

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S). No. 173 of 2021

Priyanka Rani

..... Petitioner

Versus

1. The State of Jharkhand through its Secretary-cum-Legal Remembrancer, Department of Law, Ranchi.
2. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasa Department, Govt. of Jharkhand, Ranchi.
3. Jharkhand Public Service Commission through its Secretary, Ranchi.
4. The Controller of Examination, Jharkhand Public Service Commission, Ranchi.

..... Respondents.

CORAM: HON'BLE DR. JUSTICE S.N.PATHAK
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Petitioner : Mr. Manoj Tandon, Advocate
Mr. Adanya Kerketta, Advocate
For the Respondents : Mr. Gaurav Abhishek, AC to AG
Mr. Pravin Kumar Pandey, Advocate

C.A.V. on 10/07/2024

Pronounced on 26/09/2024

Per: Dr. S.N. Pathak, J. Heard the parties.

Prayer

2. Instant writ application has been preferred by the petitioner for a direction upon the respondents to consider the case of petitioner for appointment to the post of Judicial Officer, Civil Judge (Jr. Div.) pursuant to the Advt. No. 12/2018, issued by respondent No. 2 as one post in her category is still vacant.

Facts of the Case

3. The Jharkhand Public Service Commission (for short “the JPSC”) floated an advertisement being Advt. No. 12/2018 for appointment of Judicial Officers (Civil Judge, Junior Division). Altogether 107 posts were advertised out of which 5 posts were reserved for Scheduled Caste Category. The petitioner having the requisite qualification, applied for the

same under SC category and participated in the Preliminary Test, in which petitioner was declared successful. Thereafter, she appeared in the Mains Examination and successfully competed the same. Consequently, she was called for interview and the petitioner appeared on the scheduled date i.e. on 20.01.2020 at the office of respondent-JPSC. Thereafter, the respondent-JPSC published the final result in which the name of petitioner did not figure.

4. It is the case of petitioner that one Priyanka Kumari, who was at Sl. No. 5 under SC Category did not appear for certificate verification and as such, her candidature for appointment was rejected. Since the rank of petitioner was not clear, she sought information under Right to Information Act, in response to which vide letter dated 22.12.2020, it was informed by the respondent-JPSC to the petitioner that her rank was 6th in SC Category. It is the specific case of petitioner that since Priyanka Kumari, who was 5th in rank under SC Category, failed to appear for certificate verification, the petitioner ought to have been called for the same. But the same was not done for the reasons best known to the respondents. Though petitioner submitted representation on 19.10.2020 before the respondent No. 2 as also to respondent No. 3 on 22.10.2020 requesting them to consider her case for appointment but no heed has been paid to her such request.

Hence, the petitioner has been constrained to knock the door of this Court.

Arguments advanced by learned counsel for the petitioner:

5. Learned counsel appearing for the petitioner submits that it is not a case where the appointment letter has been served and somebody has not joined but it is a case where during the selection process the 5th rank holder did not appear for certificate verification and hence, the immediate next candidate having 6th rank i.e. the petitioner ought to have been called for certificate verification. Learned counsel further argues that the respondents are duty bound to consider the case of petitioner for appointment pursuant to Advt. No. 12/2018 in view of the fact that one post under SC Category to

which petitioner belongs is still vacant against which petitioner can be accommodated. Learned counsel further argues that Priyanka Kumari (5th in rank under SC Category) did not appear for certificate verification, the respondents were duty bound to call the petitioner (who was 6th in rank under SC Category) for such certificate verification as she was the next immediate candidate having 6th rank in the category of SC. The action of respondents is violative of Articles 14 and 16 of the Constitution of India.

6. To buttress his arguments, learned counsel for the petitioner places heavy reliance on the judgment of Hon'ble Apex Court in the following cases:

- (I) Munja Praveen Vs. State of Telangana, reported in (2017) 14 SCC 797.
- (II) W.P.(S). No. 2361 of 2023 [Ram Prakash Ram Vs. the State of Jharkhand & Ors.] along with W.P.(S). No. 2394 of 2023 [Hare Ram Singh Vs. the State of Jharkhand & Ors.], disposed of on 26.06.2024

Arguments advanced by learned counsel for the respondents

7. Learned counsel for the respondent-JPSC and State jointly submit that as per Clause 14 of the Jharkhand Judicial Service (Recruitment) Regulation, 2013 and Clause-14 of the Advertisement No. 12/2018, petitioner did not fall within the zone of consideration and as such, her result was not published. Learned counsel submits that as per normal practice, the final merit list used to be prepared on the basis of marks obtained in Main Examination and Viva Voca Test both. Since the petitioner has obtained 199.6 marks and the last selected candidate under SC Category has obtained 200.69 marks, rightly her candidature was not considered by the respondents. Learned counsel further argued that as per Clause 3(xv) of the Circular issued by the Department of Personnel, Administrative Reforms and Rajbhasha, Ranchi dated 26.11.2012, it is stated that if the posts remains vacant due to non-joining of the candidates or any reason, such vacancy shall be carried forward for the next advertisement. Learned counsel further argues that the petitioner had appeared in the examination

process and when she was not selected finally, she filed the instant writ application before this Court with a prayer for consideration of her candidature against the one post lying vacant under SC Category.

8. In support of their contention, learned counsel placed reliance on the judgment passed by this Court in the case of **Surbhi Saxena Vs. State of Jharkhand [W.P.(S). No. 297 of 2021]** disposed of on **28.06.2021** and affirmed by the Hon'ble Apex Court in **Special Leave to Appeal (C) No(s). No. 15967 of 2021**, disposed of on **16.11.2021**.

Findings of the Court

9. Heard the parties at length.

10. Before delving deep into the matter it would be apposite to examine the following issues:

- I) Whether the case of the petitioner ought to have been considered as at the relevant time appointment letters were not issued to the last selected candidate?
- II) Since the candidate ranked just above the petitioner did not present herself for documents verification, whether it was not incumbent upon the respondents to call the candidate next in Rank for documents verification if he/she falls within the zone of consideration fulfilling the requisite criteria?
- III) Whether the respondent-authorities at all considered the legal proposition set at rest in the case of **Munja Praveen Vs. State of Telangana & Ors. [(2017) 14 SCC 797]**?
- IV) Whether the reliance of the respondent-JPSC and State in the case of **Surbhi Saxena Vs. State of Jharkhand & Ors. [W.P.(S). No. 297 of 2021]** can be distinguished as in that case ratio laid down in the case of **Munja Praveen (supra)** was not considered?
- V) Whether even if vacancies are available, the case of petitioner can be considered and she can be accommodated or remaining vacancies shall be carried forward to the next calendar year?

- VI) Whether Para-3(xiii) of circular dated 27.11.2012 comes to the rescue of petitioner or it supports the case of the respondent-JPSC?
- VII) Whether right has accrued in favour of the petitioner for consideration of her case for appointment though she has not been recommended for appointment to the post of Civil Judge (Jr. Div.)?
- VIII) Even if the petitioner has secured 199.67 and the cut-off marks under her category was 200.67, whether her case can be considered for appointment after issuance of call letter for document verification?
- IX) Whether the petitioner can be considered for appointment when the recruitment process itself has come to an end and the candidates have already joined their respective posts?

11. The admitted facts pleaded in the writ petition and not denied by the respondents is that petitioner having requisite qualification, participated in the Preliminary Test in which she was declared successful. Thereafter, she appeared in the Mains Examination successfully competed the same and called for interview in which petitioner appeared on the scheduled date on 20.01.2020 at the office of respondent-JPSC. Thereafter, final result was published in which name of petitioner did not figure. Admittedly, one Priyanka Kumari, who had secured 5th rank under SC Category did not appear for certificate verification and as such, her candidature for appointment was rejected. In reply to the RTI application preferred by the petitioner, the respondents vide its letter dated 22.12.2020 informed the petitioner that her rank is 6th in SC Category and that one Priyanka Kumari, who was 5th in rank in the same Category did not appear for certificate verification and as such, one seat is still vacant under her category.

12. Similar issue fell for consideration before a Co-ordinate Bench of this Court arising out of same advertisement in case of **Surbhi Saxena Vs.**

State of Jharkhand & Ors. [W.P.(S). No. 297 of 2021], disposed of on **28.06.2021** and the same has been affirmed by the Hon'ble Apex Court in **SLP No. 15967 of 2021 (Surbhi Saxen Vs. the State of Jharkhand & Ors.)**. The Division Bench of this Court in the said case observed that the case of petitioner has rightly not been considered for appointment as even if remaining vacancies were there they ought to have been filled-up by way of fresh advertisement and not from the remaining list of candidates even if they fell vacant. Dismissing the Writ Petition, the Court observed as under:

“This Court is further of the view that the writ petitioner has failed to make out a specific case because it is the specific case of the writ petitioner that she has not been selected and as such there cannot be any direction by this Court under Article 226 of the Constitution of India for the purpose of ‘chance’ to see as to whether the writ petitioner is going to be selected or not rather the writ petitioner ought to have approach this Court with the specific cause of action.

22. This Court on the basis of discussions made herein above and in the entirety of facts and circumstances of the case, is of the view that the writ petitioner has failed to make out a case for interference so as to pass any positive direction.”

13. Mr. Manoj Tandon, learned counsel for the petitioner to buttress his arguments places heavy reliance on the judgment of the Hon'ble Apex Court in the case of **Munja Praveen (supra)** and argues that the same was not placed before the Co-ordinate Bench of this Court and as such, the judgment delivered in the case of **Surbhi Saxena (supra)** is *per incuriam* as the legal proposition laid has not at all been appreciated.

14. For better appreciation, the view of the Hon'ble Apex Court has to be examined. The Hon'ble Apex Court in the case of **Munja Praveen (supra)** held as under:

“9. According to us, the High Court has totally misconstrued the above GOMs. The portion of the GOMs quoted above clearly lays down that there shall be no waiting list and the selection shall be made equal to the number of posts notified. The purpose was that the

vacancies arising due to people leaving the posts must be filled up by subsequent selection and not on the basis of a waiting list. It was clarified that after selection of the candidates and after issue of appointment orders, if the candidate fails to join within the stipulated period, that vacancy should be notified again. This portion of the GOMs admits of only one interpretation that after appointment order is issued and the person appointed does not join, then the vacancy cannot be filled up on the basis of the waiting list or by operating the merit list downwards. This is also clear from Clause 9 of the GOMs, which also clarifies that fallout vacancies due to relinquishment or non-joining of the selected candidates may be notified in the next recruitment. This obviously means that the clause will apply after issue of letter of appointment. There can be no relinquishment and non-joining unless an appointment letter is issued.

12. Even otherwise also, we are of the view that this is the only logical way to interpret the GOMs. The GOMs obviously has been issued, keeping in mind a single selection process. Here, we are dealing with a multiple selection process for different Corporations. The more brilliant candidates were selected in more than one of the Corporations. They obviously cannot join in more than one Corporation. Therefore, if the top four candidates have been selected in all four Corporations, they could only join one of the Corporations and twelve posts would remain vacant, if the interpretation given by the High Court is accepted. This would lead to a position where large number of vacancies would not be filled up.”

The interpretations of learned counsel for the petitioner in view of **Surbhi Saxen (supra)** and **Munja Praveen (supra)** that since letter of appointment was not issued and petitioner was not called for document verification, if vacancies arises, the same has to be considered by the respondent-JPSC. The contention of learned counsel for the petitioner is not at all acceptable to this Court in view of para-3(xiii) of the circular dated 27.11.2012, it is very much clear that there cannot be any exception to that effect that recommendation made by the respondent-JPSC may be amended. Further, no ground or occasion has been made for deviating from para-3(xiii) of the circular dated 27.11.2012 referred below:

“3(xiii) सम्बन्धित आयोग द्वारा एक बार अनुशंसा भेज देने के बाद उसे परिवर्तित नहीं किया जा सकेगा। परन्तु, कतिपय विशिष्ट कारणों, यथा—विभाग द्वारा अनुशंसा वापस किये जाने/न्यायालयों के संगत आदेशों के आलोक में आयोग की अनुशंसा में यथोचित संशोधन किया जा सकेगा।”

15. The second issue is as to whether petitioner fulfills the requisite qualification and whether her case fall within the zone of consideration for calling her for document verification is also negated in view of the fact that cut-off marks for appointment under SC category was 200.67 and petitioner has secured only 199.67 marks which is less than the cut-off marks fixed by the respondent-JPSC for SC category's candidates. Hence, petitioner cannot claim to be called for documents verification also when the recruitment process is over.

16. It is settled proposition of law that even if name of the candidates is in the select list and some vacancies exist that does not give any indefeasible right to the selected candidate, as has been decided by Hon'ble Apex Court in case of **Shankaran Das Vs. Union of India [(1991) 3 SCC 47]**. Since the name of petitioner did not find place in the select list as she has secured less marks than the last selected candidate under SC category, there is no question of any consideration of the case of Writ Petitioner by issuing direction to the respondent-JPSC to call the petitioner for document verification and thereafter to appoint her.

17. The case of the respondent-JPSC is further fortified in view of Clause-3(xv) of the Resolution issued vide Memo No. 13026 dated 27.11.2012 issued by the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, , which reads hereunder as:

“(xv) किसी उम्मीदवार या उम्मीदवारों द्वारा निर्धारित समय –सीमा के अन्दर योगदान नहीं देने या अन्य कारणों से रिक्तियाँ भरी नहीं जा सकने की स्थिति में ऐसी रिक्तियाँ अगली अधियाचना के लिए अग्रणील की जायेगी।”

18. Since the recommendation has already been made by respondent-JPSC on 26.02.2020 and selection process has already been completed, at

this stage it would not be proper and appropriate to allow the relief as has been sought for by the petitioner.

19. Admittedly, it is settled legal propositions that even if the name of the candidate is selected and vacancies exist, it does not give an indefeasible right to the selected candidate for being appointed. But there is always a right of consideration. Here petitioner is not claiming appointment rather, she is only claiming that she should be allowed to appear for document verification and thereafter, if she is found fit, the respondent-JPSC recommend her case for appointment.

20. Now, it has to be decided that once the merit of the candidates have been prepared by the respondent-JPSC and petitioner has been found to be less meritorious on the ground that she has secured less marks than the last selected candidate whether Court can interfere under Article 226 of the Constitution of India and if at all judicial review is permissible?

21. As far as power of judicial review is considered, there is no quarrel to the legal proposition that judicial review is an appeal from a decision to a review in which the decision was made. The said issue fell for consideration before the Hon'ble Apex Court in the case of **Syed TA Naqshbandi and Ors. vs. State of J&K and Ors.**, [(2003) 9SCC 592], wherein the Hon'ble Court has observed as under:

“Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions.....”

Further reference in this regard be made to the judgment rendered in **Tata Cellular v. Union of India**, [(1994) 6 SCC 651], wherein the Hon'ble Court at paragraphs 72-75 and 77 held as under:

72. Lord Scarman in Nottinghamshire County Council v. Secretary of State for the Environment [1986 AC 240, 251 : (1986) 1 All ER 199] proclaimed:

“ ‘Judicial review’ is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power.”

Commenting upon this Michael Supperstone and James Goudie in their work *Judicial Review* (1992 Edn.) at p. 16 say:

“If anyone were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent times, and therefore to be treated as an idiosyncratic aberration, it has received the endorsement of the Law Lords generally. The words of Lord Scarman were echoed by Lord Bridge of Harwich, speaking on behalf of the Board when reversing an interventionist decision of the New Zealand Court of Appeal in *Butcher v. Petrocorp Exploration Ltd.* 18-3-1991.”

73. Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

75. In *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141, 154] Lord Brightman said:

“Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.”

.....

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.

The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) *Illegality* : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) *Irrationality*, namely, *Wednesbury unreasonableness*.
- (iii) *Procedural impropriety*.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

(emphasis supplied)

Further, when the Writ Petitioner has not been declared successful, the Court cannot issue any direction for filling-up the vacant seat by appointing the petitioner when the process of selection is already over.

22. From perusal of both the judgments, i.e. **Surbhi Saxena (supra)** and **Munja Praveen (supra)**, it appears that ratio laid down in the case of **Surbhi Saxena (supra)** is applicable in the case of petitioner and the ratio laid down in the case of **Munja Praveen (supra)** does not come to her rescue.

23. Further, reliance has been made by the petitioner in the case of *Akhilesh Prasad Vs. Jharkhand Public Service Commission & Ors.*, reported in **2022 SCC Online SC 510 : 2022 (2) JBCJ 206 (HC)**.

24. This Court takes no other view than what has been taken in the case of **Surbhi Saxena (supra)** and the case laws relied upon by the petitioner does not come to her rescue and is accordingly distinguished. All the issues since interconnected are answered accordingly.

25. This Court is of the view that even if sympathetic consideration is given to the petitioner for consideration of her case for document verification, at this stage the same cannot be done as the process of appointment is already over and has come to an end and petitioner has not secured equal or more marks than the last selected candidate. Any selection has to be made as per the terms and conditions of the advertisement and recruitment rules and no deviation at any cost should be made and as such, in view of the terms and conditions of the advertisement in question, the case of the petitioner cannot be reconsidered.

26. As a sequitur to the aforesaid observations, rules, guidelines and judicial pronouncements, the writ petition being devoid of any merit is hereby dismissed.

(Dr. S.N. Pathak, J.)

Arun Kumar Rai, J.: I agree.

(Arun Kumar Rai, J.)

kunal/-