

IN THE HIGH COURT OF JHARKHAND AT RANCHI

....
W. P . (S) No. 1266 of 2015
with
W. P. (S) No. 1906 of 2015

1. Md. Maqsood Ansari
2. Nazni Devi Petitioners(W. P. (S) No. 1266 of 2015)

Abdul Ghaffar Ansari Petitioner (W. P. (S) No. 1906 of 2015)

-V e r s u s-

1. The State of Jharkhand
2. Jharkhand Academic Council, Namkum, Ranchi
3. Secretary, HRD Department, Ranchi
4. Principal Secretary, Department of Personnel, Administrative
Reforms & Raj Bhasha, Government of Jharkhand ...Respondents
(in both cases)

with
W. P . (S) No. 1986 of 2015

....
Amrendra Kumar @ Amrendar.Petitioner

-V e r s u s-

1. The State of Jharkhand
2. Secretary, Labour Employment and Training
Department, Government of Jharkhand, Ranchi
3. Director, Directorate of Labour Employment and Training
Department, Government of Jharkhand, Ranchi
4. Jharkhand Academic Council, Namkum, Ranchi
5. Department of Personnel, Administrative
Reforms & Raj Bhasha, Government of Jharkhand ...Respondents

with
W. P . (S) No. 2030 of 2015

....
1. Prakash Kumar Singh
2. Sheela Kumari
3. Rajesh Kumar PandeyPetitioners

-V e r s u s-

1. The State of Jharkhand
2. Secretary, HRD Department, Ranchi
3. Director, Secondary Education, HRD
Department, Government of Jharkhand, Ranchi
4. The Jharkhand Academic Council, Namkum, Ranchi
5. The Secretary, Jharkhand Academic Council, Ranchi
6. Principal Secretary, Department of Personnel, Administrative
Reforms & Raj Bhasha, Government of Jharkhand ...Respondents

with
W. P . (S) No. 1538 of 2015

....
Supriya KumariPetitioner

-Versus-

1. The State of Jharkhand
2. Chief Secretary, State of Jharkhand, Ranchi
3. Principal Secretary, HRD Department, Ranchi
4. Principal Secretary, Department of Personnel, Administrative
Reforms & Raj Bhasha, Government of Jharkhand
5. Secretary, Jharkhand Academic Council, Namkum, Ranchi
...Respondents

with
W. P. (S) No. 2851 of 2015

...

Md. Arshad ShahnwazPetitioner
-V e r s u s-
1. The State of Jharkhand
2. Jharkhand Academic Council through
its Secretary, Namkum, Ranchi ...Respondents

...

CORAM: - HON'BLE MR. JUSTICE APARESH KUMAR SINGH

...

For the Petitioners : M/s. Rajiv Ranjan, Sr. Adv., Rajeev Sharma, Sr. Adv.
Om Prakash Tiwari, Ajit Kr. Dubey,
Onkar Nath Tiwary, Sarfaraz Akhtar,
Matinuddin Khan, Bipin Kumar, S. L. Agarwal,
Umesh Kumar Choubey & Anup Kumar Agrawal, Advs.
For the State : M/s. Jai Prakash, AAG, Chaitali C. Sinha, JC to AAG,
D. K. Dubey, Sr. SC-I, K. M. Verma, GP-I,
Lalan Kr. Singh, JC to GP-I, Shweta Singh, JC to GP-V,
& Prem Pujari Roy, JC to GA
For the Respondent- JAC : M/s Md. Sohail Anwar, Sr. Adv.,
Sunil Kr. Sinha, Afaque Ahmed & Rajesh Kumar, Advs.
....

10/13.08.2015 The common issue raised in these writ petitions relate to reservation of 3% to physically handicapped category in terms of Section 33 of the Act of 1995 in recruitment exercise conducted by Jharkhand Academic Council for filling of post of Assistant Teachers in Upgraded High School under Adv. No. 93/11.

According to the petitioners, allocation of vacancies for physically handicapped category were made by the respondent authorities not on the basis of total number of vacancies in the relevant subjects but category wise in different subjects (General or Reserved). This, according to the petitioners, was also in teeth of the judgment rendered by the Hon'ble Supreme Court in the case of ***Union of India and Another Vs. National Federation of the Blind and Others*** reported in ***(2013) 10 SCC 772***.

Taking note of the aforesaid grievances of the petitioners, the respondent-State and Jharkhand Academic Council were asked to come out with their response. The response of the Jharkhand Academic Council was taken note in the order dated 20.05.2015 quoted hereinunder:-

"In response to the writ petition, the Jharkhand Academic Council has filed an affidavit, which in sum and substance states that in view of the Circular of the State Government dated 7th November,2007, Annexure B, 3% reservation to the physically

handicapped will be provided from the quota, to which they belong (general or reserved). Therefore, respondent-JAC was directed by the HRD Department through letter dated 29.12.2014 to revise the list. They also stated at para 12 that only 11 sanctioned post are available for the MBC (BC I) category for Urdu teachers and the last candidate recommended in the category has scored 195 marks while petitioners obtained 188 and 181 marks respectively. Therefore, they could not figure in the final merit list of the Urdu teachers published on 18.3.2015.

Learned senior counsel for the petitioners submits that this interpretation of the provision is not in accord with the provision of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He also relied upon the judgment rendered by the Hon'ble Supreme Court in the case of **Union of India & ors Vs. National Federation of the Blind and ors., reported in (2013) 10 SCC 772** to submit that computation of 3% reservation has to be done on the total number of vacancies in the cadre strength, which in the instant case as per advertisement, Annexure 1, is 134 invited by the Council itself.

Learned counsel for the respondent-State and JAC are, therefore, given further three weeks time to respond the legal issues involved therein.

List this case along with WP(S) No.1538/2015 on 2nd July, 2015. ”

Apparently, Jharkhand Academic Council was making recommendation against physically handicapped category in different category (General or Reserved) for a particular subject and not on total number of vacancies in the cadre strength in the said subject notified under the said Advertisement. Therefore, the stand of the respondent-State was required to be ascertained. After order dated 20.05.2015, the matter was adjourned once again and it was felt that on issue, which has wider repercussion and implementation of provisions of the Act of 1995 are based upon Resolution Dated 07.11.2007 of the Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand, presence of the Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand was also necessary. They were allowed to be impleaded vide order dated 08.07.2015. The order dated 08.07.2015 is also quoted hereinunder:-

“The affidavit of Respondent-J.A.C. placing reliance upon an office memorandum of Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand dated 7th November, 2007, is itself based upon office memorandum dated 29th December, 2005 issued by Ministry of Public Grievances and Pension, Government of India, Annexure-B. Counsel for petitioner pointed out that certain Clauses of office

memorandum dated 29th December, 2005 which are contrary to the reasoning given by Hon'ble Supreme Court in the judgment rendered in the case of Union of India and another vs. National Federation of the Blind and others reported in (2013) 10 S.C.C 772 have been struck down with a direction to the appropriate Government to issue new office memorandum consistent with the decision rendered by Hon'ble Apex Court. It therefore appears that presence of Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand is necessary to have their point of view in the matter where the petitioners are seeking reservation of 3 % in the Category of Physical Handicapped as provided under the Act of 1995.

Let Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand be impleaded as respondents in all these writ petitions through Principal Secretary of the said department, if not already impleaded in any of individual writ petitions. Let such correction be made during the course of the day by learned counsel for petitioners in red ink in his own hand writing.

Learned counsel for Respondent-State was allowed time on the previous date also, but no counter affidavit has been filed on their behalf. She is however seeking one more indulgence to do so. She shall also categorically seek instruction as to whether Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand has issued any fresh office memorandum pursuant to decision of Hon'ble Supreme Court in the case of Union of India and another vs. National Federation of the Blind and others (Supra).

By way of one more indulgence further 4 weeks' time is allowed and it is made clear that if the affidavit is not filed on behalf of Respondent-State by the next date, a cost of Rs. 3,000/- shall be paid by the concerned respondent to the petitioners.

The Principal Secretary, Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand as also Principal Secretary/Secretary, Department of Human Resources Development would depute a responsible officer not less than the rank of Deputy Commissioner to be present in Court on the next date for assistance to the Court.

List these cases on 6th August, 2015.

Let a copy of this order be handed over to counsel for Respondent-State."

Pursuant thereto, the respondent- Department of Personnel Administrative Reforms & Raj Bhasha, Government of Jharkhand has filed counter affidavit in some of these writ petitions i.e. W. P. (S) No. 2030 of 2015 and W. P. (S) No. 1906 of 2015. The stand of the respondent-Personnel Department, which is author of the Resolution dated 07.11.2007 was taken note of in order dated 06.08.2015, which is self speaking. The said order is also quoted hereinunder:-

*“Pursuant to the previous order, the respondent-Personnel Department has filed counter affidavit in W. P. (S) No. 2030 of 2015 and W. P. (S) No. 1906 of 2015. Submissions have been advanced on behalf of the respondent-Personnel Department on the interpretation of provisions of Section 33 of the Act of 1995 and import of the judgment of the Hon'ble Supreme Court in the case of **Union of India and Another Vs. National Federation of the Blind and Others** reported in (2013) 10 SCC 772 by Mr. Jai Prakash, learned AAG. It is their considered stand that vide office memorandum dated 07.11.2007 of the Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand is in line with the judgment rendered by the Apex Court in the case of **National Federation of the Blind and Ors.** (Supra) as also office memorandum modified by the Department of Personnel, Administrative Reforms, Government of India dated 03.12.2013.*

In essence what is submitted on behalf of learned AAG is that the office memorandum of 2007 of Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand is clear on the point that computation of 3% reservation for physically handicapped category is on total number of vacancies in the cadre strength. It is not to be computed on the total number of post of the cadre. Therefore, no further clarification has been issued by Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand. It is also submitted that reservation under the Act of 1995 being horizontal reservation, it cuts across all categories of vertical reservation. Computation of reservation for physically handicapped categories is to be done in the aforesaid manner in any recruitment exercise conducted by the respective Departments under the Government of Jharkhand. Learned AAG refers to para-11 of the counter affidavit filed in W. P. (S) No. 1906 of 2015 to buttress his point.

Now the question involved in the present writ petitions is whether computation of vacancies of physically handicapped categories for appointment of Urdu and Other Subjects Teachers in Upgraded High School is being done in line with the ratio laid down by the Hon'ble Supreme Court and the stand of the respondent-Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand or not. Learned AAG seeks short time to deliberate on the issue with the officials of the Human Resources Development Department and Jharkhand Academic Council in the presence of the officials of the Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand .

Accordingly, the matter is adjourned for 12.08.2015.

Let a copy of the order be handed over to the learned A.A.G, Mr Jai Prakash by tomorrow.”

As would appear, the Personnel Department was very clear that the resolution of 2007 is in complete conformity with the provisions of the Act of 1995 and the Judgment rendered by the Hon'ble Supreme Court in the case of **National Federation of the Blind and Others (Supra)**. It was also submitted by

the learned AAG that computation of 3% reservation for physically handicapped category is to be done on total number of vacancies in cadre strength. It is not to be computed on total number of post of the cadre. According to the respondent-State, therefore, no further clarification was required in Resolution of November, 2007. It was also submitted that reservation under the Act of 1995 being horizontal reservation, it cuts across all categories of vertical reservation. Computation of reservation for physically handicapped category was, therefore, required to be done in terms of the aforesaid Resolution in any recruitment exercise conducted by the respective Department.

Taking note of the aforesaid stand of the Personnel Department, it was felt that the very issue involved in these writ petitions, i.e., whether computation of vacancies of physically handicapped category for appointment of Assistant Teachers in various subjects in Upgraded High School by the respondent- Jharkhand Academic Council has been done in line with the ratio laid down by the Hon'ble Supreme Court and Resolution of November, 2007 is required to be deliberated by the respondents in which representative of the Human Resources Development Department, Jharkhand Academic Council and the Department of Personnel, Administrative Reforms & Raj Bhasha, Government of Jharkhand should also be present. The matter was, accordingly, adjourned for the said purpose vide order dated 06.08.2015 quoted hereinabove.

The respondent-Human Resources Development Department, which is now renamed as School Education and Literacy Department, Government of Jharkhand, Ranchi, has filed an affidavit. It is stated therein that pursuant to previous order dated 06.08.2015 passed by this Court, a committee comprising Joint Secretary, School Education and Literacy Department, Deputy Secretary, Department of Personnel, Administrative Reforms & Raj Bhasha and Secretary of the Jharkhand Academic Council was constituted to re-ascertain the reservation with regard to disabled candidates for selection of teacher in Upgraded High Schools. Photocopy of the decision of the joint committee is enclosed as Annexure-A to the said affidavit.

Mr. Jai Prakash, learned AAG, by referring to minutes of the committee, submits that computation of 3% of the vacancies

for the disabled category existing in cadre strength in different subjects under the said recruitment exercise have been reworked in terms of resolution dated 07.11.2007 of the Personnel Department. They are furnished in form of a chart.

It is submitted that in view of reworking of vacancies in physically handicapped category, now Jharkhand Academic Council has to undertake an exercise to find out as to who are the eligible candidates from physically handicapped category in each subjects to be recommended to the State Government for recruitment against such posts in Upgraded High School.

Mr. Sohail Anwar, learned Senior Counsel for the JAC submits that process may take some time as scrutiny of applications along with relevant certificates and credentials of candidates belonging to physically handicapped category have to be undertaken. It is submitted that in some subjects, the respondent-JAC may also require specific instruction/guidelines from the respondent-Department, if such occasion arises. It is, however, also pointed out across the bar that out of 2512 vacancies notified, recommendations have been made only in respect of 1871 candidates. Therefore, against a large number of vacancies, recommendations have not yet been made. Reasons may be that in some subjects sufficient candidates were not available or other genuine reasons as well.

Be that as it may, since comprehensive reapplication of mind and deliberations have been made on the aforesaid issue in respect of which petitioners came before this Court and vacancies for physically handicapped category under the said recruitment exercise have been reworked, the exercise for making recommendation against those vacancies are to be now undertaken by the respondent-JAC. For that purpose in the opinion of the Court, four weeks' time would be required, subject to any genuine reasons for seeking extension. Based upon such exercise, the respondent-JAC would send list of recommended candidates of physically handicapped category to the respondent-Education Department for filling up of the said posts in the respective subjects.

The officials of the respondents- School Education and Literacy Department, Department of Personnel, Administrative Reforms & Raj Bhasha and Jharkhand Academic Council have been present in the Court on the last few dates and today also

for providing assistance to the Court. The presence of the officials are no longer required and are dispensed with. This court must also record appreciation for the efforts taken by Mr. Jai Prakash, learned AAG and Md. Sohail Anwar, learned Senior Council appearing on behalf of the respondent-JAC in making sincere efforts for resolving the issue involved.

Accordingly, in view of elaborate reasons and discussions made hereinabove, these writ petitions are disposed of with the observations and directions contained herein.

Pending IA also stands closed.

(Aparesh Kumar Singh, J.)

Kamlesh/