

Gautam Kumar Rai Vs. Forest

Gautam Kumar Rai Vs. Forest

SooperKanoon Citation : sooperkanoon.com/111156

Court : Jharkhand

Decided On : Oct-11-2017

Appellant : Gautam Kumar Rai

Respondent : Forest

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 5981 of 2017

=====

Gautam Kumar Rai, son of Sri Ashok Kumar Rai, resident of village Jamdiha, P.O.& P.S. Deori, District Giridih. Petitioner VERSUS1 The State of Jharkhand through its Chief Secretary, Ranchi.

2. The Principal Secretary, Forest & Environment Department, Govt. of Jharkhand, Ranchi.

3. The Principal Chief Conservator of Forest, Jharkhand Van Bhawan, Doranda, Ranchi.

4. The Principal Secretary, Department of Health, Govt. of Jharkhand, Ranchi.

5. The Jharkhand Staff Selection Commission through its Secretary, Ranchi.

6. The Examination Controller, Jharkhand Staff Selection Commission, Ranchi. ... Respondents.

=====

For Petitioner : Mr. Rajesh Kumar, Advocate For Respondents : Mr. Tejo Mistri,
Advocate

=====

CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK02 11.10.2017 Heard
learned counsel for the petitioner and learned counsel for the respondents.

2. Petitioner has approached this Court with prayer for quashing of certificate of medical fitness dated 26.12.2016, issued by the Medical Board headed by Civil Surgeon, whereby the petitioner has been disqualified by mentioning him as physically disabled/ deformity of flat feet. Further prayer has been made for a direction upon the respondents to constitute a Medical Board, consisting of expert doctors for re-examination of the petitioner as the petitioner has not been found flat foot by the expert doctor of Rajendra Institute of Medical Sciences, Ranchi (RIMS).

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 petitioner claims to have qualified and passed PT as well as Mains Examination and he has also appeared for physical eligibility test as well as medical examination at Bhagwan Birsa Jewik Udyan, Chakla, Ormanjh, Ranchi on 19.12.2016. Thereafter, the petitioner was verbally asked to come 2 on 26.12.2016 also for his re-examination of flat foot and knock knee. The petitioner appeared before the Medical Board on the said date. It is the specific case of the petitioner that in the final result published on the website of JSSC, total number of 175 candidates were shown as successful candidates for the post of Forest Guard for Giridih District. The JSSC also published the district wise qualifying marks on the website as well as percentage of marks obtained by the individual candidates obtained in the examination. The petitioner got 61.53% marks and the last selected candidates for Girdih district has secured 59.96% marks, which is less than the marks obtained by the petitioner. On coming to know that he was disqualified due to flat foot, he himself re- examined for knock knee and flat foot from the expert doctor of RIMS, Ranchi where he was found fit which would be evident from the medical certificate dated 13.02.2017 given by the doctors of RIMS, Ranchi. On receipt of such

certificate, the petitioner represented before the Secretary, Jharkhand Staff Selection Commission, Ranchi on 14.02.2017 annexing medical reports of RIMS, Ranchi and prayed for constitution of Medical Board for re- examination of the petitioner with respect to flat foot and knock knee but no heed was paid to his said representation. Thereafter, the petitioner applied under Right to Information Act on 11.08.2017 as to why he has not been selected for document verification. In reply to his application, the respondents have provided him information that due to his physical disability viz. flat foot, he was not considered for appointment. However, he has qualified in other physical test. Hence, this writ petition has been filed. .

4. Mr. Rajesh Kumar, learned counsel strenuously urges that the respondents have deliberately tried to stop the petitioner from joining service. In preparation of merit list, the rules regarding appointment of Forest Guard have been given a complete go-bye. Learned counsel further submits that the medical test conducted by the Civil Surgeon-cum-Chief Medical Officer is not in accordance with the standard procedure adopted by the Indian Army. After appearing before the Medical Board, the petitioner went to RIMS, Ranchi and under the supervision of the Medical Experts, the Wet Test of the petitioner was conducted according to the guidelines laid by the Indian Armed Forces & he was surprised to find that he has a normal foot & will be able to conduct his duties normally as a Forest Guard.

5. Learned Counsel submits that the merit list based on the medical certificates issued by the respondents were disputed by the petitioner and as such, the same could not be taken into consideration and the petitioner got 3 himself examined by the Medical Experts of RIMS, Ranch, where he was declared medically fit. Learned Counsel emphatically submitted that the merit list prepared for appointment of Forest Guard is de hors the rules and as such, fit to be quashed and set aside and fresh merit list should be prepared taking into account that the petitioner has been declared successful and there was no occasion to declare him medically unfit. Learned 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 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 the same day itself and that too without preparing the merit list after physical test. Learned Counsel further argued that the petitioner was duly qualified in all the examinations conducted by the respondents even then he was not included in the final list of the candidates called for verification of the documents. Learned counsel further submitted that Rules 9 and 10 of the Resolution have not been followed at all. Petitioner though was declared medically unfit but subsequently found to be fit by experts and his name did not find place in the merit list. In order to strengthen his arguments, learned Counsel has placed reliance on various Judgments: (i) Bhupendra nath Hazarika and Another Vs. State of Assam and others reported in (2013) 2 SCC516 (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 Counsel further submitted that any appointment dehors the rules would be illegal and any recruitment must be done in accordance with rules and in terms of advertisement. Learned Counsel emphatically argues that in the present scenario when the medical report is 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 petitioner is found to be within the zone of consideration, a 4 direction be given for preparation of fresh merit list by the Department and letter of appointment should be issued if the petitioner is found fit in accordance with law. Lastely, learned counsel submits that this issue has already been decided by this Honble Court in case of Jitendra Kumar & Ors. Vs. State of Jharkhand & Ors. vide judgment dated 04.08.2017 passed in W.P.(S). No. 670 of 2017.

6. Per contra no counter affidavit has been filed by the respondents - Jharkhand Staff Selection Commission.

7. Mr. Tejo Mistry, learned counsel appearing for JSSC vehemently opposed the contention of learned Counsel appearing for the petitioner. Learned counsel submitted that once the petitioner has appeared in the written examination

conducted by the Commission and is disqualified, it is not open for him to challenge the rules as he has 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 petitioner had been declared medically unfit, his case cannot be considered for appointment and there is no illegality committed by the Commission in not considering his name for appointment and neither his name appeared in the merit list. Learned counsel further argued that once the selection process is complete, unless successful candidate is arrayed as party, 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.

8. Be that as it may, having gone through rival submission of the parties, this Court is of the considered view that case of the petitioner needs consideration. It is settled principle of law that no appointment can be done dehors 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 5 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 dehors the Rules, the appointee cannot

claim seniority even if his appointment is late on regularized. 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 medical fitness or 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. The contention of the learned counsel for the respondents that when the petitioner had already appeared in the entire process, he is 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 6 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 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 petitioner even though they participated in the selection process.

9. 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 petitioner and decide his 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 petitioner is found to be medically fit and otherwise fulfill the requisite conditions, a fresh merit list be prepared by including the name of the petitioner and accordingly, recommendations be made to the State Government for appointment on the post of Forest Guard.

10. The writ petition is disposed of on the aforesaid terms (Dr. S.N. Pathak, J.)
kunal/-