

Mithilesh Kumar Vs. the State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Aug-07-2008

Reported in : [2008(4)JCR119(Jhr)]

Judge : D.G.R. Patnaik, J.

Appellant : Mithilesh Kumar

Respondent : The State of Jharkhand and ors.

Judgement :

D.G.R. Patnaik, J.

1. Prayer in this writ application has been made for issuance of a direction upon the Respondents to appoint the petitioner on the post of Constable. pursuant to an advertisement No. 01, of 2004 against which the petitioner had applied.

2. The ground advanced by the petitioner is that in response to the aforesaid advertisement, the petitioner has submitted his candidature and he has appeared at the requisite Tests/examinations. The merit lists were published by the Respondents and the petitioner's name finds in the third Merit list at 98th rank. The petitioner had also received a letter dated 05.06.2005 from the competent authority informing him that he has been provisionally selected for the appointment on the post of Constable and he was directed to appear for the requisite Medical examinations with all requisite papers on 15.06.2005. The petitioner had

accordingly appeared in response to the Call Letter and submitted all his Testimonials including his Intermediate examination result and had appeared at the Medical examination also. In spite of this, the Respondents have denied the appointment to the petitioner firstly on the ground that the total number of vacancies which was originally advertised for, have been reduced and secondly on the ground that the petitioner's position in the merit list did not make it manageable for his appointment to the existing vacancies.

3. Learned Counsel for the petitioner explains that as a matter of fact, it would be evident from the counter affidavit filed by the Respondents, the petitioner's mark in respect of his Intermediate qualification was not considered at all in spite of the fact that the petitioner had submitted his Intermediate mark-sheet and had it been considered, then even as admitted by the Respondents, the total marks of the petitioner as earned was 16. On the other hand the candidates whose marks were 15 have also been selected and have been appointed. Learned Counsel refers to the statements contained in Para 18 of the counter affidavit, wherein the names of three such persons have been mentioned together with the marks which they had obtained and their respective given date of birth. Learned Counsel reiterates that though it was declared that their original number of seats have been reduced to 76 in the first instance, but later 36 more seats were added making the total number of seats as 118 and since admittedly, the petitioner's position in the third merit list was at 98, there is no reason as to why he should be denied or deprived of his legitimate right of the benefit of his appointment. Learned Counsel submits further that considering the fact that the persons, who had obtained lesser marks than the petitioner, have been granted appointment and the petitioner has been denied, this is apparently an act of discrimination on the part of the Respondents.

4. A Counter affidavit has been filed on behalf of the Respondents. Learned J.C. to A.G. would explain that as a matter of fact, the petitioner did not submit his intermediate certificate and had he done so, his marks would have been calculated, and then the total mark would have been calculated at 16. Furthermore, the disqualification which the petitioner had suffered is also on account of the age, since the persons selected are of higher age than the petitioner.

5. Leaned Counsel for the petitioner explains at this juncture that the age criteria is applicable only in cases, where two or more candidates obtain the same marks and in such circumstance, the older amongst them is given the privilege. This criteria is not applicable to the petitioner, since admittedly, the total marks of the petitioner was 16, whereas, the persons obtaining 15 marks have been given preference over the petitioner merely on the ground that the petitioner had not submitted his intermediate certificate, although he has submitted his intermediate mark-sheet alongwith his original application and other testimonials.

6. In the counter affidavit, it has not been denied that in the third merit list, the petitioner's position was marked at 98. It is also not denied or disputed that the total number of vacancies, which have been filled is 118. In fact, this has been admitted in Paragraph 18 of the counter affidavit. The petitioner did not produce his intermediate certificate although he had produced the intermediate mark-sheet. This in itself does not constitute a reasonable and just ground to deny the petitioner, the privilege of his appointment, when other candidates securing lesser marks than the petitioner's by adding the marks in respect of the intermediate qualification being taken together.

7. In the facts and circumstances, the Respondents are directed to consider the candidature of the petitioner for which, the petitioner shall file a fresh representation before the concerned Respondents and within three months from the date of receipt of such representation, the concerned Respondents shall consider the same and pass a reasoned and appropriate order in accordance with the rules and the law. In the event, the petitioner is found eligible for his appointment, the Respondents shall consider his case for his appointment against available vacancies and issue necessary orders accordingly.

With these observations and directions, this writ application stands disposed of.