

Shashi Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Oct-13-2017

Appellant : Shashi Kumar

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 2924 OF2010with W.P.(S) No. 31 OF2010with W.P.(S) No. 1206 OF2010with W.P.(S) No. 1435 OF2010with W.P.(S) No. 2214 OF2010with W.P.(S) No. 3351 OF2010with W.P.(S) No. 4805 OF2010 Rajendra Prasad Thakur Petitioner [in W.P.(S) No. 2924 of 2010] Versus

1. The State of Jharkhand

2. Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand, Ranchi

3. Commissioner, South Chhotanagpur Division, Ranchi

4. Deputy Commissioner, Simdega Respondents [in W.P.(S) No. 2924 of 2010] WITH1 Raju Kumar

2. Md. Mahboob Alam

3. Pradeep Kumar

4. Md. Mumtaz

5. Binod Kumar Shrivastava

6. Prakash Ranjan

7. Khagesh Chandra Mahto

8. Khalid Belal Petitioners [in W.P.(S) No. 31 of 2010] Versus

1. The State of Jharkhand

2. Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand, Ranchi

3. Commissioner, South Chhotanagpur Division, Ranchi

4. Deputy Commissioner, Lohardaga

5. Deputy Commissioner, Gumla

6. Deputy Commissioner, Simdega Respondents [in W.P.(S) No. 31 of 2010] WITH Kalabati Sahoo Petitioner [in W.P.(S) No. 1206 of 2010] Versus

1. The State of Jharkhand

2. Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand, Ranchi

3. Commissioner, South Chhotanagpur Division, Ranchi

4. Deputy Commissioner, Lohardaga Respondents [in W.P.(S) No. 1206 of 2010] RC2WITH1 Yogendra Nath Swansi

2. Mokhtar Ahmad

3. Md. Naushad Alam

4. Md. Jalaluddin Petitioners [in W.P.(S) No. 1435 of 2010] Versus

1. The State of Jharkhand
2. Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand, Ranchi
3. Commissioner, South Chhotanagpur Division, Ranchi
4. Deputy Commissioner, Simdega
5. Deputy Commissioner, Gumla Respondents [in W.P.(S) No. 1435 of 2010] WITH Shashi Kumar Petitioner [in W.P.(S) No. 2214 of 2010] Versus

1. The State of Jharkhand
2. Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand, Ranchi
3. Commissioner, South Chhotanagpur Division, Ranchi
4. Deputy Commissioner, Simdega Respondents [in W.P.(S) No. 2214 of 2010] WITH1 Budheshwar Oraon

2. Telesphor Minz
3. Brijmohan Ram
4. Mahadeo Prasad Baitha
5. Niketius Bara
6. Keshwar Tirkey
7. Uday Hembrom
8. Sudesh Kumar Tirkey
9. Naresh Kumar
10. Anita Kullu

11. Telesphor Dungdung

12. Punai Oraon

13. Ashok Munda Petitioners [in W.P.(S) No. 3351 of 2010] Versus

1. The State of Jharkhand

2. Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand, Ranchi

3. Commissioner, South Chhotanagpur Division, Ranchi

4. Deputy Commissioner, Gumla

5. Deputy Commissioner, Ranchi

6. Deputy Commissioner, Simdega

7. Deputy Commissioner, Lohardaga Respondents [in W.P.(S) No. 3351 of 2010]
WITH RC3Anju Kumari @ Anju Nath Petitioner [in W.P.(S) No. 4805 of 2010]
Versus

1. The State of Jharkhand

2. Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand, Ranchi

3. Commissioner, South Chhotanagpur Division, Ranchi

4. Deputy Commissioner, Gumla Respondents [in W.P.(S) No. 1206 of 2010]
CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK For the Petitioners : Mr. Anil Kumar Sinha, Sr. Advocate. Mr. Kumar Harsh, Advocate. Mr. Afaq Ahmad, Advocate Mr. Altaf Hussain, Advocate. Mr. Shadab Bin Haque, Advocate. Mr. Abhishek Sinha, Advocate. For Respondents : Mr. Binod Singh, SC (L & C) Ms. Richa Sanchita, SC-V. Mr. Anup Kumar Agrawal, JC to SC-V. Mr. Vishal Kumar Singh, JC to SC (L & C) Mr. Sunil Singh, JC to Manoj Kumar [S.C. (Mines)] Mr. Arup Kumar Dey, JC to GP-I C.A.V. on 12/09/2017 Pronounced on 13 /10/2017

Dr. S.N.Pathak, J.

As common question is involved in all these writ petitions, they have been taken up together and are decided by this common order.

2. Heard learned counsel for the parties in all these writ petitions.

3. Petitioner in W.P.(S) No. 2924 of 2010 has approached this Court with a prayer for quashing the letter no. 426, dated 18.06.2009, issued by the Secretary to the Commissioner, Office of the Divisional Commissioner, South Chhotanagpur Division, Ranchi whereby application of the petitioner for his absorption on Class-III post from Class-IV post, has been arbitrarily rejected. Further, petitioners in all the writ petitions have prayed for a direction to the respondents to consider their case and appoint/ absorb them on Class-III posts forthwith as the petitioners are senior in panel to those who have been given appointments on Class-III posts and also in view of the fact that petitioners possess the requisite qualifications for being appointed/ absorbed on Class-III posts and vacancies still exist for their appointments/ absorption.

4. The facts in brief as has been delineated in the writ petitions is that in the year 1991 petitioners were appointed in the Census Directorate as Compiler, Checker and Supervisor i.e. Class-III posts on a consolidated salary basis. The petitioners were Graduates at the relevant time of their appointments. A panel was also prepared in the year 1991 in which name of the petitioners stood at different serial numbers in the said panel list. All the petitioners and few others were RC4retrenched in the year 1991 itself. Upon such retrenchment and considering grievances of all such retrenched employees, a direction was issued by the Revenue and Land Reforms Department, Government of Jharkhand, Ranchi for their absorption by way of adjustment of the employees of the 1991 Census and this direction was conveyed to the concerned Deputy Commissioners of all the districts vide letter dated 06.11.2003. Consequent upon such directions, the exercise to assess the vacancies both in Class-III and Class-IV posts was completed and the vacancies were assessed as per roster. However, when absorption of the retrenched employees was taken up, pick and choose method was adopted by giving preference to some candidates who were even juniors to

the petitioners and had been allotted Class-III posts on which they had been appointed whereas petitioners were offered Class-IV posts. Grievance of the petitioners is that though they possessed requisite qualifications for their appointment on Class-III posts and though their names appeared in the panel above the name of the persons who had been allotted Class-III posts, the petitioners had been denied the offer for Class-III posts.

5. It appears that similarly situated persons had moved this Court in W.P.(S) No. 1735 of 2007, W.P.(S) No. 4631 of 2007 and W.P.(S) No. 1089 of 2007. In view of the fact that still the vacancies were existing there, the Court directed the respondents to consider case of those petitioners for their appointments/ absorption on Class-III posts as persons even below in the panel list had been appointed. The petitioner in W.P.(S) No. 2924 of 2010 had preferred W.P.(S) No. 1089 of 2007 before this Court, which was however withdrawn in view of the orders passed in W.P.(S) No. 1735 of 2007. Thereafter, he preferred representation before the Commissioner, South Chhotanagpur Division with a request to consider his case in light of the orders passed by this Court. The said representation filed by him had been arbitrarily rejected vide letter no. 426, dated 18.06.2009, passed by the Secretary to the Commissioner, South Chhotanagpur Division, Ranchi and his claim for absorption from Class-IV to Class-III posts has been illegally rejected by the said letter. Similarly, the grievance of the petitioners in other writ petitions are that though juniors to them have been absorbed in Class-III posts but they have been denied similar benefits.

6. Mr. Anil Kumar Sinha, learned Sr. Counsel, by referring to Annexures-12, 12/A and 13 in W.P.(S) No. 2924 of 2010, submits that still there are vacancies in Class-III posts against which the petitioners could be adjusted as petitioners fulfill requisite criteria and they have been denied absorption whereas juniors to them have been absorbed against the Class-III posts. Learned Sr. Counsel, in order to buttress his arguments, drew attention of this Court to the order dated 10.08.2009, passed in W.P.(S) No. 1735 of 2007 [Vijay Shankar Prasad and others Vs. The State of Jharkhand and others] and the order dated 11.11.2009, passed in W.P.(S) No. 4631 of 2007 [Gurucharan Hajam & Ors. Vs. The State of Jharkhand & Ors.] and submitted that in view of order passed by this Court, the

Principal Secretary, Department of Revenue and Land Reforms, Government of Jharkhand, vide letter dated 27.01.2010, has issued direction to proceed for absorbing the petitioners of the aforesaid cases on Class-III posts on the available vacancies in accordance with law after due verification of essential conditions and eligibility. Learned Sr. Counsel further drew attention of this Court towards Annexure- 17 in W.P.(S) No. 2924 of 2010 i.e. the Letter dated 23.03.2010 and submits that 35 new Circles have been created in Ranchi and 630 new posts have been sanctioned through Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand and in view of that, the petitioners are entitled to be absorbed against Class-III posts in view of the fact that still there are large number of vacancies for their adjustments. Learned Sr. Counsel further argued that the respondents have illegally and arbitrarily rejected case of the petitioners though vacancies are still there and already steps have been taken by the Department to consider cases of retrenched employees on different posts. Learned Sr. Counsel further argued that discriminatory view has been adopted by the respondents authorities as the persons below in the panel list, have already been appointed whereas the petitioners, though fulfill all requisite qualification, have not been appointed against Class-III posts and as such, in view of various orders passed by this Court in cases of similarly situated persons and in view of the fact that vacancies are still existing, a direction may be given to the respondents to consider cases of the petitioners for their appointment/ absorption against Class-III posts.

7. Learned counsel appearing for the respondents have vehemently opposed the contention raised by learned Sr. Counsel and further submitted that petitioners and others had been retrenched in the year 1991 itself. Much water has already flown and no case is made out for absorption/ appointment against Class-III posts. Learned Counsel further argued that the employees can only be given promotion on Class-III posts from Class-IV posts through proper procedure and decision taken in Divisional Meeting and as per direction of Government and according to the orders passed by competent Court, petitioners have already been adjusted against the Class-IV posts and they cannot be again re-absorbed in Class-III posts. Learned counsel further draws attention towards paragraphs-9, 11 and 12 of the supplementary counter RC6affidavit filed on 18.08.2017 in W.P.(S) No.

2924 of 2010 which reads as under:

9. That it is stated and submitted that the respondent no. 4 - the Deputy Commissioner, Simdega has already sent existing vacancy report of Class-III post in Simdega District vide Letter No. 395(II) Est. Dated 12.07.2017 to the Joint Secretary, Personnel, Administrative Reforms & Rajbhasha Department, Government of Jharkhand Ranchi. 11. That it is stated and submitted that the employees only be given promotion on Class-III posts from Class-IV post through proper procedure or decision taken in Divisional Meeting and as per direction of Government of Jharkhand or according to order passed by any competent court. The petitioner has been adjusted to the post of Peon (Class-IV pot) and joined on the place of posting willingly.

12. That it is stated and submitted that the petitioner claimed his grievances on the basis of the panel list, which was prepared and issued by the respondent and in that panel list the name of the petitioner was figured and issued on 16.09.2006 and on 06.02.2008, accordingly many persons below in panel list have been adjusted in Class-III post. Learned counsel further submitted that claim of the petitioners is contrary to the decision made in high level meeting of the Deputy Commissioners chaired by the Divisional Commissioner, South Chhotanagpur Division, Ranchi, Jharkhand and contrary to the conditions laid down in their appointments and as such, there is no question of any illegality or discrimination and as such, prayer for appointment/ absorption in Class-III posts is not sustainable and fit to be rejected.

8. I have heard both sides. It appears that similarly situated persons had moved this Court in W.P.(S) No. 1735 of 2007 and vide order dated 10.08.2009, it was held at para-9 as under:

9. In the light of the above facts, the concerned authorities of the Respondents, particularly the Respondent no. 2, namely the Principal Secretary, Department of Revenue & Land Reforms, Government of Jharkhand, Ranchi is directed to consider the grievance of the petitioners particularly in the light of the fact that the petitioners do admittedly possess the requisite qualifications for their appointment to Class-III posts and also in the light of the fact that, as indicated by the

petitioners that a number of vacancies in Class-III posts do exist both in the district of Simdega and in the district of Lohardaga, and a decision on this issue should be taken by the Respondent no. 2 by passing a reasoned and speaking order within a period of two months from the date of receipt/ production of a copy of this order and such decision shall be effectively communicated to the petitioners. The respondents in their supplementary counter affidavit dated 18.08.2017 have admitted in paragraph-12 that in the panel list name of the petitioner was figured and was issued on 16.09.2006 and on 06.02.2008, accordingly RC7 many persons below in panel list have been adjusted in class-III post. In paragraph-9 of the said affidavit, it has also been admitted that the Deputy Commissioner, Simdega has already sent existing vacancy report of Class-III posts in Simdega District. As vacancies still exist and persons below in panel list have already been appointed/ absorbed against Class-III posts, the respondents cannot adopt pick and choose methods. Equal treatment has to be given to the similarly situated persons.

9. In view of the admitted position that still vacancies are there and persons below in the panel list have been appointed/ absorbed in Class-III posts and also in view of the fact that already this Court has directed to consider case of the petitioners in view of the vacancy position, resultantly the impugned letter no. 426, dated 18.06.2009, issued by the Secretary to the Commissioner, Office of the Divisional Commissioner, South Chhotanagpur Division, Ranchi is hereby quashed and further respondents are directed to consider case of the petitioners along with others taking into consideration the vacancy position and also in view of the fact that persons below the petitioners in panel list, have been considered for appointment. Let entire exercise be completed in accordance with law within a period of sixteen weeks from the date of receipt/ production of a copy of this order. It is made clear that if case of the petitioners are found to be fit for absorption/ appointment on Class-III posts, offer of appointment letter be issued accordingly without any further delay. All these writ petitions are disposed of with aforesaid observation and directions. (Dr. S.N. Pathak, J.) High Court of Jharkhand at Ranchi Dated: October 13, 2017 RC RC