, 2006. The

report of Inspector General was submitted alongwith the affidavit of the Deputy Superintendent of Police. Be that as it may, we are of the considered opinion that in view of the original record, we cannot accept the report, Annexure-A, submitted alongwith the affidavit of the Deputy Superintendent of Police being Officer-in-charge of the Director General and Inspector General of Police, Jharkhand.

9. Learned counsel for the petitioner-appellant relied upon the Division Bench judgment of this Court delivered in the case of Ranjay Kumar Singh (supra). In that case, after appointment, the writ petitioner was dismissed from service on the basis of the same enquiry report dated 31.10.2005, which was the report under consideration before the Division Bench of this Court in W.P.(S) No. 1242/2006 and connected matters (supra) and in view of this, once the report was considered by the Division Bench, on the basis of the same report, no contrary decision could have been taken by the Department and the order of cancellation of appointment of the petitioner was set aside. It appears from the said judgment dated 5.8.2009 passed in Ranjay Kumar Singh, that matter was decided on the basis of the facts of that case and in the present case, it appears from the impugned order dated 7.7.2007 that on 10.6.2007 again a meeting was convened of the selection committee, in view of the order passed by the Superintendent of Police, Koderma and the selection committee, by decision no. 1296/Ga dated 10.6.2007, examined the case of the petitioner and from the record and the chart, it was found that the name of the petitioner has been inserted by affixing a slip. Therefore, the present case is not the case where the petitioner is being sought to be removed from the service on the basis of the earlier enquiry report. The petitioner has been sought to be removed from service on the basis of fresh enquiry and on the basis of true facts.

10. Petitioner's name in the register is due to affixed slip and if that slip is removed, then the petitioner's name goes out from that chart and if the petitioner's name, which has been inserted by different handwriting and in different ink, is erased from the register, then the petitioner's name goes out from that register. It is not the case of the petitioner-appellant that in any other place the petitioner's name is there. In equitable writ jurisdiction, we do not find any reason to give any advantage to any person who may have conveniently enjoyed the same which was due to mistake of the enquiry officer and the facts proved that he is the only beneficiary of the manipulation and therefore, such person cannot invoke equitable writ jurisdiction of the High Court under Article 226 of the Constitution of India. Because of this reason also, we do not find any substance in the submission of the learned counsel for the petitioner-appellant that the petitioner was not given an opportunity of hearing before passing the order dated 7.7.2007 and particularly in view of the fact that the material, which was placed before the learned single Judge and also before this Court, clearly indicates that the appointment of the petitioner on the post of constable was due to only manipulation which may have escaped the notice of the Enquiry Officer who submitted enquiry report before the Division Bench in the earlier round of litigation.

11. Learned counsel for the petitioner-appellant tried to rely upon certain averments made by the State in the reply to the writ petition to show that the plea taken by the State is afterthought. We are not impressed by the fact stated by the State in reply, nor we can accept any fact which may have been stated by the respondent-State which is found to be contrary to records. Therefore, after going through records, we are of the considered opinion that no case is made out for interference by this Court. This appeal is, thus, dismissed.