

Ashish Ranjan Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-25-2017

Appellant : Ashish Ranjan Kumar

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S). No. 3730 of 2016

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Ashish Ranjan Kumar, son of Shri Sushil Kumar, resident of C/o. Kaushik Banerjee, 57, Burdwan Compound, P.O. & P.S. Lalpur, District Ranchi. Petitioner
VERSUS1 The State of Jharkhand.

2. Jharkhand Public Service Commission having its office at Circular Road, P.O. G.P.O., P.S. Lalpur, District Ranchi.

3. The Home Secretary, Govt. of Jharkhand, Dhurwa, Ranchi.

4. The Jharkhand Public Service Commission through its Chairman, having its office at Circular Road, P.O. G.P.O., P.S. Lalpur, District Ranchi.

5. The Secretary, Personnel, Administrative Reforms & Rajbhasha Department, Govt. of Jharkhand, Dhurwa, Ranchi.

6. Ajitesh Kumar Singh, son of Purnendu Narayan Singh, resident of D-415, 1st Floor, Nehru Vihar, Timarpur, North Delhi-110054.

7. Shanti Bhushan, son of Ratneshwar Shukla, resident of 80A/9, Sahara Apartment, Flat No. 320, Kisangarh, P.O. & P.S. Basant Vihar, New Delhi-110070.

8. Ram Govind Pandit, son of Manik Chandra Pandit, resident of village Rangmatia, K. Bhoktadih, Masalia, Dumka-814166. ... Respondents.

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For Petitioner : Mr. R. Krishna, Advocate Ms. Neeta Krishna, Advocate For Respondent-State : Mr. Vineet Prakash, JC to SC (L&C) For Respondent-JPSC : Mr. Anil Kumar Sinha, Sr. Advocate Mr. Sanjoy Piprawall, Advocate Mr. Divyam, Advocate For Respondent Nos.6 to 8 : Mr. A.K. Sahani, Advocate.

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with IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S). No. 2761 of 2016

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Sandeep Kumar Tiwari, son of Jagat Narayan Tiwari, resident of B-138, Nehru Vihar, Civil Line, Timarpur, North Delhi. Petitioner VERSUS1 The State of Jharkhand.

2. The Chairman, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. 2 Lalpur, District Ranchi.

3. The Secretary, Department of Home Affairs, Govt. of Jharkhand, Dhurwa, Ranchi.

4. The Controller of Examination, Jharkhand Public Service Commission, Circular Road, P.O. & P.S. Lalpur, District Ranchi.

5. Sanjib Kumar Singh, son of Shrabhan Kumar Singh, resident of Barahpur, Mor, Mokama, P.O. & P.S. Mokama, District Patna (Bihar).

6. Ramgovind Pandit, son of Manik Chandra Pandit, resident of village Rangamatia, K. Bhoktadih, Masalia, P.O. & P.S. Dumka, District Dumka.

7. Shanti Bhushan, son of Ratneshwar Shukla, resident of 80A/9, Sahara Apartment, Flat No. 320, Kisangarh, P.O. & P.S. Basant Vihar, New Delhi.

8. Ajitesh Kumar Singh, son of Purnendu Narayan Singh, resident of D-4/5, First Floor, Nehru Vihar, Timarpur, District North Delhi. ... Respondents.

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For Petitioner : Mr. Amit Sinha, Advocate For Respondent-State : Ms. Shruti Shresth, JC to SC AG For the Respondent-JPSC : Mr. Anil Kumar Sinha, Sr. Advocate Mr. Sanjoy Piprawall, Advocate Mr. Divyam, Advocate For Respondent Nos.6 to 8 : Mr. A.K. Sahani, Advocate

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK C.A.V. on 04.08.2017
Pronounced on 25/08/2017 Dr. S.N. Pathak, J.

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The instant writ petitions have been preferred for directing the respondents to declare the petitioners successful in the examination taken by them against the post of Probation Officer taking into consideration the fact that the other candidates, who have obtained the similar marks as to that of these petitioners, have been declared successful and the petitioners have been declared unsuccessful, though the petitioners have also secured same marks to that of last selected candidates. Further prayer has been made to direct the respondents particularly, respondent No. 2 to recommend the names of these petitioners to the State Authorities, so that they may take necessary action for appointments of the petitioners against the post of Probation Officers. FACTUAL MATRIX3 An Advertisement has been issued by the Jharkhand Public Service Commission (for short JPSC) vide Advt. No. 6/2013 for appointment against 3 the post of Jharkhand Administrative Service, Jharkhand Police Service, Jharkhand Finance Service, Jharkhand State Jail Service, Jharkhand Labour Service, Jharkhand Probation Service and Jharkhand Excise Service. In pursuant to the said advertisement, the petitioners have applied for their appointments against the post mentioned in the advertisement. The JPSC after scrutinizing the application forms filed by the petitioners along with other candidates, has issued the admit cards to the petitioners and others for Preliminary Test. Upon receiving the admit cards, the petitioners appeared in the Preliminary Test and have been declared successful in the said test. Thereafter, the petitioners have appeared in Mains Examination, in

which they have also declared successful and thereafter, interview letters have been issued to them under the signature of Controller of Examination, JPSC, Ranchi. The petitioners appeared before the Interview Board on the scheduled date along with all the testimonials, where they were informed that they are required to report to Sadar Hospital, Ranchi for their medical examinations.

4. In pursuant of such direction, they have presented themselves for their medical examinations, which was conducted by a team of doctors of various departments/ wings. Finally, the list of successful candidates were published in Prabhat Khabar and uploaded in JPSCs Website on 21.02.2016, in which the petitioners have not been declared successful against any of the posts for which the examination was conducted pursuant to the Advt. No.6/2013. It is the further case of the petitioners that when they went through their mark-sheets they found that they have secured same marks as to that of the marks secured by the last selected candidates but they have been declared unsuccessful by the respondent-JPSC for the reasons best known to them.

5. It is the further case of the petitioners that one Ajitesh Kumar Singh, whose date of birth is 16.03.1988 and secured 192 marks in General Studies which is less to the marks obtained by the petitioner of W.P.(S). No. 3730 of 2016, has been declared successful by the authorities without taking into consideration the fact that the petitioner has secured 798 marks in total and further 224 marks in General Studies, which is one of the determining factor in the Commissions Examination like, UPSC, JPSC that if more than one candidate secure equal marks in the examination then on the basis of marks obtained in General Studies paper and on the basis of the age, the candidates who secured more marks in General Studies and who is senior in age would be given preference to the other candidates who has obtained less marks and junior in age to the petitioner. Similarly, in the case of Shanti Bhushan, he has 4 been declared successful though he was having less marks in comparison to the petitioner in General Studies paper and further he is also junior/ younger in age to the petitioner but the reasons best known to the respondents, the petitioner has not been declared successful and at the same time Ajitesh Kumar and Shanti Bhushan have been declared successful.

6. Similarly, the petitioner of W.P.(S). No. 2761 of 2016 has got the same marks to that of the last four selected candidates namely, Sanjib Kumar Singh, Ramgovind Pandit, Shanti Bhushan and Ajitesh Kumar Singh for Jharkhand Probation Service in unreserved category. When the petitioner verified the date of birth of all the aforesaid candidates, he found that he is elder to all the aforesaid four candidates since the date of birth of the petitioner is 01.01.1977 whereas, the date of births of the aforesaid four candidates namely, Sanjib Kumar Singh, Ramgovind Pandit, Shanti Bhushan and Ajitesh Kumar Singh are 25.09.1977, 15.11.1985, 24.09.1986 and 16.03.1988 respectively. In spite of that their cases have not been considered by the respondents. Hence, these writ applications have been filed by the petitioners for redressal of their grievances.

7. Mr. R. Krishna, learned counsel appearing for the petitioners submits that the action of the respondent-authorities in not declaring the petitioners as successful candidates in the examination held by the JPSC for the appointment against the post of Probation Officer is arbitrary, mala fide and bad in the eyes of law. The petitioner is entitled to be appointed against the post of Probation Officer taking into consideration the fact that the petitioner has secured 798 marks and he is senior/ older in age to the other candidates who have secured the same marks. In spite of the above fact, they were discriminated by not giving them the benefits of appointments. The petitioners are entitled to get appointment against the post of Probation Officer on account of the fact that the candidates who have secured the same marks as of the marks secured by the petitioners in General Studies paper, which is also one of the determining factor in competitive examination like UPSC, JPSC that if more than one candidate secured the same marks in total then on the basis of marks obtained in General Studies paper and on the basis of the age, the candidates who secured more marks in General Studies and who is senior in age would be given preference to the other candidates who has obtained less marks and junior in age.

8. Summing up his arguments, learned counsel for the petitioners submits that the action of the respondents in not considering the case of the petitioners for appointment is in violation principle of natural justice and against the settled provisions of law, guidelines and noted government orders. 5 9. Per contra

counter-affidavit has been filed by the respondent JPSC as well as State. Learned senior counsel, Mr. Anil Kumar Sinha assisted by Mr. Sanjoy Piprawall appearing for the JPSC vehemently opposes the contention of the learned counsel for the petitioner and submits that JPSC is merely a recommending authority. The duty and job of JPSC is to recommend the names of successful candidates, which has been done following the rules. In absence of any statutory rules, JPSC has done whatever was required i.e. reasonable action has been taken in accordance with law for recommending the names of successful candidates. No statutory provisions or even administrative decisions was supplied to JPSC and as such, in absence of any such statutory rules or administrative decisions, reasonable action has been taken by JPSC.

10. Learned counsel appearing for the respondent-State argues that this Honble Court vide order dated 31.03.2017 directed respondents to produce Government Notification/ Resolution/ Circular, if any, under which preference in appointment is decided in the event two candidates in the same category obtain equal marks. In this regard, attention of the Court was drawn on paragraphs - 6 & 7 of the counter-affidavit filed by the respondent-State, which reads as under:-

6. That in this context, it is stated that vide letter No. 6509 dated 12.12.1934, issued by the Bihar & Orissa Appointment Department certain directions have been issued to the concerned departments for determining the seniority of direct recruits, wherein, it has been mentioned that seniority may be determined by general consideration of merit, by educational qualifications or by age.

7. That it is pertinent to mention here that Government of Jharkhand has formulated various Rules for conducting competitive examinations for appointment on various posts by Jharkhand Staff Selection Commission namely:- (i) Jharkhand Staff Selection Commission Examination (Matric/10th level), Conduct Rules, 2015 [Notified vide Notification NO. 10506 dated 11.12.2015] (ii) Jharkhand Staff Selection Commission Examination (Intermediate/ 10+2 Level), Conduct Rules, 2015 [Notified vide Notification No. 8566 dated 28.09.2015]. (iii) Jharkhand Staff Selection Commission Examination (Diploma Level), Conduct Rules, 2015 [Notified vide Notification No. 8565 dated 28.09.2015], (iv) Jharkhand Staff

Selection Commission Examination (Graduate Level), Conduct Rules, 2015 [Notified vide Notification No. 10507 dated 11.12.2015]. In the aforesaid Rules, the following Guidelines have been given for determining seniority in the condition when two candidates obtains equal marks:- In case more than one candidate are having equal marks in the merit list, the seniority would be determined by their 6 respective dates of birth in such a way that the older candidate would be placed at the senior position in the merit list. Learned counsel argues that in view of the aforesaid rules and guidelines, the writ petition is not maintainable and is devoid of any merit 11. Mr. A.K. Sahani, learned counsel appearing for the respondent Nos. 6 to 8 argues that the answering respondents have rightly been selected by taking into consideration all the criteria for such selection without any deviation from the norms and established rules. Mr. Sahani further argued that no error has been committed by the respondent-authorities in selecting answering respondents i.e. respondent Nos. 6 to 8. Learned counsel argued that vacancies are still existing as four Probation Officers namely, Sanjeev Kumar Singh, Abhinav Mishra and Md. Wasim Ahmad have not joined their posts which admitted by the respondent-JPSC and as such, also in view of the fact that these respondents have already completed their training, hence, their candidature should not be disturbed and no order against them be passed.

12. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that cases of the petitioners need consideration. The argument advanced by the learned counsel for the State as well as the learned senior counsel for the JPSC is not acceptable to this Court. What has been argued by the learned counsels is contrary to what has been stated in the counter-affidavits. After perusal of the counter-affidavits this Court is of the considered view that illegally and arbitrarily and without considering the relevant provisions and rules framed by the respondents themselves, the appointments of petitioners have not been considered. It is not open to the respondents to make any appointment dehors the rules. May be no specific rules or guidelines were framed and given to JPSC to act upon in case of appointments where the numbers of several candidates are same similar but as per their own rules and guidelines, which they have brought on record by way of counter-affidavit, the same has not been followed in cases of these two petitioners. In this regard submissions made

in para-27 & 28 of the counter-affidavit filed by the respondent-JPSC is necessary to look into, which is reproduced herein below:- 27. That, it is stated that since the petitioner and 5(five) other candidates have secured same marks, i.e. 798 marks and as per the date of birth, petitioner Sandeep Kumar Tiwari ranked 1st in terms of date of birth and one Ashish Ranjan Kumar is the 3rd oldest candidate in terms of date of birth, but as per Medical Report, the height of one Ashish Ranjan Kumar 7 and Sandeep Kumar Tiwari was only 165 cms. i.e. the minimum height and generally in police and allied services preference is given to the taller candidates and as such, JPSC after considering the Medical Fitness Certificate, recommended respondents No. 6 to 8 for appointment in Jharkhand Probation Services and due to the aforesaid facts, the name of the petitioner and one Sandeep Kumar Tiwari has not been recommended for appointment.

28. That, it would be evident from the perusal of the materials available on the record that JPSC while making recommendation for appointment of the respondent No. 6 to 8 and one Sanjeev Kumar Singh, has taken into consideration Clause-9 of the Advertisement.

13. From perusal of the counter-affidavit filed by the JPSC it would be evident that the JPSC has recommended the names of respondent No. 6 to 8 on the basis of Clause-9 of the advertisement. The contention of the JPSC is not tenable in the eyes of law. Clause-9 of the advertisement never talks of any guidelines regarding recommendation of the candidates when the marks are same and similar. It talks about minimum physical criteria only. The counter-affidavit filed by the State bringing on record Annexure-B series which memo No. 10506 dated 11.12.2015, states that in case more than one candidate are having equal marks in the merit list, the seniority would be determined by their respective date of birth in such a way that the older candidate would be placed at the senior position in the merit list. From perusal of Police Manual Vol.-I, which is adopted and implemented all over the State, clearly mentions that in case the marks of two or more candidates are same and similar, the cases of seniority has to be decided on the basis of their age and in case of further tie then educational qualification is taken into consideration and lastly, the height. In the instant cases, the respondents have taken the 3rd criteria for consideration of seniority which is not tenable in the eyes

of law. In absence of any statutory rules, the guidelines which are prevalent or even the executive orders are to be taken into consideration. In the instant case, the prevalent guideline clearly speaks that in case of tie, firstly, the date of birth has to be taken into consideration for preparation of merit list and not the height, which is the 3rd criteria.

14. As a cumulative effect of the aforesaid facts, rules, guidelines and the judicial pronouncements, this Court is of the considered view that though the petitioners have secured the same marks and are senior in age than the other candidates, who have obtained the same marks and have been declared successful by the respondent-authorities arbitrarily and without taking into consideration the fact that even the government orders, circulars, executive instructions provides that if two candidates obtained the same marks, preference for appointment would be given to candidate who is senior in age between the two, but they have denied the benefit of appointments.

15. Accordingly, I hereby direct the respondents particularly, respondent Nos. 2 & 4 i.e. JPSC, to recommend the names of the petitioners to the State- authorities, after declaring them successful, for necessary actions for appointments of the petitioners against the vacant post of Probation Officers. As already the respondent Nos. 6 to 8 are working and have also already obtained training and some vacancies are still there, the respondents may consider the cases of respondent Nos. 6 to 8 for allowing them to continue in the service in view of the vacancy position but in any view of the matter, the cases of the petitioner namely, Ashish Ranjan Kumar in W.P. (S). No. 3730 of 2016 and Sandeep Kumar Tiwari in W.P. (S). No. 2761 of 2016, have to be considered for appointment on the post of Probation Officers. Needless to say that the entire exercise should be completed within a period of four weeks from the date of receipt/ production of a copy of this order and upon completion of the process, the petitioners should be issued appointment letters within a further period of two weeks thereafter.

16. Resultantly, the writ petitions stand allowed. (Dr. S.N. Pathak, J.) kunal/-