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Mahendra Saw Vs. Labour

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Court : Jharkhand

Decided On : Dec-15-2016

Appellant : Mahendra Saw

Respondent : Labour

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 5449 of 2015 ----- Bijay Lakra, S/o Anukaran Lakra resident of village Murai Toli, PO-Pojenga, PS- Palkot, District-Gumla, Jharkhand ... Petitioner -Versus-

1. The State of Jharkhand

2. The Secretary, Labour Employment and Training Department, Ranchi, State of Jharkhand

3. The Secretary, Department Administrative Reform and Rajbhasha, Government of Jharkhand, Ranchi

4. The Secretary, Jharkhand Combined Entrance Competitive Examination Board, Engg. Hostel, Sector-3, HEC, PO & PS-Dhurwa, District-Ranchi, Jharkhand

5. The Director, Labour Employment and Training Department, Project Building, PO & PS- Dhurwa, Ranchi, State of Jharkhand .... Respondents with W.P.(S) No. 5699 of 2015 ----- Mahendra Saw S/o Sri Naresh Sahu, resident of village-Pachamba, PO-Kutamu, PS-Bishrampur, District-Palamau,Jarkhand ... Petitioner -

Versus-

1. The State of Jharkhand

2. The Secretary, Labour Employment and Training Department, Ranchi, State of Jharkhand

3. The Secretary, Department Administrative Reform and Rajbhasha, Government of Jharkhand, Ranchi

4. The Secretary, Jharkhand Combined Entrance Competitive Examination Board, Engg. Hostel, Sector-3, HEC, PO & PS-Dhurwa, District-Ranchi, Jharkhand

5. The Director, Labour Employment and Training Department, Project Building, PO & PS- Dhurwa, Ranchi, State of Jharkhand .... Respondents with W.P.(S) No. 5421 of 2015 ----- Budhan Tudu S/o Subren Tudu, resident at 70, haludbani(Paratola), PO-Tatanagar, PS-Parsudih, District- Jamshedpur,(East Singhbhum), Jharkhand ... Petitioner -Versus-

1. The State of Jharkhand

2. The Secretary, Labour Employment and Training Department, PO & PS-Doranda,Ranchi, State of Jharkhand

3. The Secretary, Department Administrative Reform and Rajbhasha, Government of Jharkhand, Ranchi

4. The Secretary, Jharkhand Combined Entrance Competitive Examination Board, Engg. Hostel, Sector-3, HEC, PO & PS-Dhurwa, District-Ranchi, Jharkhand

5. The Director, Labour Employment and Training Department, Project Building, PO & PS- Dhurwa, Ranchi, State of Jharkhand .... Respondents 2 with W.P.(S) No. 5426 of 2015 ----- Raj Kishor Mahto S/o Sri Roidas Mahto, resident of village-Chipibandhdih, PO-Lungtu, PS-Tamar, District-Ranchi, Jharkhand ... Petitioner -Versus-

1. The State of Jharkhand

2. The Secretary, Labour Employment and Training Department, Ranchi, State of Jharkhand

3. The Secretary, Department Administrative Reform and Rajbhasha, Government of Jharkhand, Ranchi

4. The Secretary, Jharkhand Combined Entrance Competitive Examination Board, Engg. Hostel, Sector-3, HEC, PO & PS-Dhurwa, District-Ranchi, Jharkhand

5. The Director, Labour Employment and Training Department, Project Building, PO & PS- Dhurwa, Ranchi, State of Jharkhand .... Respondents with W.P.(S) No. 5428 of 2015 ----- Mantu Ram Mahato S/o late Maheshwar Mahto resident of village-Joshpur, PO-Gamharia, PS-Gamharia, Districit- Saraikela-Kharsawan, Jharkhand ... Petitioner -Versus-

1. The State of Jharkhand

2. The Secretary, Labour Employment and Training Department, PO & PS-Doranda,Ranchi, State of Jharkhand

3. The Secretary, Department Administrative Reform and Rajbhasha, Government of Jharkhand, Ranchi

4. The Secretary, Jharkhand Combined Entrance Competitive Examination Board, Engg. Hostel, Sector-3, HEC, PO & PS-Dhurwa, District-Ranchi, Jharkhand

5. The Director, Labour Employment and Training Department, Project Building, PO & PS- Dhurwa, Ranchi, State of Jharkhand .... Respondents with W.P.(S) No. 5435 of 2015 ----- Manoj Kumar Rana, S/o Saroj Kumar Rana, resident of village-Garri Kalan, PO- Garri Kalan, PS- Keradari, District-Hazaribagh, Jharkhand ... Petitioner -Versus-

1. The State of Jharkhand

2. The Secretary, Labour Employment and Training Department, PO & PS-Doranda, Ranchi, State of Jharkhand

3. The Secretary, Department Administrative Reform and Rajbhasha, Government of Jharkhand, Ranchi

4. The Secretary, Jharkhand Combined Entrance Competitive Examination Board, Engg. Hostel, Sector-3, HEC, PO & PS-Dhurwa, District-Ranchi, Jharkhand

5. The Director, Labour Employment and Training Department, Project Building, PO & PS- Dhurwa, Ranchi, State of Jharkhand .... Respondents ------ 3 CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR ----- For the Petitioner(s) : Mr. Niranjan Kumar, Adv. For the Resp.-State : Mrs. Rakhi Rani, Adv. ----- 06/15.12.2016 Issue involved in these writ-petitions is common. The petitioners who were called for counselling in the same transaction were left out, while other similarly situated short-listed candidates were appointed. Accordingly, prayer in the writ petitions is for a direction for appointment of the petitioner(s) in their respective categories, on the posts for which they were found suitable.

2. Briefly stated, an Advertisement was issued on 08.09.2009 for appointment on non-gazetted post in Group-C through Jharkhand Combined Entrance Competitive Examination. Total number of advertised vacancies under different trades was 504. The petitioners applied for the post of Electrician Instructor/ Fitter Instructor/ Wiremen Instructor/ Turner Instructor. They were declared successful in the written examination and thereafter, called for counselling, in which they participated and completed all the formalities. However, they were not appointed. In the meanwhile, several appointments were made from the list of successful candidates who had qualified in the written test and were called for counselling. In the counter-affidavit, the respondents have pleaded that on account of uncertainty how to run the ITIs; initially in the year 2011 it was proposed to run ITIs on P.P.P mode, however, in 2012 it was decided to run them through Department of Labour, Employment and Training, no concrete decision for appointment pursuant to Advertisement no.50 of 2009 dated 08.09.2009 was taken. Finally, when an opinion from the Department of Personnel, Administrative Reform and Rajbhasha was received, appointment from the panel prepared pursuant to Advertisement no.50/2009 was stopped. Few more facts, which are relevant for the present proceeding are noticed hereunder : (i) In W.P.(S) No.5699 of 2015, there were 03

vacancies under B.C.-I Group 'C' category and none of the candidates has been appointed. 4 (ii) In W.P.(S) No.5449 of 2015, there were 14 vacancies under S.T. Group 'C' category and 12 candidate have been appointed. (iii) In W.P.(S) No.5421 of 2015, there were 10 vacancies under S.T. Group 'C' category and 05 candidates have been appointed. (iv) In W.P.(S) No.5426 of 2015, there was 01 vacancies under B.C.-I Group 'C' category and none of the candidate has been appointed. (v) In W.P.(S) No.5435 of 2015, there were 02 vacancies under B.C.-II Group 'C' category and none of the candidates has been appointed. (vi) In W.P.(S) No.5428 of 2015, there were 08 vacancies under B.C.-I Group 'C' category and 07 candidates have been appointed.

3. Learned counsel for the petitioners, referring to letter for appointment dated 21.5.2014 submits that several similarly situated persons were appointed, however, the claim of the petitioners who were found suitable, has been illegally withheld. Learned counsel for the respondents has tried to contend that when an opinion from the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand was received, in the light of letter dated 06.12.1995 after 14.09.2015, no appointment from the select list prepared pursuant to Advertisement dated 08.09.2009 has been made. Be that as it may, the fact remains that the petitioners were found suitable and they were called for counselling. The respondents continued to appoint other similarly situated candidates as late as on 21.05.2014 and, in fact, the petitioners have pleaded that appointments have been made in the year, 2015 also. Though, in the supplementary counter-affidavit only a list of the appointees has been appended, the respondents have conveniently not disclosed the date on which the last appointment from the select list was made. In the counter-affidavit, suitability of the petitioners has not been challenged. The petitioners by producing appointment letters issued in the year 2011-2014 have pleaded that the respondent-Department withheld petitioners' appointment illegally. The plea that after opinion from the Department of 5 Personnel, Administrative Reform and Rajbhasha was received on 14.09.2015, a decision was taken not to appoint any candidate from the panel, has been taken for the first time in the present proceeding. The respondent-Department while continued to make appointments whenever they wanted, never made it public that panel prepared pursuant to Advertisement

no.50/2009 no longer survives. Now, in the above facts, the plea taken by the respondent-Department that after one year the panel had lapsed appears to be a feeble attempt on its part to resist the claim for appointment raised by the petitioners. In my opinion, at this stage the aforesaid plea is not available to the respondent-Department.

4. The petitioners have pleaded that a list of 41 candidates was prepared and approved for appointment. The said list containing name of all the petitioners was sent to the Department of Personnel, Administrative Reform and Rajbhasha for final approval. The file notings from Personnel Department, which has been produced by the respondents with the counter-affidavit, would disclose that while noticing delay on the part of the respondent- Department, it was opined that appropriate decision may be taken by the Department itself. Apparently, the plea founded on letter dated 06.12.1995 that no appointment from the panel can be made, was not the decision of the Personnel Department, as pleaded by the respondents in the counter- affidavit. This plea on the face of the record is untenable. The respondents, who continued to make appointments at least three years after alleged lapse of the waiting list/select list, cannot take the plea that after lapse of one year no appointment from the panel can be made. Another plea taken by the respondents is that experience-certificate of the petitioners were not verified within a reasonable period and in the meantime, one year after the preparation of select list lapsed and therefore, in view of instructions contained in letter dated 06.12.1995, they were not appointed. The petitioners were never intimated about the alleged delay in verification of the experience-certificate. Had a notice been issued to the petitioners, they could have also taken steps for verification of the experience-certificates. It is not in dispute that the petitioners were applicants for appointment on the 6 posts of Electrician Instructor/Fitter Instructor/Wiremen Instructor and Turner Instructor and they qualified in the written examination and finally their names were included in the select list. In these facts, only if the experience- certificates were not found proper or genuine, they can be denied appointment and not on the ground of delay; that too for no fault of the petitioners.

5. Accordingly, in the peculiar facts of the case, it is hereby ordered that subject to fulfillment of other conditions, if any, Secretary, Labour Employment and Training Department, Ranchi, State of Jharkhand-respondent no.2 shall issue necessary orders for appointment of the petitioners in their respective categories, on the posts for which they were selected.

6. The writ petitions are allowed in the above terms. (Shree Chandrashekhar, J.) sudhir/SI,

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