

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P.(S) No.1718 of 2020**

1. Sumit Kumar Mahato, son of Iswar Chandra Mahato, resident of NPVR & Co. Flat No. 401, 4th Floor, K.C. Apartment, 137, Aam Bagan, Sakchi, P.O. and P.S. Sakchi, Town Jamshedpur, District-East Singhbhum

2. Premjit Kumar Sahu, son of Gyani Sahu, resident of village and P.O. Babhanbay, P.S.-Muffasil, District-Hazaribagh Petitioners

Versus

1. State of Jharkhand through the Chief Secretary, Government of Jharkhand, Ranchi

2. The Principal Secretary, Personnel, Administrative Reforms & Rajbhasha Department, Government of Jharkhand, Ranchi

3. Jharkhand Public Service Commission through its Secretary, Ranchi

4. Controller of Examination, Jharkhand Public Service Commission, Ranchi

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Amritansh Vats. Advocate
 For the Respondent -State : Mr. Rajiv Ranjan, A.G.
 For the Respondent Nos. 3 &4 : Mr. Sanjay Piprawall, Advocate

02/Dated: 09/07/2020

Heard, Mr. Amritansh Vats, learned counsel for the petitioners, Mr. Rajiv Ranjan, learned A.G., appearing for the respondent-State and Mr. Sanjay Piprawall, learned counsel for the respondent nos. 3 &4.

This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic.

Respondents are directed to file counter-affidavit within 10 days. Reply, if any, of the counter-affidavit must be filed on or before the next date of listing.

Pleadings must be completed by 5th of August, 2020.

Post the matter on 05.08.2020.

I.A. No.3920 of 2020

This interlocutory application has been filed for staying the operation/implementation and recommendation of final result/merit list of 6th Combined Civil Services Examination, pursuant to Advertisement No. 23/2016 conducted by the respondent –JPSC.

At the outset, Mr. Rajiv Ranjan, learned Advocate General submits that identical

matters are being listed on 31.07.2020 and 05.08.2020 respectively. The Court has directed the respondents to file counter-affidavit in this case and there is every likelihood that pleadings will be completed by that time. In that view of the matter, the interlocutory application may be considered on the next date of listing when the counter-affidavit of the respondent-State and Jharkhand Public Service Commission will be filed before the Court for correct appreciation of the case.

Learned counsel for the petitioners insisted to pass the order in interlocutory application today itself in absence of any affidavit on behalf of State of Jharkhand and JPSC.

Accordingly, interlocutory application is being heard.

Mr. Amritansh Vats, learned counsel for the petitioners submits that it came to the knowledge of the petitioners that during the pendency of the writ petition, the respondent-JPSC has made recommendation for appointment of successful candidates to State and thereafter the State Government vide press release dated 01.07.2020 as contained in Memo No. 3033 issued under the signature of Joint Secretary, State of Jharkhand had invited the successful candidates for verification of documents. He further submits that from various different sources, the petitioners learnt that very soon the respondent-State is going to issue appointment letters to the successful candidates and appointment will be made effect to. He further submits that petitioners have already filed writ petition challenging the final result/merit list. He further submits that stay may kindly be granted.

Apart from the above statements, nothing has been disclosed on the facts of the case in the said interlocutory application and that is why, the Court has ventured to move the facts of the case in the writ petition.

The petitioner has asserted that in adding marks obtained by the candidates in Paper-I i.e. General English and Hindi (100 marks) in the merit, even though the same was only a qualifying paper and as per the terms of the syllabus, the total marks of Paper-I cannot be adjusted or added for the preparation of merit list of the candidates, the purpose of qualifying marks as per the syllabus is to see that whether the candidate

is obtaining cut off marks in the said paper or not. Petitioner has asserted that the settled proposition of law has not been considered by the examination taking body.

Learned counsel for the petitioners relied on judgments in the case of **“K.H. Siraj Vs. High Court of Kerala and Others”** reported in (2006) 6 SCC 395, in the case of **“Taniya Malik Vs. Registrar General of The High Court of Delhi”** reported in (2018) 14 SCC 129 and in the case of **“Lila Dhar Vs. State of Rajasthan and Others”** reported in (1981) 4 SCC 159.

On the other hand, Mr. Rajiv Ranjan, learned Advocate General appearing for the respondent-State and Mr. Sanjay Piprawall, learned counsel appearing for the respondent-Jharkhand Public Service Commission jointly submit that identical matters are coming on 31.07.2020 and 05.08.2020 respectively in which counter-affidavits are directed to be filed. They submit that after filing of the counter-affidavit, the entire matters may kindly be heard. The Jharkhand Public Service Commission has already recommended the name of selected candidates. They further submit that the persons who have been selected in the 6th Jharkhand Combined Civil Services Examination, 2016 are not party respondents in the writ petition and in that view of the matter, no order of stay is required to be passed by this Court.

Learned Advocate General further submits that by inclusion in the select list, the selected candidates had acquired right of consideration for appointment. Learned Advocate General further submits that no order of stay and modification in the list of selected candidates can be passed by this Court in absence of the selected candidates who are necessary party in the writ petition. The learned Advocate General relied judgment in the case of **“Vishal Ashok Throat and Others Vs. Rajesh Shrirambapu Fate and Others”** reported in 2019 SCC Online SC 886 in which the Hon’ble Supreme Court has held as under :-

“36. The judgment of this Court in A. Janardhana relied by Shri Naphade is not applicable in the facts of the present case. In the above case, this Court was considering the challenge to the seniority list. This Court has noticed in paragraph 36 that the appellant had not claimed seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The

contention was that criteria adopted by the Union Government in drawing up the seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing already drawn up valid list. Thus, the relief is claimed against the Union Government and not against any particular individual. This Court by making the above observation has repelled the submission that relief could not have been granted without impleading those who were affected in the seniority list. The claim pertaining to seniority may be laid on different grounds. There may be cases where seniority is claimed against individual person on specific facts, it might be necessary to implead those persons but there may be cases where non-impleadment of person in seniority dispute may not be fatal. The present is a case of recruitment and selection where after participation in the selection process, 832 candidates were finally selected and were included in the select list. By inclusion in the select list, the selected candidate had acquired right of consideration for appointment, which could not have been taken away in the writ petition filed by respondent no. 1, where he could not have challenged the advertisement nos. 2 of 2017 and 48 of 2017.”

The matter has chequered career. The dispute involves in the present case revolves around the 6th Jharkhand Combined Civil Services Examination, 2016. The State sent a requisition to the Jharkhand Public Commission for filling up the vacancies, advertisement was issued by the Jharkhand Public Service Commission for 6th Jharkhand Combined Civil Services Examination. After the said notification, there were litigation and the matter travelled twice upto the Hon’ble Supreme Court and finally pursuant to order of the Hon’ble Apex Court as well as by the Division Bench of this Court, the examination has been conducted. The petitioners participated in the said examination thereafter now they are challenging the final result. In absence of persons whose names have been recommended by the Jharkhand Public Service Commission and without any affidavit of the State of Jharkhand and Jharkhand Public Service Commission, the Court has not only to take into consideration the basic elements in relation thereto, such as of prima facie case, balance of convenience and irreparable injury. The Court also needs to take into consideration the conduct of the parties.

The judgments relied upon by the learned counsel for the petitioners in the case

of “K.H. Siraj Vs. High Court of Kerala and Others” (supra) is on the point of minimum pass marks on oral and written examination in order to get best available talents which was considered by the High Court and travelled upto the Hon’ble Supreme Court. The case of “Taniya Malik Vs. Registrar General of The High Court of Delhi” (supra) is also on the point of best method to assess ability of candidate and to adjudge his capabilities and it was required to be considered at the time of final hearing of the case and the case of “Lila Dhar Vs. State of Rajasthan and Others” (supra) is on the point of consideration for determining percentage of marks to be allotted for interview in case of admission in academic institution. These all judgements may help the petitioners at the time of final argument of this case and not at the time of grant of interim relief. The judgments relied by the counsel for the petitioners are not helping the petitioners for obtaining any interim relief from this Court.

The grant of interim relief is equitable relief. The person who kept quiet for the long time and allowed examination to be conducted and participated ordinarily would not be entitled for order of stay especially in absence of affidavit which has been sought by the Court by the respondents. Reference may be made in the case of ***M. Gurudas v. Rasaranjan, reported in (2006) 8 SCC 367*** in which the Hon’ble Supreme Court has held as under:-

21. While considering the question of granting an order of injunction one way or the other, evidently, the court, apart from finding out a prima facie case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused. The contention of the plaintiffs must be bona fide. The question sought to be tried must be a serious question and not only a mere triable issue. (See Dorab Cawasji Warden v. Coomi Sorab Warden, Dalpat Kumar v. Prahlad Singh, United Commercial Bank v. Bank of India, Gujarat Bottling Co. Ltd. v. Coca Cola Co., Bina Murlidhar Hemdev v. Kanhaiyalal Lokram and Transmission Corpn. of A.P. Ltd.)”

The grant of interim relief during the pendency of writ petition is matter requiring exercise of the discretion of the Court. While exercising discretion the Court

generally applies the following tests (i) whether the petitioners have prima facie case (ii) whether the balance of convenience is in favour of the petitioners (iii) whether the petitioners would suffer irreparable injury if their prayer for interim relief is disallowed. The decision whether or not to grant an interim stay has to be taken at a time when the existence of legal right assailed by the petitioners and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The affidavit of the respondents are directed to file which is still awaited and in absence of the said affidavit the facts asserted in the writ petition cannot be ascertained.

The grant of interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no straight jacket formula can be laid down. Reference may be made in the case of *Zenit Mataplast (P) Ltd. v. State of Maharashtra, reported in (2009) 10 SCC 388* in which the Hon'ble Supreme Court has held in paragraph 32 and 37 as under:

32. In Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. this Court observed that the other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:

“24. (i) extent of damages being an adequate remedy;

(ii) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;

(iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;

(iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case—the relief being kept flexible;

(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in

support of the grant;

(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.”

37. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss.”

It is well settled proposition of law that if a candidate takes a calculated chance and appears at the interview, then, only because the result of interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

The Court held that before passing any interim order, the Court should not only consider the prima facie case, balance of convenience and irreparable injury, but also its effect on public interest. The public interest demands that the process should be continued in this case. Accordingly, no relief can be allowed in favour of the petitioners in interlocutory application. Accordingly, prayer for interim relief is rejected.

Accordingly, I.A. No. 3920 of 2020 stands dismissed.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/