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Court : Jharkhand

Decided On : Jul-17-2008

Reported in : [2008(4)JCR695(Jhr)]

Judge : R.K. Merathia, J.

Appellant : Birendra Kumar

Respondent : Coal India Limited Through Its C.M.D. and ors.

Advocate for Def. : Mr. Sen

Advocate for Pet/Ap. : Mr. Kalyan Roy

Disposition : Petition dismissed

Judgement :

R.K. Merathia, J.

1. Heard the parties finally.

2. Mr. Kalyan Roy, appearing for the petitioner submitted that petitioner has challenged the notice dated 5.6.2008 (Annexure-4) by which several employees including the petitioner have been asked to appear in the qualifying examination for promotion from nonexecutive cadre to executive cadre in Secretariat discipline. He further submitted that petitioner and others filed writ petitions being C.W.J.C.

No. 3482 of 1998 which was disposed of on 31.8.2005. The operative portion of the said order reads as follows:

In all the writ petitions, the petitioners have become eligible for promotion and after written test and interview they were selected for promotion. Since it is not a case of fresh appointment, I am of the view that even after the expiry of the panel, the cases of the petitioners are bound to be considered by the respondents' authority for giving promotion. Learned Counsel for the petitioner by filing affidavits have given the existing vacant posts where the petitioners are to be promoted. This fact has not been controverted by the respondents. It is, therefore, high time the respondents should consider the cases of the petitioner for giving them promotion to E-2 cadre.

The respondents filed L.P.A. being L.P.A. No. 680 of 2005 which was heard with other cases and disposed of by order dated 5.7.2006 affirming the order of learned Single Judge. Then the respondents filed S.L.P. (Civil) No. 9831 of 2006 before the Supreme Court which was disposed of on 18.9.2007 by passing the following order:

Mr. Ajit Kumr Sinha, learned Counsel appearing for Coal India Limited states that there are 40 vacancies available in E2 grade which have now been notified by Coal India and he further submits that all eligible candidates will be considered for the aforesaid posts in accordance with law.

In view of the statement made by learned Counsel for the petitioners, nothing survives to be adjudicated in these petitions. We, accordingly, disposed of these special leave petitions in the above terms and modify the impugned order of the High Court to that extent. No order as to costs.

He further submitted that however the contempt petition filed in the Supreme Court were dismissed. He further submitted that as the petitioner was already eligible having passed the examination far back in 1997, he could not have been asked to appear again in the qualifying examination for promotion by the impugned orders. He further submitted that as per the order of the Supreme Court only the eligible candidates like the petitioner were to be considered for promotion.

3. On the other hand, Mr. Sen, appearing for the respondents, submitted that this Court directed the respondents to consider the case of petitioner and others who had become eligible for promotion. The Supreme Court modified the orders of this Court to the extent that all eligible candidates were to be considered against 40 vacancies available in E2 Grade by the Coal India Limited in accordance with law. He further submitted that a contempt petition was filed by similarly situated employees of Chhatisgarh being Contempt Petition (C) No. 310 of 2007 in which a claim was made that-in view of the said order of the Supreme Court dated 18.9.2007, the respondents could not issue notification for preparation of a fresh selection panel and the available vacancies were to be filled up by the petitioners only. He read out the following portion from the said contempt petition:

If the following observation of this Hon'ble Court is born in mind, it leaves no doubt that by issuing notification dated 14.11.07 for preparation of fresh selection panel the contemnors have deliberately and mischievously flouted the order passed by this Hon'ble Court on 18.09.07:

In view of the statement made by learned Counsel for the petitioners, nothing survives to be adjudicated in these petitions. It cannot be believed that contemnors do not understand or they would have not been made to understood by their Counsel as to what is the meaning and significance of the aforesaid observation.

This observation of the Hon'ble Court indicates only one thing that nothing survived for adjudication in the petitions after the statement made by the Counsel because the statement of the Counsel had accepted the view taken by the Hon'ble High Courts.

By the statement made before this Hon'ble Court the contemnors created only one impression that they were accepting the claim of the Petitioners which has been upheld by the High Court in the impugned order namely of there being forty (40) vacancies and further that these vacancies should be fulfilled by the Petitioners/candidates from the existing panel i.e. the panel prepared in the year 1997 and it was for this reason only this Hon'ble Court came to the most significant conclusion that nothing survives to be adjudicated.

Now to defeat the claim of the Petitioners the contemnors have issued a notification on 14.11.07 inviting bio-data particular of eligible candidates for preparation of selection panel. From this notification dated 14.11.07 it is evident that the order dated 18.09.07 is being interpreted as if this Hon'ble Court has modified the view of the High Court taken in para 6 of the order dated 05.07.06 that the selection panel prepared on 09.01.98 had not lost its life or force.

It is most humbly submitted that the Petitioners agreed for disposal of the Special Leave Petition because their grievance stood vindicated by the aforesaid statement/offer made by the Counsel for the contemnors. However, after having obtained disposal Special Leave Petition in aforesaid terms the contemnors who had been denying legitimate claim of the Petitioners have now dared to play tricks even with the order passed by this Hon'ble Court and giving an arbitrarily and manifestly incorrect meaning/interpretation to the order passed by this Hon'ble Court have issued notification for preparation of fresh selection Panel whereas the understanding given before this court at the time of disposal of Special Leave Petition was that the available vacancies will be fulfilled by the Petitioners.

Mr. Sen submitted that the said ground taken in the contempt petition was not accepted by the Supreme Court and the contempt case was dismissed on 1.2.2008. He further submitted that therefore the respondents are justified in preparing a fresh panel of 'all' the eligible candidates and for that petitioner is also required to appear in the qualifying examination.

4. In reply, Mr. Kalyan Roy submitted that the respondents can prepare another panel of other candidates who might have become eligible by this time, but so far as the petitioner is concerned, as he was eligible from 1997, there is no need for asking him in to appear in examination again.

5. From the facts and circumstances, it appears that the orders of this Court directing the respondents to consider the case of petitioner and others from the panel prepared in 1997 was modified to the extent that 'all' eligible candidates will be considered against 40 vacancies available in E2 Grade in accordance with law. Thereafter in the contempt petition the order of the Supreme Court dated 18.9.2007 was sought to be interpreted to mean that the respondents could

consider the cases of only those candidates who had already become eligible, and the respondents cannot prepare a fresh panel. But it appears that such contention was not accepted and therefore, the contempt petition was dismissed. In this situation, the respondents cannot be directed to consider the cases of only those who had become eligible earlier. Further, in my opinion, the respondents cannot be directed to prepare two panels, as in view of the Supreme Court order 'all' eligible candidates are to be considered, which means that a fresh panel is to be prepared for 'all' eligible candidates.

6. In these circumstances, I find no reason to interfere with the notice directing the petitioner and others to appear in the qualifying examination for promotion.

This writ petition is, accordingly, dismissed however no costs.

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