

Durga Thakur and Ors Vs. Personnel and Adminis Reform

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Court : Jharkhand

Decided On : Sep-28-2015

Appellant : Durga Thakur and Ors

Respondent : Personnel and Adminis Reform

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4619 of 2015
--- 1. Durga Thakur 2. Saraswati Devi 3. Ghasi Ram Pan 4. Niranjana Kumar Singh
--- --- --- Petitioners Versus 1. The State of Jharkhand 2. The Secretary,
Personnel, Administrative Reforms & Rajbhasha, Government of Jharkhand 3.
The Secretary, Department of Industry, Government of Jharkhand 4. The Director,
Department of Industry, Government of Jharkhand 5. The Director, Handicraft,
Government of Jharkhand 6. The Secretary, Jharkhand Staff Selection
Commission --- Respondents --- CORAM: The Honble Mr. Justice Aparesh Kumar
Singh For the Petitioner: Mr. Krishna Murari & Mr. Abhijeet Tushar, Advocates For
the Resp-State: Ms. Jyoti Nayan, JC to GP-IV For the Resp No. 6: Mr. M.S.
Anwar, Sr. Advocate & Mr. Tejo Mistry, Advocate --- 02/ 28.09.2015 Heard counsel
for the parties.

2. Four petitioners herein seek relaxation in upper age limit for all the categories and modification in the cut-off date for the purposes of reckoning the upper age limit under Advertisement No. 05/2015 issued by the Respondent- Jharkhand Staff Selection Commission published on 07.09.2015 (Annexure-1) inviting application for the post of Kitpalak (Sericulture). Petitioners have incidentally asked for

extension of the last date for submission of the application and stay of the advertisement itself during the pendency of the writ application.

3. Counsel for the petitioners however seeks an interim relief to the extent that the petitioners should be allowed to submit application and appear in the examination, subject to the outcome of the writ petition.

4. Essentially, grounds of challenge are that the present recruitment exercise has been held after more than two decades and delay in holding such recruitment exercise would deny reasonable opportunity to the eligible candidates who have the educational qualification prescribed under the advertisement and in terms of the Jharkhand Staff Sericulture Rules, 2013 (Annexure-2) notified vide Memo No. 1735 dated 11.09.2013 by the Industries Department. Petitioners claim to have obtained the qualification of one year certificate course in Sericulture from Silk Technology Development Institute, Chaibasa which is the only prescribed Institute from where such a qualification can be obtained, as required under the educational criteria prescribed under 2013 rules. Referring to their personal details at Para-10 of the writ petition, it is stated that each one of them have obtained the certificate in the specialized course of Sericulture in the year 2007, 2004 and 2000 but have become age barred as per the present advertisement in the individual cases. All the petitioners are above 40 years of age as per the chart enclosed thereunder.

5. It is submitted that the rules do not prescribe any upper age limit, but the advertisement contains the upper age limit which is arbitrary as it would deny eligibility to several such persons like the present petitioners. Para-14 of the writ petition contains a chart showing the list of candidates who have obtained various degrees from Silk Technology Development Institute, Chaibasa totalling 598 over a period ranging from 1991 till 2009, while according to them, there are more than 1100 vacancies existing. Learned counsel submits that the upper age limit prescribed under the advertisement in terms of the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand Notification contemplates situation where age relaxation can be granted. Therefore, petitioners do bear legitimate expectation of such relaxation in view of extraordinary situation

of delay in any such recruitment exercise over a period of two decades. Petitioners have accordingly sought indulgence of this Court.

6. Counsel for the respondent State and the Staff Selection Commission submit that the advertisement is fully in consonance with 2013 rules. Petitioners may not be lacking in the educational qualification prescribed, but the age limit prescribed is in terms of Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand Notification which applies in any such recruitment exercise in respect of various categories such as, General, SC/ST and Other Backward Classes Category. It is submitted that the petitioners cannot insist upon the age relaxation on account of suffering any hardship on their part, as that is not a ground to assail fixation of upper age limit as being arbitrary. It is submitted that the rules are not under challenge herein, therefore, no interference is warranted. Counsel for the respondents has relied upon the judgment rendered in the case of Anil Kumar Vs. The State of Jharkhand through the Chief Secretary & others in WPS No. 2505/2015 dated 14.09.2015 whereunder also, a similar challenge to fixation of upper age limit and the cut-off date for reckoning the same by the respondent-Commission for appointment to the post of Assistant Superintendent in Sericulture Service Cadre (Industries Department) based upon the same 2013 Rules has been declined by this Court. It is submitted that the case of the petitioners have no distinguishing features from the case of Anil Kumar (Supra) where such plea was rejected by this Court.

7. I have considered the rival submissions of the parties in the light of the background material facts referred to hereinabove. From the grounds of challenge laid on behalf of the petitioners, it is apparent that only a plea of hardship is being raised as the recruitment exercise is reportedly being held after a long time by the respondent State through Commission. Rules are not under challenge. The plea that the petitioners have obtained the prescribed qualification from the only Institute in the State of Jharkhand and therefore, their candidature should be considered for such recruitment exercise, does not merit acceptance for the simple reason that the fixation of upper age limit is based upon a rationale criteria which is only open to challenge, if it is demonstrably arbitrary and does not have rational nexus with the object sought to be achieved. Fixation of upper age limit or cut-off

date always operates as a hardship to one or the other candidates depending upon which such candidate falls. Rules stipulate that vacancies are to be reckoned from the 1st January of the Calendar year, admittedly 2015. If the vacancies are to be reckoned from the 1st January of the Calendar year 2015, the cut-off date of 1st August 2015 prescribed under the advertisement is only proper. 4. in the eye of law. Reliance of the petitioner upon a judgment rendered in the case of Dr. Rabindra Kumar Singh & others vs. The State of Bihar & others [2000(3) PLJR231, in opinion of this Court, would not come to the aid of the petitioner as fixation of upper age limit has not been shown to be suffering from any irrationality or arbitrariness in the present exercise. It appears further that a similar challenge to the fixation of upper age limit and the cut-off date under Advertisement No. 06/2014 by the respondent-Commission for appointment to the post of Assistant Superintendent in Sericulture Service Cadre in the same Industries Department and based upon the same 2013 Rules, has been declined by this Court vide Judgment dated 14.09.2015. Similar plea of delay in recruitment exercise over a period of several years was raised by the said petitioners to claim that he had completed the required B.Sc, Silk Technology (Sericulture) from a college under Bhagalpur University which alone imparts such course.

8. Considering all aspects of the matter and grounds of challenge raised therein, this Court was not satisfied that the grounds urged on their behalf were sufficient to render the fixation of upper age limit in the recruitment exercise as arbitrary or irrational. Ratio in the said judgement applies squarely to the facts of the instant case also. Para-5 to 7 of the judgment passed in the case of Anil Kumar (Supra) is quoted hereunder.

5. I have considered the submissions of the parties and gone through the relevant materials on record. Challenge to the fixation of age limit in such recruitment exercise undertaken through public notice, is to be substantiated on the ground that it is either arbitrary and does not have any rationale. On consideration of the grounds urged by the petitioner, it cannot be said that on the ground that the petitioner has completed B.Sc, Silk Technology (Sericulture) in 1995 and that no examination were held by the State of Jharkhand for the purposes of filling up the vacancies till the impugned advertisement, the fixation of upper age limit would

itself be arbitrary and without rationale. From the rules, it is evident that the reckoning of vacancies are to be done on 1st January of the calendar year in which recruitment exercise is done. The age limit under unreserved / OBC / SC / ST / as also female category is prescribed in terms of the Notification of Department of Personnel, Administrative Reforms and 5. Rajbhasa. The advertisement is of 2014, though it has been published on 20.03.2015. In matters of reckoning of upper age limit in any such recruitment exercise, the upper age limit is ordinarily reckoned with effect from the date either 01st January of the said year or 01st August of the said year.

6. In the instant case, since the vacancies are reckoned from 1st January of the calendar year i.e. 2014, the upper age limit is bound to be reckoned from 1st August 2014 only. No other grounds are made out to substantiate the contention that the cut-off date for reckoning of upper age limit, is arbitrary or irrational apart from the contention that it would cause hardship to one or the other candidates. Because of non- holding of exam over a period, it cannot be said that the fixation of upper age limit itself would be subject to the challenge and interference. As per the impugned advertisement and corrigendum issued thereafter, the last date to submit the application was 30.04.2015 but the writ petition was preferred on 17.06.2015. Certain letter written by the Legislative Assembly to the Hon'ble Chief Minister, Jharkhand (Annexure-6) is referred to by the learned counsel for the petitioner, which on perusal, only indicates that the same has been forwarded to the Department of Personnel, Administrative Reforms and Rajbhasa. No mileage can be drawn from the said communication either. In the judgment rendered by this Court in the case of Kokila Devi (Supra), facts were quite conspicuous as the entire recruitment exercise undertaken by the respondent State in the matters of appointment of Assistant Teachers, was quashed by the learned Division Bench of this Court finding various irregularities and fresh recruitment exercise was directed to be completed within a stipulated period.

7. In such circumstances, when there was a considerable delay in initiation of fresh exercise and many of those applicants who were eligible for exercise undertaken in 2011 which was quashed, were rendered ineligible on grounds of age limit on account of delay in holding the examination despite direction passed

by the learned Division Bench of this Court, certain observations and directions were issued in the case of Kokila Devi (Supra). However, it is informed by the learned counsel for the respondents that the said judgment is presently under stay in Letters Patent Appeal preferred before the learned Division Bench of this Court.

9. In view of the aforesaid discussions made and the reasons recorded herein, this Court is not inclined to interfere in the matter. The writ petition is accordingly dismissed. (Aparesh Kumar Singh, J) Ranjeet/

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