

Sanjay Kumar Singh and Anr Vs. Human Resource Development

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Court : Jharkhand

Decided On : Apr-21-2015

Appellant : Sanjay Kumar Singh and Anr

Respondent : Human Resource Development

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S). No.6115 of 2013
..... 1.Ram Kishore Kashi 2.Manoj Kumar Petitioners Versus 1. The State of
Jharkhand 2. Principal Secretary, H.R.D. Dept., Ranchi 3. Director, Secondary
Education,H.R.D. Dept. Ranchi 4. Jharkhand Public Service Commission, Ranchi
5. Chairman, Jharkhand Public Service Commission, Ranchi Respondents
with W. P. (S) No. 6124 of 2013 ...

1. Sanjay Kumar Singh 2. Archana Kumari Petitioners -V e r s u s- 1. The
State of Jharkhand 2. The Principle Secretary, Human Resources Development
Department, Government of Jharkhand 3. The Secretary, Jharkhand Public
Service Commission, Ranchi Respondents CORAM: HONBLE MR.
JUSTICE APARESH KUMAR SINGH For the Petitioners : M/s Ashish
Kumar Thakur & Akshay Kr. Mahto (WPS No.6115 of 2013) : Mr. Santosh Kumar
Gautam(WPS No. 6124 of 2013) For the State : Mr. Prabhat Singh, J.C to A.A.G.
& J.C. to G.A. For the J.P.S.C : Mr. Sanjay Piprawall (both cases)
05/21.04.2015 Heard counsel for the parties. Petitioners in both these writ
petitions were candidates for appointment to the post of teachers in High Schools
under advertisement no. 12 of 2008. They have approached this Court with a

prayer that the respondents should consider their candidature for appointment to the said post in their respective categories and subjects with the common underlying claim that all of them have scored more than the qualifying marks i.e. 50% in their respective subjects. Petitioners in W.P.S. No. 6115 of 2013 submits that for the subject of History and Economics respectively under the OBC category, out of 35 advertised posts of teachers for the subject -2- History, 1 post is lying vacant and out of 32 advertised posts for the subject Economics, 2 posts are lying vacant. Petitioner No. 1 and 2 have obtained 172 and 158 marks in subject History and Economics respectively . Petitioners in W.P.S. No. 6124 of 2013 submits that in the General Category to which they belong, petitioner no. 1 has secured 175 in the subject of History while the petitioner no. 2 has secured 178 marks in the subject of Hindi. Petitioners in both the writ petitions have relied upon the judgment passed in LPA No. 201 No. 2012 and in Cont. Case (Civil) No. 969 of 2012 to submit that the petitioners' case should have been considered by the respondents for appointment. The only ground on which the petitioners have tried to make out their case is that despite having obtained more than 50% marks i.e. qualifying marks their results were not declared by the Jharkhand Public Service Commission(J.P.S.C.) and if the posts are lying vacant, they should have been appointed. Learned counsel for the J.P.S.C, by referring to Annexure-4 to both the Writ Petitions, which is a chart of category wise cut off marks of different subject, has submitted that last selected candidate in OBC category for appointment to the post of Teacher in the subjects of History and Economics have secured 173 and 160 marks respectively, whereas in the General Category, last selected candidate in the subjects of History and Economics have secured 178 and 198 marks respectively, that means that petitioners have secured less marks than the last selected candidate in the respective subjects. It is further submitted by learned counsel for the JPSC that the issue at hand has already attained finality and the petitioners have approached this Court after 5 years of the advertisement. He has referred to the judgment passed in L.P.A. No. 201 of 2012 and Contempt Case (Civil) No. 969 of 2012 to the writ petition to -3- submit that if any one having lesser marks than the petitioners have been appointment then only the petitioners can have legally sustainable right. He has also relied upon a judgment rendered by this Court in a batch of cases lead by W.P.(S) No. 898 of 2014 on 3.11.2014

where the entire relevant issues have been considered while rejecting the claim of the said petitioners for appointment in the respective posts of teachers pursuant to the selection exercise carried out under the same advertisement no. 12 of 2008. It is further submitted that the petitioners have failed to make out any case as no person having less marks in the respective category and subjects have been recommended and appointed by the respondent- Government. Therefore, they do not have any sustainable legal right to seek writ of mandamus or direction. I have heard counsel for the parties. From perusal of the relevant material facts which have been noticed herein above, it appears that all these issues raised in the aforesaid writ petitions are squarely covered by the judgment rendered by this Court in the case of Jairam Sah & others passed in batch of writ petitions led by W.P.S. No. 898 of 2014 dated 3.11.2014. The relevant extract of the said judgment is quoted herein below:- I have heard learned counsel for the parties and gone through the relevant materials on record. The relevant individual details of the petitioners have been indicated in the earlier paragraph of this judgment. It is not in dispute that none of these petitioners have scored more marks than the last recommended candidate in their respective categories and subjects . It is also true that these petitioners have approached this Court after four years of publication of result and recommendation made by J.P.S.C. It is also found that the recruitment exercise has come to an end pursuant to the said advertisement. If at all the petitioners had a reason to raise their grievances against non-filling of the vacancies advertised, they were required to raise their grievances within a reasonable time and not after such delay and unexplained latches. In the case of Pramod Kumar Jha & others (Supra), the learned Division Bench upon considering the submissions of the rival parties was of the opinion that there is no quarrel that qualifying marks were 50%, but the advertisement clearly indicated that appointment would be offered to the candidates subject-wise and number of seats were already mentioned in the advertisement, therefore, only after obtaining cut off marks one becomes eligible for consideration, subject to his coming in the merit-list so as -4- to come within that number of candidates for which posts have been advertised and beyond the number of posts advertised, no one can claim any right even for consideration for appointment. The findings of the learned Division Bench is completely in line with the judgment rendered by the Apex Court on the issue as

laid down in the case of Shankarsan Dash -Vs.- Union of India. It has been clearly held therein that if the vacancies or any of them are filled up, the Respondent-State is bound to respect the comparative merit of the candidates, as reflected in the recruitment test, and no discrimination can be permitted. Unless the relevant rules mandate the State is under no legal duty to fill up all or any of the vacancies and the notification of advertisement merely amounts to an invitation to qualified candidates to apply for recruitment. On their selection they do not acquire any right to the post. Though all the said vacancies notified have not been filled up, but much time has elapsed since the declaration of the result and appointments made thereunder and State may have initiated fresh process of recruitment in the meantime. In such circumstances, the contention of the petitioners for consideration of their cases on the basis of their participation under the advertisement no. 12/2008, at this stage cannot be allowed. Therefore, considering the relevant aspects of the matter and for the reasons recorded hereinabove, this Court is not inclined to exercise its discretionary jurisdiction in the manner as prayed for. Accordingly, the writ petitions are dismissed. In that view of the matter, after giving due consideration to the rival submission of the parties and the materials on record, I do not find that any ground has been made out for exercise of writ jurisdiction by this Court by directing the respondents to appoint the petitioners in respective subjects of History, Economics and Hindi in their categories as sought for by them. The writ petitions being devoid of merit are dismissed. (Aparesh Kumar Singh, J.) A. Mohantiy/Kamlesh/

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