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Court : Jharkhand

Decided On : Aug-04-2017

Appellant : Jitendra Kumar and Ors

Respondent : Finance

Judgement :

1 W.P.(S) No. 670 OF 2017 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 670 OF20171. Jitendra Kumar, son of Surendra Ram; 2. Bhola Nath Mahto, son of Prayag Mahto; 3. Raj Kumar Choudhary, son of Mahabir Chaudhary; 4. Piyush Pravakar, son of Nakul Prasad; 5. Binod Kumar, son of Bijay Bhogata; 6. Radhe Shyam Prasad, son of Jhaul Paswan; 7. Sajiwan Kumar Braik, son of Shyam Braik; 8. Ghaneshyam Mahto, son of Ghasi Ram Mahto Petitioners VERSUS1 State of Jharkhand, 2. The Principal Secretary, Finance Department, Government of Jharkhand 3. The Principal Secretary, Forest & Environment Department, Nepal House, Doranda, Ranchi 4. The Principal Chief Conservator of Forest, Jharkhand Van Bhawan, Ranchi 5. The Jharkhand Staff Selection Commission (Recruitment of Forest Guard), Ranchi through its Chairman. ... Respondents. PRESENT HON'BLE MR. JUSTICE DR. S. N. PATHAK For Petitioners : Mr. Rajiv Ranjan, Sr. Advocate. Mr. Shresth Gautam, Advocate. Mr. Shreya Mishra, Advocate. For the State: Mr. Jayant Franklin Toppo, SC (L & C) For the JSSC: Mr. Sanjay Piprawall, Advocate. Mr. Tejo Mistri, Advocate C.A.V. On 07/07/2017 Pronounced on 04/08/2017 Dr. S.N.Pathak, J.

Heard learned counsel for the parties.

2. Petitioners have approached this Court with prayer for a direction upon the respondents to issue appointment letters in their favour for the post of Forest Guard and allow them to join their duties in pursuance to advertisement no. 03/2014. Further prayer has been made for a direction upon the respondents to pass order for verification of the documents which was submitted by the petitioners before the authority concerned with regard to appointment of Forest Guard after completion of all selection process in connection with Advertisement No. 03/2014. Vide I.A. No. 3074 of 2017, petitioners have prayed for issuance of writ in the nature of certiorari for quashing the results published in the official website of Jharkhand Staff Selection Commission whereby and where under RC/ 2 W.P.(S) No. 670 OF2017 results for seven districts have been published without considering the case of the petitioners and in contravention of the rules dated 04.09.2014, contained in resolution no.

4068. The said I.A. no. 3074 of 2014 has been allowed vide order dated 05.07.2017.

3. Shorn of unnecessary details, the facts which are requisite to be stated are that the pursuant to the advertisement no. 03/2014, vacancy was published for appointment of Forest Guard in all the Districts of Jharkhand. The petitioners claim to have qualified and passed PT, Mains as well as Physical Test pursuant to the said advertisement and had also submitted requisite documents but no merit list has been prepared. When the results were not published by the respondents and entire process of appointment became controversial, petitioners submitted an application dated 25.01.2017 before the authority concerned to verify the documents and to complete the process of appointment, but till date no documents have been verified nor final merit list has been prepared. It is alleged that in violation of terms of advertisement, conditions mentioned in Vivarnika as well as in violation of Forest Manual, the respondents are uploading the list of candidates for medical test before verification of documents. It is case of the petitioners that as per advertisement as well as in terms of the conditions mentioned in Vivarnika as well as Forest Manual, no medical test is required for appointment of Forest Guard and as such, the petitioners being qualified in examination and physical test, deserves to be appointed as a Forest Guard.

4. Mr. Rajiv Ranjan, learned Sr. Counsel assisted by Mr. Shresth Gautam and Shreya Mishra, strenuously urges that the merit list has been prepared illegally and arbitrarily dehorse the rules. In preparation of merit list, the rules regarding appointment of Forest Guard have been a complete go-bye. Learned Sr. Counsel submitted that the petitioners were found physically and medically fit. There was no occasion to declare the petitioners medically unfit. After review medical examination done by the same members, the petitioners have been found medically fit whereas the respondents authorities have not considered them for appointment and as such their names does not find place in the merit list because illegally they have been declared medically unfit. Mr. Rajiv Ranjan, learned Sr. Counsel further submitted that it is specific case of the petitioners that their signatures were obtained on the RC/ 3 W.P.(S) No. 670 OF2017blank papers and the medical report prepared by the respondents, were never shown to them. Learned Sr. Counsel further submitted that the merit list based on the medical certificates issued by the respondents were disputed by the petitioners and as such the same could not be taken into consideration and the petitioners got themselves examined by the experts who declared them medically fit. Learned Sr. Counsel emphatically submitted that the merit list prepared for appointment of Forest Guard is dehorse the rules and as such fit to be quashed and set aside and fresh merit list should be prepared taking into account that the petitioners have been declared successful and there was no occasion to declare them medically unfit. Learned Sr. Counsel also draws attention of this Court towards Resolution of the respondents authorities contained in Resolution No. 4068, Dated 04.09.2014 and further submitted that under the said Resolution, the eligibility criteria for selection has been provided. Learned Sr. Counsel further laid stress on Rule 10 of Resolution No. 4068 and further submitted that the requirement of the State authorities to prepare a comprehensive merit list and thereupon venture into the medical test, was never followed and without adhering to their own rules, they have conducted physical and medical test on one day itself without preparing the merit list after physical test. Learned Sr. Counsel further argued that though the petitioners followed the direction of the respondents, appeared in medical test once conducted and, thereafter, re-conducted but surprisingly their named did not find place in the merit list. Learned Sr. Counsel further argued that the petitioners

were duly qualified in all the examinations conducted by the respondents even then they were not included in the final list of the candidates called for verification of the documents. Learned Sr. Counsel further submitted that Rules 9 and 10 of the Resolution have not been followed at all. Petitioners though were declared medically fit but subsequently found to be unfit and their names did not find place in the merit list but the same member of the Medical Board subsequently declared them medically fit and as such, the declaration of the petitioners to be medically unfit, cannot be a ground for ousting them from the merit list. In order to strengthen his arguments, learned Sr. Counsel has placed reliance on various Judgments: (i) Bhupendra Nath Hazarika and Another Vs. State of Assam and others reported in (2013) 2 SCC 516 RC/ 4 W.P.(S) No. 670 OF 2017; (ii) Rajendra Prasad Vs. State of Jharkhand & Anr. passed in Contempt Case (C) No. 109 of 2013; (iii) Nirbhay Pandey Vs. The State of Jharkhand and others passed in W.P.(S) No. 6075 of 2010; (iv) Narayan Das Vs. The State of Jharkhand and others in W.P.(S) No. 2917 of 2010; Learned Sr. Counsel further submitted that any appointment dehors the rules would be illegal and any recruitment must be in accordance with rules and in terms of advertisement. Learned Sr. Counsel emphatically argues that in the present scenario when the medical reports are itself disputed, it would be better if the matter is referred to the Apex Medical Board and after report of the Apex Medical Board if the petitioners are found to be within the zone of consideration, a direction be given for preparation of fresh merit list by the Department and letter of appointment should be issued if the petitioners are found fit in accordance with law.

5. Per contra counter affidavit has been filed by the respondents - Jharkhand Staff Selection Commission.

6. Mr. Sanjay Piprewall, learned counsel for the respondents - JSSC assisted by Mr. Tejo Mistry, Advocate vehemently opposed the contention of learned Sr. Counsel appearing for the petitioners. Mr. Sanjay Piprewall submitted that once the petitioners have appeared in the written examination conducted by the Commission and are disqualified, it is not open for them to challenge the rules as they have submitted to the jurisdiction of the Commission. Learned counsel has referred to Para 18 of the Judgment passed by Hon'ble Apex Court in the case of

Union of India and others Vs. S. Vinodh Kumar and others reported in (2007) 8 SCC100 which is reproduced as under: 18. It is also well settled that those candidates concerned who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See *Munindra Kumar v. Rajiv Govil*) (See also *Rashmi Mishra v. M.P. Public Service Commission*). Learned counsel submitted that as the petitioners had been declared medically unfit, their cases cannot be considered for appointment and there is no illegality committed by the Commission in not considering their names for appointment and neither their names appeared in the merit list. RC/ 5 W.P.(S) No. 670 OF2017 Learned counsel further submitted that there is no challenge to the report of the medical board and in absence of the same, no relief can be given to the petitioners. Learned counsel further argued that once the selection process is complete, unless successful candidates are arrayed as parties, the writ petition itself is not maintainable. Learned counsel further submitted that the competitive examination was to be conducted in four tiers i.e. Preliminary test examination, Mains examination, Physical test and lastly Medical examination. Learned counsel further submitted that the marks secured by the candidates is not the sole criteria for appointment rather the candidates have to qualify the physical and medical test also as per the terms of Jharkhand Rajya Avar Ban Kshetra Karmi Sambarg Niyamawali, 2014.

7. State respondents is represented by Mr. Jayant Franklin Toppo, learned Standing Counsel (L & C). Learned counsel submitted that the respondents - Jharkhand Staff Selection Commission has to conduct examination and publish result and State has no interference.

8. In reply to the contention raised by learned counsel for the respondents, Mr. Rajiv Ranjan, learned Sr. Counsel appearing for the petitioners submitted that the merit list itself is dehorse the rules and no offer of appointment has been done till date and as such, there is no need of arraying the selected candidates as party-respondents.

9. Be that as it may, having gone through rival submission of the parties, this Court is of the considered view that case of the petitioners need consideration. It is

settled principle of law that no appointment can be done dehorse the rules. The Hon'ble Apex Court in the case of Bhupendra Nath Hazarika and another Vs. State of Assam and others reported in (2013) 2 SCC516 has held in para-43 as under:- 43. Thus, emphasis was laid that when appointment is made without following the procedure prescribed under the Rules, the appointees are not entitled to have the seniority fixed on the basis of the total length of service. In essence, it has been ruled that when the appointment is made dehorse the Rules, the appointee cannot claim seniority even if his appointment is late on regularised. This court in catena of decisions have held that in case of dispute regarding measurement or the medical certificates, the Civil Surgeon is the competent authority for granting medical certificate or declaring a person to be medically fit or unfit. In the cases where disputes arise regarding the RC/ 6 W.P.(S) No. 670 OF2017medical fitness, in case where two certificates are there - one declaring them to be unfit and one declaring fit, the Hon'ble Apex Court has held in para-19 and 20 of the Judgment in the case of National Thermal Power Corporation, Kahalagaon and others Vs. Nakul Das and others reported in (2014) 9 SCC385

19. Pursuant to the orders dated 9-5-2013 directing NTPC to appoint the selected candidates, two out of the aforesaid five appellants have been given appointment. However, cases of other three appellants are rejected as in the medical examination conducted, they are found medically unfit as suffering from colour blindness. They are Appellants 1, 4 and 5. The learned counsel appearing for these appellants submitted that their medical examination was done in haste; they had made representation to NTPC regarding constitution of Medical Board to re-examine their cases to which NTPC was not agreeing; they had got themselves medically examined from the same hospital and same doctor, namely NTPC, Kahalagaon Hospital and also outside doctor and they had duly certified that these appellants were not suffering from colour blindness. Additional affidavit dated 26-6-2005 is filed including the result of their medical examination from out-patient department of NTPC, Kahalagaon Hospital, as well as opinion of some private doctors in support of the aforesaid submission.

20. Having regard to the aforesaid facts, we are of the opinion that it would be in the interest of justice that NTPC constitutes another Medical Board for re-

examination of these three appellants and decide their fate on the basis of the opinion given and taken further action on the basis of opinion given by the reconstituted Medical Board. This appeal is disposed of on the aforesaid terms.

10. The contention of the learned counsel for the respondents that when the petitioners had already appeared in the entire process, they are debarred from challenging the selection process, is not at all acceptable to this Court in view of the fact that Courts have already held that if the selection process is vitiated by glaring defects, the same can be challenged by the candidates even though they have participated in the process. An applicant even after appearing in the selection test for public employment has locus standi to challenge the procedure and method of selection - debarring an unsuccessful candidate from challenging the selection procedure is largely a practice followed by the Court having regard to the facts of each case and is not a declaration of law under Article 141 of the Constitution - doctrine of Estoppel will not apply as a routine in every case - therefore, a candidate even if having participated in the selection procedure, on being unsuccessful, has a locus to challenge it on the ground of glaring RC/ 7 W.P.(S) No. 670 OF2017 defects in the selection process - the candidate cannot be said to have waived his fundamental rights under Articles 14 and 16 of the Constitution by being an applicant. Reference may be made to para-5, 8, 9, 12, 13, 72 and 73 of the Judgment passed in the case of Dilip Kumar Jha & Anr. Vs. The state of Bihar & ors. And others analogous cases reported in 1999(1) PLJR664 Therefore, selection procedure in this case is vitiated by glaring defects and can be challenged by the petitioners even though they participated in the selection process.

11. As a cumulative effect of the aforesaid rules, guidelines, judicial pronouncement and legal proposition, this Court is of the opinion that it would be in the interest of justice that the respondents constitute another medical board for re-examination of the petitioners and decide their fate on the basis of the opinion given and take further action on the basis of the opinion given by the reconstituted medical board. Secretary, Health Department, Government of Jharkhand, Ranchi is directed to constitute Medical Board consisting of five expert doctors other than the medical officers who were there in the earlier medical board, preferably expert

doctors of RIMS, Ranchi. Needless to say, if the petitioners are found to be medically fit and otherwise fulfill the requisite conditions, a fresh merit list be prepared including names of the petitioners and recommendations be made to the State Government for appointment on the post of Forest Guard.

12. The writ petition is disposed of on the aforesaid terms. (Dr. S.N. Pathak, J.)
High Court of Jharkhand at Ranchi Dated August 4, 2017 RC/ RC/

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