

IN TH E SU P R E M E COURT OF INDI A
CIVI L A P P E L L A T E JUR I S D I C T I O N
CIVI L A P P E A L NO.6 9 0 9 OF 2 0 0 5

SUNI L KUMA R & ORS.

... A P P E L L A N T S

VE R S U S

STA T E OF JHA R K H A N D & ORS.
RES POND E N T S

...

WI T H
C.A.Nos. 7 5 5 8 / 0 5 & 1 4 9 0 , 2 0 5 0 , 2 0 5 3 , 1 9 3 2 , 1 9 3 3 , 1 1 6 7 of 2 0 0 6
and C.A.No.4 4 0 1 of 2 0 0 7 (arising out of SL P (C)No. 2 2 1 8 0 / 2 0 0 5)

OR D E R

C.A.Nos. 6 9 0 9 / 0 5 , 7 5 5 8 / 0 5 & 1 4 9 0 , 2 0 5 0 , 2 0 5 3 , 1 9 3 2 , 1 1 6 7 of
200 6 and C.A.No.4 4 0 1 of 200 7 (arising out of
SL P (C)No.2 2 1 8 0 / 2 0 0 5)

Delay condoned.

Leave granted in SL P (C)No.2 2 1 8 0 / 2 0 0 5 .

The implead ment applications are dismissed.

All these appeals are directed against the judgment and
order dated 3 0 . 0 3 . 2 0 0 5 passed by the Division Bench in Writ
Petition No.1 4 5 8 of 200 4 filed by respondent No.4 in
C.A.No.6 9 0 9 of 2 0 0 5 and appellant in C.A.No.1 9 3 3 of 2 0 0 6 .

Unfortunately, the aforesaid writ petition has been treated and
accepted by the High Court as Public Interest Litigation. At this
stage, we may say that this is the first fallacy of the High Court.

In a catena of decisions, this Court has consistently held that in a
service matter which is of personal interest, the writ petition

2

cannot be treated as public interest litigation.

In other words,

public interest litigation cannot be filed to support the cause of
private interest. Be that as it may, the facts leading to the filing of
the present appeals may be summarily recited.

The present controversy relates to the recruitment of
1 2, 7 4 1 Police Constables for which advertisement was published by
the State of Jha r k h a nd on 1 3 th
Janu a ry, 2 0 0 4 .

Briefly stated facts are as follows:

The present State of Jh a r k h a nd prior to bifurcation was within the State of Biha r. The Director General of Police (DG P), Biha r issued Police Order No.2 0 2 of 1 9 8 8 on 1 4. 0 3 . 1 9 8 8 in exercise of power under Section 1 2 of the Police Act, modified Clause 6 6 3 of the Police Manual and reduced the educational qualification for recruitment to the post of constable to 7 th Standa rd pass which was earlier prescribed as matriculation (10 th Class pass). The said order was assailed in Writ Petition No.1 1 7 3 of 1 9 9 8 . The learned Single Judge quashed the order passed by the Director General of Police by its order dated 1 0. 0 9 . 1 9 9 8 , inter alia, on a single ground that the DG P has no authority to pass such an order. It was further held that such power can only be exercised by the State. It is stated that against the judgment of the learned Single Judge, the State of Biha r preferred an appeal bearing LPA No.1 4 5 2 / 1 9 9 9 before the Division Bench which was admitted on 0 3. 0 5 . 2 0 0 1 and pending for disposal. Be that as it may, for the purpose of adjudication of the present controversy in hand the

3

pendency of L P A before the Division Bench has no relevancy at all.

The State of Biha r was bifurcated and a new State of Jha r k h a nd was formed on 1 5. 1 1 . 2 0 0 0 by virtue of Biha r Reorganis ation Act, 2 0 0 0 . The State of Jha r k h a nd in exercise of power under Section 8 5 of the Biha r Reorganis ation Act, 2 0 0 0 framed a new Rule on 1 2. 1 1 . 2 0 0 1 and brought down the educational qualification for the purpose of recruitment of police constables to 7 th Class pass. Rule 5 deals with the educational qualification and it provides that educational qualification would be 7 th Class pass for all Class IV posts of constables.

Further Rule 1 0 deals with procedure for selection. Rule 1 0 A provides amongst others that for educational qualification 7 th Class to 9 th Class pass will be given 5 points, 1 0 th Class pass will get 6 points, whereas intermediate and above pass will be given 7 points.

It appears that in the aforesaid writ petition bald statement has been made challenging the aforesaid Rules framed on 12.11.2001 without specifying the grievances of the writ petitioner for challenging the aforesaid Rules. Mr. Shambhu Prasad Singh, learned counsel appearing on behalf of respondent No.4, however, contended before us that the earlier order issued by the DG P, Bihar on 14.03.1988 brought down the educational qualification to 7th Standard pass has been quashed by the learned Single Judge as aforestated and, therefore, according to the counsel when the Rules were adopted by the Jharkhand State on 12.11.2001 the said Rules were not in existence and, therefore, the subsequent adoption by an order dated 12.11.2001 under Section 85 of the Bihar Reorganisation Act, 2000 permitted State of Jharkhand to make, by order, such adoptions and modifications of the law prevailing in Bihar as may be necessary or expedient is not tenable in law. This contention, in our view, is thoroughly misconceived.

It is noticed that the earlier order dated 14.03.1988 passed by the DG P was quashed only on the ground of jurisdictional error. The order dated 12.11.2001 which was allegedly assailed by the writ petitioner was a new Rule framed by the State Government in modification of the earlier order dated 14.03.1988. By the aforesaid order dated 12.11.2001 passed by the State of Jharkhand, a new Rule has come into existence and, therefore, it is not correct to say that by an order dated 12.11.2001 a Rule which was not in existence was adopted.

The next question on the basis of which these appeals should succeed is that, admittedly, the writ petition was filed on 12.03.2004 allegedly challenging the orders dated 12.11.2001 and advertisement dated 13.01.2004. Admittedly, the writ petitioner (respondent No.4) applied for the post of Constable pursuant to the advertisement issued on 12.03.2004. While the writ petition was still pending the case of the writ petitioner (respondent

No.4) was considered and he was declared unsuccessful. This fact was not brought to the notice of the High Court before the impugned judgment was rendered. It was incumbent upon the writ petitioner

5

to have brought this fact to the notice of the High Court for the reason that this Court has been taking a consistent view that a candidate who has applied for a post and could not qualify himself would not be eligible for challenging the advertisement on the ground that it was not validly made.

The High Court quashed the Notification dated 12.11.2001 solely on the ground that dropping down the minimum educational qualification is wholly arbitrary, irrational and against public interest. The High Court further observed that the modification in the minimum educational qualification from matriculation pass to 7th Class pass is wholly arbitrary and violative of Article 14 of the Constitution. We are unable to accept the finding of the High Court which is based on no reason, much less ostensible reason. The High Court on the other hand held that such reduction of the educational standard is the policy matter of the State yet such drastic finding has been recorded without any cogent and justified reason. We notice that before the High Court the State has filed a detailed counter-affidavit and contended that the dropping down of the educational qualification has been considered by the State Government and a policy decision has been taken by the State Government on rationale basis. The rationale on the basis of which the State has taken a policy decision in passing Notification dated 12.11.2000 are (a) backwardness of the State; (b) large number of illiteracy basis; and (c) economic background in the State of Jharkhand.

6

In the view that we have taken, the judgment of the Division Bench under assails is not sustainable in law. The same is set aside. These appeals are allowed. Parties to bear their own costs.

C.A.No.1933 of 2006

This appeal is dismissed.

. J.

(H.K. S E M A)

..... J.
(L O K E S H W A R S I N G H P A N T A)

N E W D E L H I ,
S E P T E M B E R 1 9 , 2 0 0 7 .

7

I T E M N O . 1 0 1 (P H)

C O U R T N O . 5

S E C T I O N X V I I

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

C I V I L A P P E A L N O (s) . 6 9 0 9 O F 2 0 0 5

S U N I L K U M A R & O R S .

A p p e l l a n t (s)

V E R S U S

S T A T E O F J H A R K H A N D & O R S .

R e s p o n d e n t (s)

(With appln(s) for permission to file rejoinder affidavit and office report)
W I T H C i v i l A p p e a l N O . 1 4 9 0 o f 2 0 0 6 , C i v i l A p p e a l N O . 1 9 3 2 o f 2 0 0 6 ,
C i v i l A p p e a l N O . 1 9 3 3 o f 2 0 0 6 , C i v i l A p p e a l N O . 2 0 5 3 o f 2 0 0 6 ,
C i v i l A p p e a l N O . 7 5 5 8 o f 2 0 0 5
(With prayer for interim relief and office report) and
C i v i l A p p e a l N O . 2 0 5 0 o f 2 0 0 6 (w i t h a p p l n . (s) f o r i m p l e a d m e n t a n d w i t h
p r a y e r f o r i n t e r i m r e l i e f a n d o f f i c e r e p o r t)
C . A . N o . 1 1 6 7 / 2 0 0 6 (w i t h p r a y e r f o r i n t e r i m r e l i e f a n d o f f i c e r e p o r t) a n d
S L P (C) N o . 2 2 1 8 0 / 2 0 0 5 (w i t h a p p l n . (s) f o r c / d e l a y i n f i l i n g S L P a n d w i t h p r a y e r f o r
i n t e r i m r e l i e f a n d o f f i c e r e p o r t)

Date: 1 9 / 0 9 / 2 0 0 7 These Appeals were called on for hearing today.

C O R A M :

H O N ' B L E M R . J U S T I C E H . K . S E M A
H O N ' B L E M R . J U S T I C E L O K E S H W A R S I N G H P A N T A

F o r A p p e l l a n t (s)

Mr. Upendra Mishra, Adv.
Mr. P r a s h a n t K u m a r , Adv.

Mr. P.S. Mishra, Sr.adv.
Mr.Gaur av Agrawal, Adv.
Mr. Ashutosh Lohia, Adv.
Mr. P r a s h a n t K u m a r , Adv.

Mr. Arjun Nar ayan Deo, Adv.
Ms. S. Jan a n i, Adv.

Mr. Shmbhu P r a s a d Singh, Adv.
Ms. Pun a m K u m a r i, Adv.

...2/-

8

: 2 :

Mr. S.B. Upadhyay, Sr.Adv.
Mr. R.R. Dubey, Adv.
Mr. Santosh Mishra, Adv.

Mr. Shiv Mangal Sharma , Adv.
Ms. Shubhra Goyal, Adv.
Ms. Sharmila Upadhyay, Adv.

For Respondent(s)

Mr. Ajit Kumar Sinha, Adv.

Mr. Anil K. Jha, Adv.

Mr. Manish Kumar Saran, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Leave granted in SL P (C) No. 22180 / 2005 .

The impleadment applications are dismissed.

The judgment of the Division Bench under assail is not
sustainable in law. The same is set aside. These appeals are
allowed. Parties to bear their own costs.

C.A.No.1933 of 2006

This appeal is dismissed.

(PAWAN KUMAR)
COURT MASTER

(ANAND SINGH)
COURT MASTER

(signed order is placed on the file)