

(2016) 09 JH CK 0009

JHARKHAND HIGH COURT

Case No: L.P.A. No. 649 of 2015

Sanjeev Kumar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Sept. 5, 2016

Citation: (2016) 4 JCR 743

Hon'ble Judges: Mr. Virender Singh, CJ. and Mr. Shree Chandrashekhar, J.

Bench: Division Bench

Advocate: Mr. M.S. Anwar, Senior Advocate and Mr. Sunil Kumar Sinha, Advocate, for the Respondent-JAC; Mr. Abhijeet Kr. Singh, Advocate, for the Appellant; Mr. Binod Singh, S.C. III, for the Respondent/State

Final Decision: Allowed

Judgement

Shree Chandrashekhar, J. - Misconstruing the appellant-writ petitioner's application for appointment to the post of Post-Graduate Trained Teacher and misinterpreting order dated 10.12.2013 passed in W.P.(S) No. 94 of 2013, the respondent-Jharkhand Academic Council has declined to recommend the name of the petitioner for appointment on the said post. Accepting the plea taken by the respondents in the proceeding of W.P.(S) No. 1389 of 2014 that once the petitioner submitted his application in the category of teachers employed in Government Secondary (High) School he cannot be considered under the category of direct recruits, the learned Writ Court dismissed the writ petition holding that, "any improvement in the claim of the petitioner at this stage would not only be contrary to the requirement of the advertisement and prescribed application form which he consciously filled, but also in teeth of the observation made in his case earlier by the learned Single Judge".

2. Reiterating the stand taken in earlier writ proceedings that the petitioner is entitled for appointment on the post of Post-Graduate Trained Teacher under unreserved category in direct recruits quota, the instant Letters Patent Appeal has been filed.

3. Advertisement No. 117/2011 was issued by the Jharkhand Academic Council for appointment of teachers in +2 High Schools district-wise, category-wise and subject-wise. Advertisement gives subject code, reserve category code and divisional codes. The prescribed proforma for the application also contained subject code, centre code, category code and subject name. The petitioner applied for the post of teacher in Economics, for which total number of vacancy was 230 out of which 115 posts were under unreserved category. Before the Writ Court, the respondents referring to the provision for appointment on 50% seats by direct recruits and 50% seats from the Graduate Trained Teachers of Government Secondary (High) Schools contended that the petitioner, who was employed in an upgraded Middle School and had filled up column 12 of the application form in affirmative, cannot claim appointment under the direct recruits quota.

4. In the present proceeding, on 12.07.2016 the respondent-Jharkhand Academic Council was directed to furnish information, whether the appellant-writ petitioner has obtained marks more than the cutoff marks in both the categories and whether the in-service teachers were barred from applying under general category. The Jharkhand Academic Council has filed counter-affidavit admitting that the petitioner obtained 202 marks and he was initially selected under unreserved category however, during verification and counselling when it was detected that he is not a teacher in Government Secondary (High) School, he was not offered appointment. The counter-affidavit further reveals that under unreserved category for teachers the cutoff marks was 162 and under unreserved category of non-teachers, the cutoff marks was 196. The respondent-JAC has stated that in-service teachers were not barred from applying under the direct recruits quota. In the counter-affidavit the respondent-State of Jharkhand has merely reiterated the stand taken before the Writ Court and asserts that the petitioner was not eligible to apply as a teacher because he was not a teacher of Government Secondary (High) School.

5. Under Advertisement No. 117/2011, the requisite educational qualification for appointment as PG Trained Teacher, which a candidate must possess, was graduation degree in the concerned subject with 50% marks and B.Ed. degree from a recognised training institute. The petitioner possesses the aforesaid qualifications is not in dispute. None of the columns under Advertisement No. 117/2011 required a candidate to apply for appointment under the category of teacher in a Government Secondary (High) School. Column 12 merely seeks an information viz, "Are you already employed as Teacher in Government Secondary (High) School in Jharkhand", to which the petitioner indicated "yes" but "on deputation".

6. The learned counsel appearing for the respondent-State of Jharkhand contended that the petitioner has thus, applied under the category of in-service candidate and since he, on verification, was found not eligible he has rightly not been offered appointment. Mr. Sohail Anwar, the learned Senior Counsel appearing for the respondent-JAC has also supported order dated 29.01.2014 which was impugned by

the petitioner before the Writ Court and submitted that in view of order dated 10.12.2013 passed in W.P.(S) No. 94 of 2013 the claim of the petitioner was to be examined in the category of in-service candidates in which he had submitted his application.

7. The aforesaid contentions are liable to be rejected. As noticed above, under Advertisement No. 117/2011 there was no separate category for in-service candidates, that is, teachers employed in Government Secondary (High) School. The category code under the aforesaid advertisement vide clause-ix prescribes that candidates should fill "category" such as, General, S.C., S.T. etc. for which different code numbers were given. No doubt, 50% of the posts advertised were to be filled up by teachers already appointed in secondary schools for which a separate list was required to be prepared, however, this would not preclude a candidate working in Government Elementary or Primary School to participate in the selection process and seek appointment as a teacher in +2 High Schools. According to the respondents, the petitioner did not fulfil requisite criteria as in-service candidate. In our opinion, in such a situation his claim should have been considered for appointment in direct recruits quota. The information furnished by the petitioner also discloses that he was not appointed as a PG Trained Teacher in a Government Secondary (High) School rather, he was posted there on deputation.

8. Expression used in column 12 of the application form is "employed" and not "appointed". Since the petitioner was working on deputation in a Government School, he was required to furnish such information. Now, referring to the information furnished by the petitioner which discloses that he is not a teacher appointed in Government Secondary (High) School, it was incumbent upon the respondents to consider his claim for appointment under unreserved category of direct recruits quota. Vide order dated 10.12.2013 in W.P.(S) No. 94 of 2013 the Writ Court directed the respondent-JAC to make suitable recommendation for appointment of the petitioner, if it is found that he had qualified in the "category" in which he had applied. The category under which the petitioner applied is "general category" for which category code 11 is given in the advertisement. The information furnished by the candidates under column 12 of the application cannot be translated into to create a new category and as if the petitioner's candidature can be considered only as in-service candidate.

Provision for appointment on 50% seats by the teachers already employed in Government Secondary (High) Schools does not exclude an otherwise eligible candidate to seek appointment under direct recruits quota in his category. The approach of the respondent-Chairman, Jharkhand Academic Council as reflected in order dated 29.01.2014 was erroneous and the learned Writ Court has also overlooked the aforesaid aspect of the matter.

9. On admitted facts, once it is found that the petitioner has obtained marks more than cutoff marks for the candidates who were recommended for appointment as

direct recruits, we are of the opinion that the respondents must be directed to offer appointment to the petitioner as a PG Trained Teacher in +2 High School. The learned counsel for the petitioner has informed the Court that all the vacancies advertised have not been filled up and no further advertisement has been issued for the posts which have remained unfilled. No other objection, except, what has been noticed herein above, has been raised by the respondents.

10. Considering the aforesaid aspects of the matter, the respondent-Jharkhand Academic Council is directed to recommend the name of the petitioner for appointment as a PG Trained Teacher in a +2 High School within two weeks and on receiving the recommendation from Jharkhand Academic Council, the Secretary and the Director of the Department concerned shall ensure that appointment letter is issued to the petitioner within four weeks, thereafter.

11. The impugned order dated 21.09.2015 passed in W.P.(S) No. 1389 of 2014 is set aside and consequently, order dated 29.01.2014 passed by the Jharkhand Academic Council is quashed.

12. The Letters Patent Appeal stands allowed.