

Anirudh Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jul-31-2015

Appellant : Anirudh Kumar

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Delip Jerath

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 3854 of 2007 ----- P. Dhananjay, son of Sri P. Narayan Rao, resident of Bahadur Singh Bagan, House No. 115, Kadam Road, Tinplate, P.O - Golmuri, P.S. Sidgora, District - East Singhbhum ... Petitioner Versus 1.State of Jharkhand 2.Zonal Inspector General of Police, Bokaro 3.Deputy Inspector General of Police, North Chhotanagpur Range, Hazaribagh. 4.S.P. Chairman Selection Committee, North Chhotanagpur Range, Bokaro. Respondents With W.P.(S) No. 5447 of 2007 ----- Sandeep Kumar Singh son of Late Dinanath Singh resident of village Chikani, P.O Jokiyari, P.S. Raxual, District: East Champaran (Motihari), Bihar.... Petitioner Versus 1.State of Jharkhand 2.Zonal Inspector General of Police, Bokaro 3.Deputy Inspector General of Police, North Chhotanagpur Range, Hazaribagh. 4.S.P. Koderma Chairman Selection Committee, North Chhotanagpur Range. Respondents With W.P.(S) No. 6261 of 2008 ----- Anirudh Kumar, son of Siya Saran Singh, resident of village - Nawadiha, P.O & P.S.- Waajirganj, District- Gaya, Bihar ... Petitioner Versus 1.State of Jharkhand 2.Director General and Inspector General of Police, Jharkhand, Project Bhawan, Dhurwa, Ranchi. 3.Deputy Inspector

General of Police (Personnel), Project Bhawan, Dhurwa, Ranchi. 4. Superintendent of Police, Koderma. Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioners : Dr. S.N. Pathak, Sr. Advocate. : Mr. Delip Jerath, Advocate. For Respondents : Mr. Ashish Kumar Thakur, J.C to Sr. S.C. I (In W.P.(S) No. 3854 of 2007) : Mr. Saket Upadhyay, Adv. (In W.P.(S) No. 5447 of 2007) : Mr. Anil Kumar, J.C to A.G. (In W.P.(S) No. 6261 of 2008) ----- C.A.V. On 14.05.2015 Pronounced on 31/07/2015 2 Per Pramath Patnaik, J.: All these writ petitions have been taken together up with the consent of the parties as common issues are involved in all these writ petitions and are being disposed of by this common order.

2. In the accompanied writ applications, the petitioners have, inter alia, prayed for quashing the decision of Superintendent of Police, Koderma-cum-Chairman Selection Committee, North Chotanagpur Range, Koderma dated 22.05.2007 whereby the candidature of the petitioners for the post of Constable under advertisement No. 1/2004 has been cancelled, by different memos, after due selection and also direction upon the respondents to permit the petitioners to join on the post of constable since they have duly qualified on merit.

3. The facts, in brief, leading to filing of the present writ petition, as made out by the petitioners, in brief, is as under: The State of Jharkhand published advertisement No. 1/04 inviting application for the post of Police Constable in different district of State of Jharkhand. Pursuant thereto the petitioners applied for the same and passed physical as well as written test, as alleged by the writ petitioners. It is stated that thereafter, final merit/select list was prepared and names of the petitioners were found in the final select list. Thereafter, since some irregularities were found in the result, the Zonal Inspector General of Police was deputed to check the result and as per the report 1085 candidates were found genuine and 932 candidates were found to be involved in malpractice. It is further stated that the matter came up before the Division Bench of this Court in W.P. (S) No. 1242 of 2006 and analogous cases, which was decided vide order dated 10.11.2006 directing the respondents to make appointment according to select/merit list of successful 3 candidates excluding 932 candidates, who were beneficiaries of malpractices.

4. Despite publication of final list since no appointment letter was issued, the petitioners in W.P. (S) No. 3854/07, 5447/07 submitted representation before the competent authority vide Annexure 5 to the writ application. Subsequently, a letter was issued on 22.05.2007 by the Superintendent of Police, Koderma stating that the petitioner's claim for the post of Constable has been cancelled as because their names have been posted on another candidate's name, as evident from Annexure 6 of the respective writ petitions.

5. Earlier the petitioner in W.P. (S) No. 6261 of 2008 with others approached this Court by way of filing W.P. (S) No. 7236 of 2005 for their appointment as Constable. The Division Bench of this Court vide order dated 10.11.2006 disposed of the matter directing the respondents to make appointment according to select/merit list of successful candidates, excluding 932 candidates who were found to be beneficiaries of malpractice. Thereafter, the petitioner filed Cont. (Cvl.) No. 601 of 2007 for non-compliance of order passed in W.P. (S) No. 7236 of 2005 dated 10.11.2006 was dropped with liberty to the petitioner to challenge the same before an appropriate Forum.

6. Left with no alternative, efficacious and speedy remedy, the petitioners have approached this Court invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of their grievances.

7. Per contra, the respondent no. 4 has filed the counter affidavit repelling the submissions made in writ application. It has been stated in the counter affidavit that once the merit list is prepared, the records of all meritorious candidates were verified and during this process, it was found that names of the petitioner in W.P. (S) Nos. 4 3854/07, 5447/07 and 6261/07 were entered in the master chart by pasting over another candidates entry, hence, their candidature were kept pending for further enquiry. Later on, when the Selection Board scrutinised their entry in the master chart and it was found that in place of P. Dhananjay (petitioner in W.P.(S) No. 3854/07) name of Sanjay Kisko, son of Lakhi Ram Kisko of village Manoharpur, District Giridih was entered, likewise in place of Sandeep Kumar Singh (petitioner in W.P. (S) No. 5447/07) name of Vikas Kumar son of Jungli, Village Hirhuru, P.O and P.S. Hazaribagh was entered; and in place of Anirudh

Kumar (petitioner in W.P. (S) No. 6261/08) name of Madhukar Kumar Son of Dilkeshwar Sharma, resident of village Kurre, P.S. Ghosi, District: Jehanabad was entered. Since the petitioners were found to be the beneficiaries of such malpractice their candidature were cancelled by the Board. It has further been submitted that the appointing authority is empowered to appoint genuine candidates and the petitioners' claim defeats the principle of equality as envisaged in the provisions of the Constitution of India. It has further been submitted that previously the Board has identified 932 candidates indulging in malpractice and excluding them, the final successful list was prepared and was sent to Deputy Inspector General, North Chotanagpur Range, Hazaribagh for approval, but, the Deputy Inspector General kept the result of 112 candidates (other than

932) pending for various reasons directing the Board to take decision of their candidature in the light of deficiency as mentioned in Memo dated 28.03.2007 and the petitioner was among those 112 candidates. It has further been stated that from perusal of the Master Chart, the name of the petitioners have been found to be entered by pasting a paper over the original entry and complying the spirit of the 5 order passed by this Hon'ble Court in W.P. (S) No. 1242 of 2006, the Committee rejected the candidature of the present petitioners.

8. Another counter affidavit has been filed on behalf of respondent no. 4 in pursuance to the order passed by this Court dated 30.04.2014 and 03.09.2014. In the counter affidavit, it has been submitted that as per the report submitted irregularities of various nature like amendment in height, overwriting in height, amendment in educational qualifications etc in respect of 932 candidates were found in four districts and apart from above, the Inquiry Officer has also reported as under: (a).Complaints have been received from the candidates that they have been declared unsuccessful on the basis of being absent from written examination or their answer sheet is being missing. Since no attendance sheet of examination was maintained, it is not possible to verify the authority of such claims. (b).A large number of candidates have been shown to have cleared the physical and written test who are in fact not enrolled as candidates at the time of registration. (c).Pages of candidates' enrolment register and master chart have been replaced. It has been noticed that name of candidate under one roll number is different in

enrolment register and master chart. In many cases blank paper was pasted in enrolment register/master chart to cover the names of original candidates who were either absent from physical tests or failed in the physical test and names and details of other candidates entered against the same number.

9. Thereafter, the Selection Committee in the light of the direction dated 26.03.2007 of Deputy Inspector General of Police, North Chotanagpur Division, Hazaribagh examined the records and concluded thereafter that the candidature of the petitioners appear to be forged, therefore, their candidatures were canceled. Since the petitioners were among the 112 candidates whose results were kept 6 pending and later after due consideration, it was canceled. The photocopy of list of said 112 candidates is being annexed herewith as Annexure 1 to counter affidavit. It is stated that since the Selection Committee found that the petitioners were beneficiary of malpractices, the writ petitions are liable to be dismissed.

10. Heard Dr. S.N. Pathak, learned Sr. counsel, Mr. Delip Jerath, learned counsel for the petitioners and Mr. Mr. Ashish Kumar Thakur, J.C to Sr. S.C. I, In W.P.(S) No. 3854 of 2007; Mr. Saket Upadhyay, in W.P.(S) No. 5447 of 2007, Mr. Anil Kumar, J.C to A.G, In W.P.(S) No. 6261 of 2008, learned counsel for the respondents.

11. Learned counsel for the petitioners assiduously urged the following points, challenging the impugned order of cancellation of selection dated 22.05.2007 :
(i).At the outset, learned counsel for the petitioners submitted that in the final merit list, the name of the petitioners finds place among the list of 1085 candidates and the Hon'ble Division Bench of this Court in W.P. (S) No. 1242 of 2006 & analogous cases has settled the issue holding therein that excluding 932 candidates, who were beneficiaries of malpractice, other 1085 candidates, who were found genuine, be appointed within two months and the order of the Hon'ble Division has neither been challenged nor any review has been filed, hence, the said order attained the finality and the case of the petitioners are squarely covered by the said decision. (ii).Secondly, it has been submitted that the stand taken by the respondents-authorities that the petitioners are guilty of malpractice in another list of 112 candidates, other than 932, is not permissible in the eye of law as Division

Bench of this Court in the case of Ranjay Kumar Singh Vs. State of Jharkhand & Ors as reported in 2009 (4) JLJR543 has been pleased to observe that any termination or cancellation of the appointment based on the candidates found guilty of malpractice other than 932 candidates is not permissible. (iii). It is further submitted that the impugned order of respondents smacks of high-handedness of the officials of respondents. (iv). It is further submitted that the respondents-State has never informed the Division Bench of this Court that result of 112 candidates other than 932 candidates have been kept pending for various deficiencies and discrepancies in their records. It has been submitted that it is the arbitrary attempt made by the State of Jharkhand and for the first time, the State of Jharkhand has come up with a new stand, which is not tenable in the eye of law.

12. On the other hand, learned counsel for the State dexterously countered the submissions of the counsel for the petitioners. The learned counsel for the State submitted that Annexure A to the counter affidavit in W.P. (S) No. 3854 of 2007 clearly reveals that the case of the petitioners was kept pending and it was found out that apart from 932 candidates, in which, the name of the petitioner finds place, have been found guilty of malpractice and the said contention has not been repelled by counsel for the petitioner. Learned counsel for the State has further stated that it is settled position of law that inclusion in the name of merit list does not give any defeasible right for appointment. Since in the instant case, the petitioners are guilty of adopting unfair means i.e. malpractice, he is not entitled to be appointed nor the action of the respondents can be termed as arbitrary exercise of power.

14. After giving my anxious consideration to the documents on record and rivalized submissions, I am of the considered view that the 8 reliefs sought for by the petitioner is not legally sustainable for the following facts, reasons and judicial pronouncements: (i). The main thrust of argument, advanced by learned counsel for the petitioners, is that since the name of the petitioners were not in the list of 932 candidates, who were found beneficiaries of malpractice, in the spirit of judgment passed by the Hon'ble Division Bench of this Court in W.P. (S) No. 1242 of 2006 and analogous cases, the petitioners are also entitled for the same benefit. For better appreciation and effective adjudication of the case, it would be

worthwhile to quote paragraph 7 of the Judgment passed in W.P. (S) No. 1242 of 2006 and analogous cases, as under:

7. As per the report submitted, irregularities of various nature like amendment in height, overwriting in height, amendment in educational qualifications, amendment in date of birth and interpolation of Hom Guard/Sports certificates etc were found in respect to 932 candidates in the four districts in the following manner: (i).Hazaribagh-312 (ii).Giridih -346 (iii).Koderma -120 (iv)Chatra -154 Apart from above, Inquiry Officer has also reported as under: (a).complaints have been received from the candidates that they have been declared unsuccessful on the basis of being missing. Since no examination or their answer-sheet of the examination was maintained, it is not possible to verify the authenticity of such claims. (b).a large number of candidates have been shown to have cleared the physical and written test who are in fact not enrolled as candidates at the time of registration. (c).pages of candidates' enrolment register and master chart have been replaced. It has been noticed that the name of a candidate under one roll number is different in enrolment register and master chart. In many cases blank paper was pasted in enrolment register/master chart to cover the names of original candidates who had either abstain from physical test or failed in the physical test and names and details of other candidates entered against the same number. 9 (Emphasis Supplied) From the above, it is quite apparent that apart from 932 candidates, there were still some candidates against whom enquiry was going on and who were found beneficiaries of manipulations. Therefore, the case of the petitioners were kept pending for various deficiencies and dependencies in their records. Therefore, no fault can be found in the impugned order of cancellation of selection of the petitioners. (ii). The respondents have come up with a clear-cut case that manipulation has been done by way of pasting over the name of other candidates. On perusal of the counter affidavit, it is quite vivid and luminescent that in place of P. Dhananjay (petitioner in W.P.(S) No. 3854/07) name of Sanjay Kisko, likewise in place of Sandeep Kumar Singh (petitioner in W.P. (S) No. 5447/07) name of Vikas Kumar and in place of Anirudh Kumar (petitioner in W.P. (S) No. 6261/08) name of Madhukar Kumar was entered. Since the petitioners were found beneficiaries of manipulation, their candidature has been cancelled by the order impugned, therefore, action of the respondents cannot be considered to

be arbitrary exercise of power. (iii). It is a settled principles of law that inclusion of name in the merit list does not give any indefeasible right to appointed as enunciated by Hon'ble Apex Court in the case of of Shankarsan Dash Vs. Union of India as reported in (1991) 3 SCC47(iv). So far as fraud in appointment is concerned, the Hon'ble Apex Court in the case of Devendra Kumar Vs. State of Uttaranchal & Others as reported in (2013) 9 SCC363 has at paragraph nos. 13 as under:-

13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. Fraud avoids all judicial acts, ecclesiastical or temporal. (Vide S.P. Chengalvaraya Naidu v. Jagannath.) In Lazarus Estates Ltd. v. Beasley the Court observed without equivocation that: (QB p.

712) No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything. Hence, the manipulation/interpolation though detected at a later stage, the petitioners cannot be given benefit of manipulation.

14. On cumulative effect of aforesaid facts, reasons and judicial pronouncements, the impugned order dated 22.05.2007, whereby the candidature of the petitioners have been cancelled, does not warrant any interference by this Court. Accordingly, the writ petitions are dismissed being devoid of any any merit. (Pramath Patnaik, J.) Alankar/-

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