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Court : Jharkhand

Decided On : Mar-13-2015

Appellant : Satish Chandra Kumar Alias Satish Chandra

Respondent : Social Welfare Women and Child Development Dept

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 1895 of 2013 Satish Chandra Kumar @ Satish Chandra, S/o Kamta Sharma, R/o Indraprashtha Colony, PO RMCH, PS Bariatu, Ranchi Petitioner Versus 1. The State of Jharkhand through Chief Secretary, Govt. of Jharkhand, Project Bhawan, PO & PS Dhurwa, Ranchi 2. The Principal Secretary, Department of Social Welfare, Women and Child Development, Jharkhand Project Bhawan, PO & PS Dhurwa, Ranchi..... Respondents Coram: The Honble Mr. Justice R.R.Prasad For the petitioner : Mr. Rajiv Ranjan, Advocate For the Respondents : Mr. Jai Prakash, AAG O R D E R C.A.V. On 30/01/2015 Delivered on 13/03/2015 25/13.03.2015 An Act known as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, was enacted by the Central Government to give effect to the proclamation on the Full Participation and Equality of the Public with disabilities in the Asian and Pacific Region. Section 60 of the said Act does prescribe for appointment of 'Commissioner for Persons with disabilities' by the State Government. Eligibility, which was prescribed for the appointment, is that

he should have special knowledge or practical experience in respect of the matter relating to rehabilitation. To carry out the aim and objectives of the said Act, a Rule in terms of Section 73(i) of the said Act, was framed as Jharkhand Disabled Persons (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2003. Rule 46 of the said Rules does prescribe that one who is having proper and special knowledge in the field with respect to disabled persons, is eligible to be appointed as Commissioner Disability. In terms of the said Rule the petitioner, who was the Directorcum Secretary of a nonGovernment Organization namely 'Buddha Saikshnik vikas Parishad' working in the field of rehabilitation with various kinds of disabilities recognized by the Rehabilitation Council of India (A Statutory Body under the Ministry of Social Justice and Empowerment), was appointed as Disability Commissioner vide Notification dated 11/09/2007, but tenure of the post was not fixed. However, the State Government in exercise of its power as enshrined under Rule 46 (Kha) of the said 2003 Rules, came out with resolution no. 2000 dated 19/02/2008, whereby the tenure of the petitioner was fixed for 3 years. Subsequently, vide resolution no. 1471 dated 05/10/2009, it was extended to 5 years. One of its clauses Clause 2(Kha) of the resolution no. 200 dated 19/02/2008 (Annexure3) does stipulate that the tenure of the person appointed as Disability Commissioner can be extended for further 3 years if his services are found to be satisfactory. By virtue of the subsequent resolution no. 1471 dated 05/10/2009 (Annexure4), tenure of 3 years was extended to 5 years. In that event, the petitioner who had initially been appointed f80or 3 years, was allowed to continue to work for 5 years. Meanwhile, when the tenure of 5 years of the petitioner was about to be completed, the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India appreciating the work done by the petitioner in the field, as commendable, made recommendation vide its letter dated 25/07/2012 (Annexure7) for his reappointment. Acting upon that letter, the Minister concerned initiated a proposal for reappointment of the petitioner on the post of Disability Commissioner. On such proposal, the Departmental Secretary put a note that in order to keep transparency it would be better to go for process of selection in stead of reappointing the petitioner. When the matter came up before the Chief Secretary, he agreed to the proposal given by the Departmental Secretary. Meanwhile, the petitioner's tenure

came to an end on 12/09/2012 and, hence, he relinquished the post on that day. Upon relinquishing the post by the petitioner, the Director, Social Welfare was assigned with the job of Disability Commissioner on 11/10/2012 as a time gap arrangement. Subsequently, the then Chief Minister vide its order dated 04/01/2013 approved the proposal of the Minister concerned for reappointment of the petitioner for another term. When the matter came to the Departmental Secretary, he put a note that since the term of the petitioner has come to an end on 12/09/2012 itself, it would be quite appropriate to go for a fresh appointment. The Chief Secretary having approved the said proposal, asked him to place the matter before the Government for review of earlier decision. Accordingly, when the matter was placed before the Advisor of the Governor, he agreed to the proposal to go for fresh appointment by way of selection process by advertising the post. Meanwhile, the Secretary, Social Welfare, was assigned to look after the work of the Disability Commissioner also. Being aggrieved with the decision taken by the Government, this writ application has been filed for direction to the respondents to issue a notification for reappointment of the petitioner in terms of the resolution dated 19/02/2008 and to quash the notification dated 04/03/2013, whereby the Principal Secretary, Social Welfare was appointed to the post of Commissioner Disability as an adhoc/time gap arrangement till the appointment of the full time State Disability Commissioner, Jharkhand.

2. The stand, which has been taken by the State is that in terms of the provision as enshrined under Article 16 of the Constitution of India, there should be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State and, therefore, the appointment on the post of Disability Commissioner should have been made under a Rule through the process of the selection, but when the proposal was mooted out to appoint the petitioner on the post of Disability Commissioner, it was objected to by the then Chief Minister by putting note that first the rule be framed and then the appointment be made through selection committee but it seems that the then Chief Minister on being requested by the Minister concerned, reviewed its earlier decision and approved the selection of the petitioner on the post of Disability Commissioner, initially for 3 years and then for 5 years and, thereby, the mandate of the Constitution as enshrined in Articles 13, 14 & 16 was never followed. While the tenure of the

petitioner was about to come to an end, a proposal was mooted out by the concerned Minister for his reappointment but by the time approval could have been accorded on the said proposal by the Chief Minister, the term of the petitioner came to an end on 12/09/2012 and, thereby, the concerned Secretary came with the proposal for review of the earlier order so that procedure as is being adopted in any other employment, be adopted keeping in view the mandate of the Article 16 of the Constitution of India. That proposal was accepted by the Advisor of the Governor and, thereby the decision taken by the then Chief Minister on 04/01/2013, for reappointment of the petitioner was rendered as nullity. Further stand, which has been taken by the State is that in terms of the Rule framed in the year 2003, a memorandum regarding fixation of qualification, mode and terms of the appointment of the State Disability Commissioner has been approved by H.E. The Governor of Jharkhand and, thereby, a memorandum dated 14/05/2013, has been issued stipulating therein the qualification, mode and terms of the appointment of Disability Commissioner and under the circumstances, the petitioner is never entitled to get the relief as has been sought for.

3. Mr. Rajiv Ranjan, learned counsel appearing for the petitioner submits that after the petitioner was appointed the tenure of the post was fixed as 3 years as per the resolution dated 12/02/2008. However the term was extended to 5 years as per the resolution dated 05/02/2009 and the rest of the terms and conditions as were there under the resolution dated 19/02/2008 remained intact and, thereby, Clause 2 (Kha) of the resolution no. 20 dated 19/02/2008, prescribing for reappointment of the Disability Commissioner if the service is satisfactory, was always in force. In terms of that Clause and also in view of the recommendation made by the Chief Commissioner for persons with Disabilities, Government of India, to the effect that the services rendered by the petitioner is worth appreciable, a proposal was mooted out by the Minister concerned for reappointment of the petitioner which got approval by the then Chief Minister on 04/01/2013, which is not being given effect to on the premise that the State Government has come up with a resolution relating to the eligibility, terms and tenure of the Disability Commissioner, but that memorandum as per the stand of the State has come up later than the process initiated for reappointment of the petitioner and, thereby, that memorandum cannot be given effect to and under the circumstances, the authority be directed to come

up with notification of reappointment of the petitioner in terms of the resolution dated 19/02/208 read with resolution dated 05/10/2009. 4 However, the aforesaid plea taken on behalf of the petitioner was countered by Mr. Jai Prakash, learned Additional Advocate General by taking the stand taken in the counter affidavit, as indicated above.

5. Thus, from the stands, which have been taken by the parties it does appear that the petitioner had been appointed on the post of Disability Commissioner initially for 3 years, which subsequently was extended to 5 years. While, the tenure was about to come to an end, a proposal was initiated in terms of Rule 2 (Kha) of the resolution dated 19/02/2008 for reappointment of the petitioner on the said post, which proposal was approved by the then Chief Minister vide order dated 04/01/2013, but by that time the petitioner having completed his tenure had relinquished the post on 12/09/2012. However, the decision taken in the matter relating to reappointment was never given effect to rather it was subsequently reviewed whereby a decision was taken to go for fresh appointment calling for the applications from the eligible candidates. Thus, the question which does arise as to whether, in spite of the decision being taken for reappointment of the petitioner on the post of Disability Commissioner, the petitioner can put forth his claim to be reappointed on the said post? 6. It is well settled principle of law that even the selected candidates do not have legal rights of being appointed. The Government cannot be forced to make appointment provided the Government comes with a reasonable explanation for not making appointment. In this regard, I may refer to a decision rendered in a case of K. Jayamohan versus State of Kerala [(1997) 5 SCC 170] wherein in para5, it has been held as follows: It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right to appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for nonappointment. Equally, the Public Service Commission/ recruitment agency shall prepare waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgment of the High Court warranting interference.

7. Again in the case of All India SC & ST Employees' Association versus A. Arthur Jeen [(2001) 6 SCC 380] it was held as hereinunder: Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or nay of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in Shankarsan Dash ve3rsus Union of India [(1991) 3 SCC 47].

8. Again the same principle has been reiterated in the case of Food Corporation of India versus Bhanu Lodh [(2005) 3 SCC 618 wherein in para14 it has been held as under: Merely because the vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review.

9. So far as the case in hand is concerned, it be reiterated that a proposal for reappointment of the petitioner on the post of State Disability Commissioner has been approved by the then Chief Minister but that decision has been reviewed subsequently on the ground that by the time proposal got approval by the then Chief Minister, the petitioner on completion of the tenure had relinquished the post and, as such, it would always be fair and appropriate that one should go for selection process to find out the suitable persons, which decision seems to be in consonance with the provision as enshrined in Article 14 of the Constitution and, thereby, the decision taken by the Government can never be termed as infected with vice of arbitrariness. If that decision does not suffer from vice of arbitrariness, it never warrants to be interfered with.

10. Accordingly, the petitioner is not entitled to get the relief as has been claimed in this writ application and, hence, this application stands dismissed. (R.R.Prasad,

J) Mukund/cp.2

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