

Mrityunjay Kumar and Anr Vs. Rural Dev Dept

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Court : Jharkhand

Decided On : May-26-2017

Appellant : Mrityunjay Kumar and Anr

Respondent : Rural Dev Dept

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S). No. 2816 of 2017
Mrityunjay Kumar and Anr. Petitioners Versus State of Jharkhand & Ors.
Respondents ----- CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK ----- For
Petitioners : Mr. Sameer Saurav, Advocate Mr. Sunil Kumar Mahto, Advocate For
Respondents : Mr. Tejo Mistri, Advocate Mr. P.K. Mukhopadhyay, Advocate -----
02/ 26.05.2017 Heard learned counsel for the petitioners and learned counsel for
the respondents.

2. The petitioners have approached this Court with a prayer for quashing the advertisement of Intermediate Level (For Computer Knowledge and Hindi Typing Posts) Combined Competitive Examination, 2017, by which the applications were invited from the eligible candidates for appointment on the post of Panchayat Sevaks in Gram Panchayats, as the said advertisement is contrary to the Jharkhand Panchayat Sevak (Niyukti, Seva-Shart evam Kartavya) Niyamavali (Sanshodhit) 2014 (Annexure-2) and notification dated 13.01.2017 (Annexure-3) and further prayer has been made for direction upon the respondents to allow the petitioners, who were working as Gram Rojgar Sewaks under MNREGA, to submit their application forms for the Intermediate Level (For Computer Knowledge and

Hindi Typing Posts) Combined Competitive Examination, 2017 for appointment on the post of Panchayat Sewaks in Gram Panchayats as there is a provision in the Rules, 2014 and notification dated 13.01.2017 for giving relaxation of 5 years in upper age limit and has also prayed for stay of the said advertisement. Factual Matrix 3. The respondent No. 4 published an advertisement on its website on 24.04.2017 in the name of Intermediate Level (For Computer Knowledge and Hindi Typing Posts) Combined Competitive Examination, 2017, by which the applications were invited from the eligible candidates for appointment on the post of Panchayat Sewaks in Gram Panchayats of different district of Jharkhand. The last date for submission of preliminary information has been fixed as 09.06.2017 and the last date for submission of the application form has been fixed as 15.06.2017 and it has been mentioned in the advertisement that only those candidates are eligible for submitting the application pursuant to the advertisement, who are below the upper age limit i.e. in case of petitioners 37 years. As the petitioners are above 37 years, their cases are not being considered and application forms are not entertained, this writ application has been preferred challenging the advertisement.

4. Mr. Sameer Saurav, learned counsel appearing for the petitioner strenuously urges that the terms and conditions mentioned in the advertisement is contrary to the Jharkhand Panchayat Sevak (Niyukti, Seva-Shart evam Kartavya) Niyamavali (Sanshodhit) 2014 (hereinafter called as 2014 Rules in brevity). Learned counsel submits that State of Jharkhand for appointment of Panchayat Sevaks in the Gram Panchayat has come out with a rule in exercise of power under the proviso of Article 309 of the Constitution of India i.e. 2014 Rules. Rule 7 (I) provides that upper age limit for appointment will be as per the notification of Department of Personnel, Training & Rajbhasha. It has been further argued that a notification was issued vide memo No. 132 dated 13.01.2017 by the Department of Rural Development and Panchayati Raj and inserted a rule 7(II) (ka) after rule 7(I), wherein upper age limit for Gram Rojgar Sevaks working under MNREGA has been relaxed by 5 years. Learned counsel submits that respondent No. 4 and 5 has issued advertisement without taking into consideration of notification dated 13.01.2017 (Annexure-3) by which upper age limit has been relaxed by the State Government for those persons, including the petitioners, who are working as Gram

Rojgar Sevaks working under MNREGA. It has been further argued that respondent authorities are bound to consider the notification dated 13.01.2017 and any advertisement without such consideration is not sustainable in the eyes of law. Learned counsel submits that the advertisement is discriminatory as the petitioners, who are Rojgar Sevaks under MNREGA for more than 9 years are entitled for relaxation of age for submitting the application forms but have been denied the same, though they are possessing the required essential qualification, as the relaxation in upper age limit has not been in the impugned advertisement. In order to strengthen his argument, learned counsel draws the attention of this Court towards Annexure-3 and submits that the advertisement without taking into consideration (Annexure-3), is arbitrary and discriminatory with the petitioners. It is clear from Rule 7(II)(ka) of the 2014 Rules that Gram Rojgar Sevaks working under MNREGA can participate in the appointment process for Intermediate Level (For Computer Knowledge and Hindi Typing Posts) Combined Competitive Examination, 2017 by claiming relaxation in their respective age and as such, action of the respondent authorities is completely illegal and arbitrary. It is further argued that the terms and conditions fixed by the respondent authorities is contrary to 2014 Rules. Learned counsel submitted that the respondent authorities in exercise of its executive power cannot change the terms of the appointment in the advertisement, which is contrary to the rules framed under the proviso to Article 309 of the Constitution of India and they are bound to make appointment in consonance with the terms of the Rules and Notification dated 13.01.2017.

5. On the other hand, learned counsel for the respondents submits that as the case has come for the first time, instructions are necessary for proper adjudication of the case and as such, counter-affidavit is required. .

6. Having gone through the rival submissions of the parties and going through the relevant records as annexed in the writ application, this Court is of the considered view that the case of the petitioners needs consideration. Upon going through the notification dated 13.01.2017 (Annexure-3 to the writ petition), it is clear that the State has come out with a notification that upper age limit for appointment will be as per the notification of Department of Personnel, Training & Rajbhasha. The notification issued vide memo No. 132 dated 13.01.2017 issued by the

Department of Rural Development and Panchayati Raj speaks that upper age limit for Gram Rojgar Sevaks working under MNREGA has been relaxed by 5 years. Before floating the advertisement, the respondents ought to have considered the notification dated 13.01.2017 (Annexure-3) to the writ petition by which upper age limit has been relaxed by the State Government and hence, any advertisement without such consideration is not sustainable in the eyes of law.

7. Since the last date for submission of preliminary information has been fixed as 09.06.2017 and last date for submission of application has been fixed as 15.06.2017, the respondents are directed to accept the forms of the petitioners taking into consideration notification dated 13.01.2017 (Annexure-3) by giving them age relaxation of 5 years and in view of the fact that this case has come out for the first time, this Court further directs the respondents to seek instruction and file counter-affidavit mentioning specifically that how the advertisement has been published without giving consideration to Annexure-3 i.e. notification dated 13.01.2017, giving them age relaxation of 5 years.

8. The respondents are allowed four weeks time to file counter-affidavit. Let this case be listed soon after filing of the counter-affidavit i.e. on 23.06.2017. Needless to say that acceptance of the application form and relaxation of age will be subject to final out come of the writ application. (Dr. S.N. Pathak, J.) kunal/-

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