

Durga Charan Kumhar and Anr Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jul-27-2015

Appellant : Durga Charan Kumhar and Anr

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Anjani Kumar Verma

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 3361 of 2009 With W.P.(S) No. 3395 of 2009 With W.P.(S) No. 3544 of 2009 With W.P.(S) No. 4100 of 2009 With W.P.(S) No. 974 of 2010 ----- Md. Akhtar Hussain, S/o late Khaja Hussain, Resident of Village- Brahmandiha, P.O. Pradhan Khanta, P.S. Baliyapur, District-Dhanbad (Jharkhand). . Petitioner in W.P.(S) No. 3361/ 2009 ---- Jailal Napit, S/o late Ram Kishun Napit, Resident of village-Barkiboa, Soritand, P.O. Bhuli, P.S. Tetulmari, District-Dhanbad (Jharkhand). . Petitioner in W.P.(S) No. 3395/ 2009 ----- 1. Durga Charan Kumhar, S/o Sri Bhim Kumhar, Resident of village and P.O.-Kharni, P.S. Barwadda, District- Dhanbad(Jharkhand).

2. Surendra Kumhar, S/o late Sambhu Kumhar, Resident of village- and P.O. Kharni, P.S. Barwadda, District-Dhanbad (Jharkhand). . Petitioners in W.P.(S) No. 3544/ 2009 ----- Kailash Chandra Kumhar, S/o late Kedar Kumhar, Resident of village- and P.O.-Kharni, P.S. Barwadda, District-Dhanbad (Jharkhand). . Petitioner in W.P.(S) No. 4100/2009 Ashwni Kumar Rajak, S/o late Sambhu Rajak, Resident of village- Rampur Tola Dorwadih, P.O. Maharajganj, P.S. Tundi, District-

Dhanbad (Jharkhand). . Petitioner in W.P.(S) No. 974/2010 Versus 1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, Ranchi.

2. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasa Deptt., Government of Jharkhand, Ranchi.

3. The Secretary, Board of Revenue, Govt of Jharkhand, Ranchi.

4. The Commissioner, North Chhotanagpur Division, Hazaribagh.

5. The Deputy Commissioner, Dhanbad cum Chairman, District Selection Committee, Dhanbad.

6. Sri Manoj Kumar, Son of not known to the petitioner, at present posted as Establishment Deputy Collector, Dhanbad Collectorate, R/o Govt. Quarter, Dhanbad Collectorate, P.O. & P.S. Dhanbad, District-Dhanbad, Jharkhand.

7. Sri Randeo Narayan Prasad, S/o not known to the petitioner, at present posted as Head Clerk, District Establishment Section, Dhanbad Collectorate, R/o Mohalla-Bekarbandh, P.O. & P.S. Dhanbad, District-Dhanbad (Jharkhand). -2-

8. Paresh Chandra Manjhi, S/o Sri Mandal Manjhi, Resident of Village-Bandarchua, P.O. Maharajganj, P.S. Tundi, District- Dhanbad (Jharkhand). .. . Respondents in all the cases ----- Coram: HONBLE MR JUSTICE RONGON MUKHOPADHYAY -----

For the Petitioners : Mr. Anjani Kumar Verma, Advocate In all the cases For the

Respondent : Mr. Deepak Kumar Dubey, J.C. to S.C. 1 Mr. Lalan Kumar Singh,

J.C. to G.P. V Ms. Nehala Sharmin, J.C. to Sr. S.C. II ----- 02/27/07/2015 Since

common questions of law and fact are involved in the writ petition(s), they are being disposed of by this common order. The petitioner(s) in the writ application

has/have prayed for the following reilefs:- (i) For direction to the respondents for

regular appointment of the petitioner on vacant class IV post, who has been duly selected as per merit list/select list published on 23.04.2006 (Annexure-9)

granting relaxation in minimum qualification giving effect the Govt. Resolution No.

5940 dated 18.06.1993 (Annexure-3) which has been issued framing scheme for

regular appointment of daily wages employees appointed prior to 01.08.1985

considering the letter no. 968 dated 03.10.2006 (Annexure-11) issued by Deputy

Commissioner-Cum-Chairman, District Selection Committee, Dhanbad (Respondent No.6) as the petitioner was initially appointed on daily wages basis in the year 1982 after interview etc. having the qualification of reading, writing and cycling etc. at that time as per the existing Govt. Letter No. 13984 dated 17.08.1971 (Annexure-1) following the settled principles of law laid by Hon'ble High Court in case of Bivash Kumar Vs. The State and others reported in 2000(1) PLJR787(Annexure-6). (ii) For direction to the respondents to issue appointment letter in favour of the petitioner on class IV posts without giving effect the minimum qualification laid down in Govt. letter dated 25.04.1997 without any discrimination because other similarly situated persons likewise Sri Paresh Chandra Manjhi (Pr. Respondent no.

8) have already been issued appointment letter vide letter no. 729 dated 29.07.2006 (Annexure-12) adopting pick and choose method. (iii) For direction to the respondent to take stern against the Private Respondent Nos. 6 & 7 for committing several irregularities in appointment of class IV posts in Dhanbad District for personal gain. -3- (iv) For hearing and disposal of the case of the petitioner in terms of the order dated 22.06.2009 (Annexure-13) passed in the cases of other similarly situated persons bearing W.P.S. No. 1910 of 2007 and other analogous cases as the case of the petitioner is squarely covered by the aforesaid order dated 22.06.2009 passed by this Hon'ble Court. It is the case of the petitioners that they were appointed on daily wage basis prior to 1.8.1985 in terms of existing criteria having knowledge of reading, writing and cycling etc. and for their regular appointment, scheme has been framed by the Government vide Memo No. 5940 dated 18.06.1993, which has been approved by the Hon'ble Supreme Court in S.L.P (Civil) No. 18154 of 1999. Further case of the petitioners is that pursuant to the order passed in S.L.P (Civil) No. 18154 of 1999, an advertisement was published in daily newspaper 'Hindustan' on 28.10.2005 by the Deputy Commissioner, Dhanbad inviting application from eligible candidates through Employment Exchange, Dhanbad. Pursuant to the advertisement dated 28.10.2005, the petitioners and other empaneled candidates of old district panel had applied for regular appointment in class IV posts. The petitioners appeared in written test and the select list/district panel was published on 23.04.2006, in which the names of the petitioners figured. However, it is the contention of the petitioners

that although they have been selected in class IV post but they have not been issued any appointment letter leading to filing of the present writ applications. Heard Mr. Anjani Kumar Verma, learned counsel for the petitioners in all the writ applications, Mr. Deepak Kumar Dubey, learned J.C. to S.C. 1 in WPS No.3361 of 2009 and WPS No.974 of 2010, Mr. Lalan Kumar Singh, learned J.C. to G.P. V in WPS No. 4100 of 2009 and Ms Nehala Sharmin, learned JC to Sr. S.C. II in WPS No. 3395 of 2009. It has been contended by the learned counsel for the petitioners that they were working since 1982 and the matters of their regularization had went up to the Hon'ble Supreme Court, which, however passed an order on 30.10.2000 and which reads as under:- " We are of the view that the regularization of the writ petitioners should be done in accordance with the procedure indicated in the Scheme dated 18.6.1993 and it should apply -4- to the persons who satisfy all the conditions mentioned in the Scheme" It has been submitted by the learned counsel for the petitioners that the scheme for regularization stipulates the cut off date as 01.08.1985 and those, who were appointed on daily wage basis prior to 1.8.1985, were to be considered and regularized. It has further been submitted that in similar circumstances, several persons have already been regularized consequent to the order passed by this Hon'ble Court in WPS No. 1910 of 2007 and its analogous cases. Learned counsel appearing for the State, on the other hand, has submitted that the advertisement itself stipulated the minimum qualification of at least 8th pass and since the petitioners have not fulfilled the said criteria, their case for regular appointment has rightly not been considered. However, the fact remains that the scheme stipulated 1.8.1985 as the cut off date for the purpose of regularization and there is also no dispute about the fact that the names of the petitioners were taken from employment exchange and they were duly subjected to test. However, the criteria as mentioned in the advertisement with respect to securing the minimum educational qualification, the same has to be considered in terms of the administrative order passed vide letter no. 3577 dated 25.4.97, which was to be applied prospectively of such appointees who were appointed subsequent to 1997. The petitioners admittedly were working since 1982. This fact had been considered by this Court in WPS No. 1910 of 2007 and its analogous cases and on consideration of the same, it was held as follows:- "The Scheme clearly stipulates the cut off date as 01.08.1985 and those appointed

prior to that were to be considered and regularized. In the instant case, there is no dispute about the fact that the petitioners names were taken from the employment exchange and they were duly interviewed pursuant to selection procedure which meets the test of Article 14 of the Constitution of India. After being selected their claim for employment was negated on the ground that they were not 8th pass. This also appears to be erroneous on the face of it for the reason that the administrative order passed vide letter no.3577 dated 25.4.97 was to be applied prospectively of such appointees, who were appointed subsequent to 1997 whereas the petitioners were working since 1982 and this is further corroborated by the letter dated 3.10.2006 issued by the Deputy Commissioner, Dhanbad to the Principal Secretary, Personnel Administrative Reforms and Rajbhasa Department, Jharkhand Government, Ranchi wherein it has been stated that such candidates who were appointed earlier and who were less qualified than the requirement of 8th pass were to be considered since at that point of time there was no qualification prescribed and only qualification was that they -5- should be literate and knows cycling. Considering the aforesaid facts and circumstances of the case, I find that the ground taken for denying the benefit accrued to the petitioners pursuant to proper selection is on the face of it illegal and accordingly these writ petitions are allowed with all consequential benefits." Learned counsel for the petitioners at this stage has brought to the notice of the Court the appointment letters issued to those persons who were petitioners in WPS No. 1910 of 2007 and its analogous cases to suggest that the said order has already been complied with by the authorities. On being confronted with the question of vacancies as on date, Mr. Anjani Kumar Verma, learned counsel for the petitioners, has submitted that as on date, there are still vacancies in class IV posts, which are to be filled up. Considering the fact that in the case of similarly situated persons, this Court had passed an order in WPS No. 1910 of 2007 and its analogous cases, consequent to which those persons had already been provided with appointment letters, these writ petitions are disposed of directing respondent no. 5 to consider the claim of the petitioners in the light of the orders passed in WPS No. 1910 of 2007 and its analogous cases by further taking into consideration as to whether as on date there are vacancies in class IV posts and on taking into consideration the aforesaid fact, shall pass a reasoned and speaking order within a period of 8

weeks from the date of receipt of a copy of this order. (Rongon Mukhopadhyay,J)
Rakesh/

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