

Prabhat Ranjan Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Apr-25-2017

Appellant : Prabhat Ranjan

Respondent : The State of Jharkhand and Anr

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 4674 of 2016

1. Kundan Kumar Mishra, son of Sri Nand Kishore Mishra, resident of village Anandi, P.O. Baridih, P.S. Ormanjhi, District Ranchi (Jharkhand)
2. Upendra Kumar, son of Sri Dashrath Thakur, resident of village Hamidganj, P.O. & P.S. Medinigar, Palamau, District Palamau (Jharkhand)
3. Ranjay Kumar Singh, son of Sri Ramashray Singh, resident of village Kusha, P.O. Dosma, P.S. Fesar, District Aurangabad (Bihar)
4. Md. Gulam Quraishi, son of Abdul Hafiz Quaraishi, resident of village Balumath, P.O. & P.S. Balumath, District- Latehar (Jharkhand)
5. Bhuwan Bhaskar, son of Late Rabindra Kumar Pandey, resident of village Bajkum, P.O. Latehar (R.S.), P.S. Latehar, District- Latehar (Jharkhand)

6. Shaktri Kamlesh Prakash, son of Sri Bisheshwar Nath Mehata, resident of village Barkagaon, Tandwa Road, Krishak Chowk, P.O. & P.S. Barkagaon, District Hazaribagh (Jharkhand)
 7. Nirmal Junus Kujur, son of Jyoti Basant Kujur, resident of village Jura, P.O. Jura, P.S. Bharno, District Gumla (Jharkhand)
 8. Yhejkel Tigga, son of Sri Vijay Tigga, resident of Village Amwatkar, P.O. & P.S. Latehar, District Latehar (Jharkhand)
 9. John Manish Minz, son of Sri Sanjay Minz, resident of village Rajhar, P.O. & P.S. Latehar, District Latehar (Jharkhand)
 10. Prasad Oraon, son of Late Hiralal Oraon, resident of village Renchi, P.O. Bari, P.S. Chandwa, District Latehar (Jharkhand)
 11. Krishna Mahto, son of Ghasiya Mahato, resident of village Burudih, P.O. Jargo, P.S. Tamar, District- Ranchi (Jharkhand)
 12. Nirmal Kumar Mahto, son of Late Surendra Mahto, resident of village Jamid, P.O. & P.S. Chakradharpur, District- West Singhbhum (Jharkhand)
 13. Suchit Kumar, son of Soharai Mahto, resident of village Barwadih, P.O. Lanipatra, P.S. Pandawa, District Palamau (Jharkahnd) Petitioners Versus
1. The State of Jharkhand, through the Principal Secretary, Department of Health & Family Welfare, Government of Jharkhand, having its office at Project Building, P.O. & P.S. Dhurwa, Ranchi, District- Ranchi
 2. Director-in-Chief, Health Directorate, Department of Health & Family Welfare, Government of Jharkhand, having its office at G.V.I., Campus, Namkum, P.O. & P.S. Namkum, District Ranchi
 3. Director, Labour, Employment and Training, Jharkhand, having its office at Kachari, P.O. G.P.O., P.S. Kotwali, District- Ranchi

4. District Malaria Officer, Ranchi, P.O. G.P.O., P.S. Kotwali, District- Ranchi (Jharkhand) Respondents with W. P. (S) No. 4083 of 2016

1. Jawed Ansari, son of Md. Farid Mian, resident of Village Manjhlanagar, P.O. Khesmi, P.S. Nawalsahi, District- Koderma

2. Pradeep Kumar, son of Lildhari Yadav, resident of Village- Puto, P.O. Karma, P.S. and District Koderma

3. Jageshwar Yadav, son of Indrajit Yadav, resident of Village- Asna- Indarwa, Ward No. P.O. Jhumritelaiya, P.S. and District Koderma 2

4. Md. Sattar Ansari, Son of Md. Farid Mian, resident of Village- Manjhlanagar, P.O. Khesmi, P.S. Nawalsahi, District- Koderma

5. Jitendra Kumar, son of Gulavchand Yadav, resident of Village- Chiglawar, P.O. Bakobar, P.S. and District Koderma Petitioners Versus

1. The State of Jharkhand

2. Civil Surgeon Cum Chief Medical Office, Koderma, P.O. and P.S. Koderma, District- Koderma

3. Director, Labour Employment & Training, Jharkhand having its office at Kutchery, P.O.- G.P.O., P.S.- Kotwali

4. Director in Chief Health Directorate Department of Health & family Welfare, Government of Jharkhand Respondents with W. P. (S) No. 5985 of 2016
Prabhat Ranjan, son of Ajay Kumar, resident of C/o Prabhat Chandra Pandit, Sangajori More, Fatehpur, P.O. and P.S. Fatehpur, District Jamtara- 814166
Petitioner Versus

1. The State of Jharkhand

2. District Malaria Officer, Jamtara, P.O. and P.S. Jamtara, District- Jamtara

3. Director, Labour Employment & Training, Jharkhand

4. Director in Chief Health Directorate Health & family Welfare, Government of Jharkhand Respondents ----- CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR ----- For the Petitioner(s) : Mr. Indrajit Sinha, Adv. Mr. Vipul Poddar, Adv. Mr. Nilesh Kumar, Adv. Ms. Asmita Srivastava, Adv. For the Resp.- State : Mr. Rajesh Kumar, G.P.-V Mrs. Chaitali C. Sinha, JC to AAG ----- 08/25.04.2017 By order of the Court, W.P.(S) No. 5985 of 2016 and W.P.(S) No. 4083 of 2016 were tagged together and heard along with W.P.(S) No.4674 of 2016. On 21.03.2017 noticing the decisions of the Patna High Court in Soni Kumari and Ors. Vrs The State of Bihar and Ors. and Ranjeet Kumar and Ors. Vrs. State of Bihar and Ors., the Principal Secretary, Department of Health and Family Welfare-respondent no.1 was directed to file an affidavit, whether in view of the aforesaid decisions of the Patna High Court, the petitioners can be appointed on the post of Multi Purpose Worker (Male) or not. This order has not been complied by the respondent no.1. No reason has been disclosed for not complying with the order passed by this Court. Least to say, conduct of the Secretary, 3 Department of Health and Family Welfare-respondent no.1 cannot be appreciated.

2. On 24.04.2017, in the above facts, the Court directed that a responsible officer of the department well- versed with the facts shall remain present in the Court with relevant records on the next date of hearing. Dr. Praveen Chandra, Director-in-Chief, Health Services is present in the Court. He states that out of 2150 advertised posts, 42 vacancies under BC-I category, 12 vacancies under BC-II category, 118 vacancies under SC category and 304 vacancies under ST category could not be filled-up, on account of unavailability of eligible candidates under these categories. The reason why vacancies in the above reserved categories could not be filled-up, is said to be unavailability of candidates with qualification of one year's experience. The Director-in- Chief, Health Services states that the relevant records have been transmitted to the Department seeking a direction how to fill-up the remaining vacancies. He admits that upon appointment under the present advertisement, any other candidate acquiring the requisite one year's experience in future is ruled out and appointment on unfilled vacancies has to be made from amongst the appearing candidates or of those who perhaps did not participate in the selection process. He informs the Court that a waiting-list for candidates under the general category has been prepared.

3. Mr. Rajesh Kumar, the learned G.P.-V, on instructions, states that there is no factual difference in these writ petitions. All the petitioners have acquired qualification of Intermediate in Vocational Courses. The learned counsels for the parties are in agreement that the issue involved in these writ petitions is common. Accordingly, with the consent of the learned counsels appearing for the parties these writ petitions are disposed of by a common order, at this stage itself.

4. The petitioners are aggrieved of rejection of their candidature for appointment to the post of Multi Purpose 4 Worker (Male), on the ground that they do not possess requisite educational qualification. All the petitioners claim that previously they were appointed as Multi Purpose Worker (Male) pursuant to advertisement(s) issued by the respondents. The petitioners in W.P.(S) No.4674 of 2016 claim that they were first appointed against 1116 sanctioned posts of Multi Purpose Worker (Male), on contractual basis, for which advertisement was published on 08.05.2008 by State Malaria Control Committee. Similarly, petitioners in W.P.(S) No. 4083 of 2016 were appointed pursuant to advertisement dated 14.07.2012 and, petitioner in W.P.(S) No. 5985 of 2016 was appointed under advertisement dated 13.06.2010. However, they have not been considered for appointment on the said post under the present advertisement. The respondents have pleaded that in the meeting of the Selection Committee headed by the Director-in-Chief, Health Services, qualification for appointment of Multi Purpose Worker (Male) was fixed; the educational qualification which was fixed is Intermediate(Science)/10+2(Science) with minimum 45% marks, which the petitioners do not possess.

5. Mr. Indrajit Sinha, the learned counsel for the petitioners contends that by appointing the petitioners to the post of Multi Purpose Worker (Male) under the previous advertisements the respondents clearly understood the qualification and eligibility of the petitioners and accepted the same by appointing them as Multi Purpose Worker (Male) and now, by mere play of words they cannot insist that the educational qualification as notified in the present advertisement is different from the previous qualification. Submission is that the respondents cannot decline appointment to the petitioners to the post on which they were appointed by the respondents themselves. It is further contended that letter dated 23.03.1996, in

essence followed by the Jharkhand Academic Council, is binding on the respondents, particularly when judicial approval has been accorded to the equivalence of such qualifications, that is, Intermediate in Vocational Course and Intermediate in Science (I.Sc.). He relies on decisions in *Mukesh Kumar Das Vrs. State of Bihar and Ors.* reported in AIR2014 Pat 5, *Soni Kumari Vrs. State of Bihar* in C.W.J.C. No.3974 of 2007, *State of Bihar Vrs. Ranjeet Kumar* reported in 2008 (3) BLJR2639 and *Prakash Kumar Vrs. State of Bihar* reported in 2008 (3) PLJR282. 6. Mr. Rajesh Kumar, the learned G.P.-V opposing the writ petition contends that equivalence of educational qualification is not the function of the Court rather, it must be decided by the executives or the academic regulator. Fixing a qualification for appointment to a post is also a discretion vested in the employer and the Court cannot decide the qualification for appointment to a particular post. The learned counsel refers to a decision in W.P.(S) No.5663 of 2008 to contend that the issue involved in these writ petitions stands concluded by a decision of this Court in the said writ petition.

7. There is no dispute in respect of the nature of work performed by Multi Purpose Worker (Male). They are mainly engaged for the awareness programmes and educating the people in rural areas to take steps for preventing outbreak of Malaria.

8. No doubt, it is a right vested in the employer to fix qualifications for appointment and the Courts cannot look into the rationale behind fixing a qualification. On a closer scrutiny of the pleadings of the parties, however, it would appear that this is not an issue calling for consideration by the Court. The issue involved in these writ petitions is, whether qualification of Intermediate in Vocational Course possessed by the petitioners satisfies the requirement of educational qualification as advertised by the respondents for appointment of Multi Purpose Worker(Male)? 9. The advertisements issued in the year 2008, 2010, 2012 and 2015 have been brought on record. The educational qualifications in these advertisements would reflect that the respondents themselves used different expressions for the qualification for appointment on the post of Multi Purpose Worker (Male). The qualifications under different advertisements were as under: Advertisement issued in the year 2008- 'kS{kf.kd ;ksX;rk & ekU;rk izklr laLFkku ls 10\$2@ baVjfefM,V

foKku fo"K; Ifgr [10+2/Intermediate(with Science subject)] f}rh; Js.kh esa mrhZ.kZ Advertisement issued in the year 2010 - 'kS{kf.kd ;ksX;rk & ekU;rk izklr laLFkku ls 10\$2@baVjfefM,V foKku fo"K; Ifgr [10+2/Intermediate (with Science subject)] de ls de f}rh; Js.kh esa mrhZ.kZ Advertisement issued in the year 2012- 'kS{kf.kd ;ksX;rk & baVjfefM,V 10\$2 Science foKku ds lkFk ,oa fdlh ekU;rk izklr laLFkku ls f}rh; Js.kh ls mrhZ.kZ Advertisement issued in the year 2015- 'kS{kf.kd ;ksX;rk & ekU;rk izklr laLFkku ls baVjfefM,V foKku@10\$2 foKku esa U;wure 45% vad ds lkFk mrhZ.kZ

10 From the above, it would appear that the educational qualification in the advertisement dated 13.06.2010 was similar to the educational qualification required under advertisement dated 08.05.2008. Another advertisement was issued on 14.07.2012, however, the expression used for educational qualification takes a departure from the previous advertisements. A qualification of Intermediate (10+2 Science) and 10+2/Intermediate with Science subject has been sought to be distinguished from the qualification Intermediate(Science)/10+2(Science), when the petitioners' candidature for the subsequent recruitment is rejected.

11. The respondents have taken a stand that in terms of the instructions dated 05.07.2002 of Finance Department, educational qualification and the basis for preparation of merit list were decided in the meeting of the Selection Committee held on 09.12.2015, and since the educational qualification fixed by the Selection Committee does not admit equivalent qualifications, no other qualification except, Intermediate(Science)/10+2(Science) can be considered for appointment of Multi Purpose Worker (Male). If this contention is accepted, then it must necessarily be held that the qualifications notified under the previous advertisements are different from the one prescribed under the present advertisement, for these advertisements use different expressions for the educational qualifications. But, this is not the case pleaded by the respondents. In this eventuality, the qualifications viz. 10+2/Intermediate (with Science subject), Intermediate(10+2 Science) and Intermediate Science)/10+2 (Science) have to be held equivalent, and an inference has to be drawn that the respondents themselves have considered the above qualifications equivalent. So, for this reason alone the plea raised by the respondents that equivalence of educational qualification can not be examined by the Court, in the aforesaid facts, is liable to be rejected. Moreover, arbitrary change in the educational qualifications, though this Court is of the

opinion that there is no distinction in the qualifications notified under the advertisements issued in the year 2008, 2010, 2012 and 2015, is always exposed to judicial scrutiny. In any event, it cannot be said that a decision on equivalence of qualifications is not justiciable [State of Rajasthan Vrs. Lata Arun reported in (2002) 6 SCC252].

12. For the present purpose, the qualifications of Intermediate with Science and Intermediate with Science subject for appointment of Multi Purpose Worker (Male) are nothing but one, and similarly Intermediate (Science)/10+2(Science) is a same and similar qualification, which is the educational qualification under the present advertisement. The respondents themselves appointed the petitioners under previous advertisements issued for the post of Multi Purpose Worker (Male) and thus, it has to be inferred that the respondents accepted that the petitioners have acquired qualifications under one or the other expressions used in the previous advertisements. Mr. Indrajit Sinha, the learned counsel for the petitioners has rightly contended that the State by its conduct has accepted that Intermediate in Vocational Course acquired by the 8 petitioners is a sufficient educational qualification for appointment to the post of Multi Purpose Worker (Male).

13. The respondents have failed to justify their action in rejecting the applications of the petitioners. While taking a plea that it is an absolute discretion of the employer to fix the qualifications for appointment to a post, the respondents conveniently forgot that qualifications for appointment of Multi Purpose Worker (Male) in the previous advertisements were also fixed by them. They have also forgotten that one year's experience as Multi Purpose Worker (Male) is one of the essential requirements for appointment. In the present context, this eligibility condition assumes significance. Once one year's experience as Multi Purpose Worker (Male) is insisted, unless there is a change in the educational qualifications in the current exercise, all applicants possessing one year's experience automatically become eligible, insofar as, their possessing educational qualification is concerned.

14. The petitioners have placed reliance on several decisions of the Patna High Court, whereunder noticing letter dated 23.03.1996 issued by the Bihar

Intermediate Education Council, Patna and Press Communique No. 56/96, the Court has held that the Intermediate Vocational Course was equivalent to regular Intermediate course, i.e., I.Sc./I.A./I. Com. In one of the cases, the matter was referred to the District Teachers Employment Appellate Authority, which held that a qualification of Intermediate in Vocational Course is equivalent to Intermediate degree. In Soni Kumari, it was specifically held that Intermediate in Vocational Course is equivalent to Intermediate in Science. A plea can be raised that the letter dated 23.03.1996 is not binding on the State and the decisions of the Patna High Court including the one in Soni Kumari case are not binding on this Court. Suffice would be to note that a final decision in this regard has to be taken by the Court and not by the respondent-State. A declaration on equivalence of educational qualifications by the Patna High Court should normally be accepted by this Court. May be, the issue of judicial discipline may not arise, but then the doctrine of comity or amity requires a Court not to pass an order which would be in conflict with another order passed by a competent Court of law. In the circumstances, I am in respectful agreement with the decisions of the Patna High Court. However, the decisions of the Patna High Court must be read in the context of the qualifications acquired by the petitioners and the requisite qualifications advertised by the respondents. In the context of objection taken by Mr. Rajesh Kumar, the learned State counsel, to letter dated 15.07.2009 that Jharkhand Academic Council has no jurisdiction to declare equivalence of degree, it is pertinent to note that reference of two years' Intermediate in Vocational Course being equivalent to Intermediate-Arts/Science/Commerce, is a reiteration of a fact in existence. Reference in letter dated 15.07.2009 reads as under: mYys[kuh; gS fd bUVj Lrjh; fjo"khZ; O;kolkf;d f'k{kk ikB~;dze ds ijh{kkQy dh ekU;rk bUVjehfM,V dyk@foKku@okf.kT; ds led{k g SA

15. All the petitioners in W.P.(S) No. 4674 of 2016 have been granted certificate of Intermediate in Vocational Course by Jharkhand Academic Council except, petitioner nos.1, 7 and 12, who have been granted degree by Bihar Intermediate Education Council. They all had opted Biology except, petitioner nos. 7 ,8 and 10-Mining and Geology and petitioner no.12-Physics, as one of the subjects in Intermediate. Petitioners in W.P.(S) No.4083 of 2016 except, petitioner no.5 have all passed Intermediate in Vocational Course examination conducted by

Jharkhand Academic Council. Petitioner no.5 in this writ petition has passed Intermediate in Vocational Course from Bihar Intermediate Education Council. They had also opted Biology as one of the subjects in Intermediate. Similarly, petitioner in W.P.(S) No. 5985 of 2016 has also completed Intermediate in Vocational Course with Biology as a subject. 10 16. Now, if previous appointment of the petitioners as Multi Purpose Worker (Male) is viewed in the context of letter dated 23.03.1996 by Bihar Intermediate Educational Council and letter dated 15.07.2009 of Jharkhand Educational Council, it must be concluded that their candidature has wrongly been rejected under the present advertisement.

17. In the aforesaid facts, on the one hand when the respondents themselves appointed the petitioners to the post of Multi Purpose Worker (Male), they cannot be permitted to throw a challenge to the qualification of the petitioners on the basis of an order passed by this Court in W.P.(S) No.5663 of 2008. The applicant in the said case was possessing Intermediate in Arts. The decision in the said case does not disclose a reference to the decisions of the Patna High Court and appointment by the respondents themselves of the present petitioners and several other similarly situated persons. Facts recorded in W.P.(S) No.5663 of 2008 are different from the facts in the present case.

18. Accordingly, it is held that the petitioners were illegally excluded from consideration for appointment to the post of Multi Purpose Worker (Male) and for the fault of the respondents they cannot be denied appointment. If they fulfill other qualifications and have secured more marks than the last selected candidate, they shall be appointed on the post of Multi Purpose Worker (Male). It is made clear that non-availability of vacancies shall not be a ground for the respondents not to appoint the petitioners. If the petitioners are finally found to have acquired marks more than the candidate last selected, without interfering with the appointments previously made they shall be appointed and for that purpose, if necessary, by creating new posts or adjusting them against existing vacancies under other categories.

19. The writ petitions stand allowed, with the aforesaid directions. (Shree Chandrashekhar, J.) sudhir

