



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos. 429-430 of 2021

Anmol Kumar Tiwari & Ors. Appellant(s)

Versus

The State of Jharkhand & Ors. Respondent (s)

WITH

Civil Appeal Nos. 431-434 of 2021

Civil Appeal No.435 of 2021

Civil Appeal Nos.436-477 of 2021

Civil Appeal No. 478 of 2021

J U D G M E N T

L. NAGESWARA RAO, J.

1. An advertisement was issued calling for applications for appointment to 384 posts of Police Sub-Inspectors, Attendants (Sergeant) and Company Commanders by the Home Department of the Government of Jharkhand on 01.03.2008. 1217 candidates were declared successful in the written examination and were called for interview. The

final result was published and 382 candidates were selected against 384 vacancies as candidates belonging to SC Quota for the two posts of Sergeant were not available. A High-Level Committee was constituted by the State Government to examine the irregularities in the selection process. A report was submitted by the Deputy Inspector General of Police (Personnel), State of Jharkhand in which it was found that the select list was prepared wrongly by ignoring merit of candidates and by giving undue importance to the preferences given by them. Unsuccessful candidates filed Writ Petitions in the High Court of Jharkhand at Ranchi. During the pendency of the Writ Petitions, the appointments of 42 candidates made on the basis of the original select list were cancelled. 43 persons were appointed on the basis of the revised select list that was prepared in accordance with the recommendations of the Committee headed by the Director General of Police, Jharkhand. In view of the developments during the pendency of the Writ Petitions, the High Court of Jharkhand disposed of the Writ Petitions giving liberty to aggrieved persons to challenge the revised select list.

2. 42 persons filed Writ Petitions being aggrieved by the termination of their services. The Appellants in the Civil

Appeals arising out of SLP (Civil) Nos.24404-24405 of 2019 and Civil Appeals arising out of SLP (Civil) Nos. 26302-26305 of 2019 filed applications for intervention in the Writ Petitions before the High Court. The Writ Petitions filed by the 42 persons whose services were terminated were allowed by a judgment dated 12.08.2016. A learned Single Judge of the High Court held that the appointment of the Writ Petitioners was irregular. The authorities prepared a revised select list after correcting the irregularities and appointed 43 persons on the basis of their merit in accordance with the Rules. As the Writ Petitioners were appointed after completion of their training and have served the State for a considerable period, the High Court was of the opinion that they should be appointed against existing/ anticipated or future vacancies. Their appointments were directed to be treated as fresh appointments and they were to be placed at the bottom of the seniority list in the revised merit list. The High Court observed that the Writ Petitioners cannot be held responsible for the irregularities committed by the authorities in the matter of their selection and there is no allegation of fraud or misrepresentation on their part.

3. Insofar as the intervenors are concerned, the High Court was aware that they secured more marks than the Writ

Petitioners. However, the High Court observed that they cannot be said to be similarly situated to the Writ Petitioners. Accepting the statement made on behalf of the Government that there were no vacancies in which the intervenors could be considered for appointment, the High Court refused to grant any relief to the intervenors.

4. The State of Jharkhand and the intervenors in the Writ Petitions filed Letters Patent Appeal (LPAs) against the judgment of the learned Single Judge dated 12.08.2016. While placing reliance on a judgment of this Court in ***Vikas Pratap Singh & Ors. v. State of Chhattisgarh & Ors.***¹, a Division Bench of the High Court of Jharkhand dismissed the LPAs. The contention on behalf of the intervenors in the Writ Petitions that they should also be appointed in view of their being more meritorious than the Writ Petitioners, was not accepted by the Division Bench. The reason given by the High Court for not granting relief to the intervenors in the Writ Petitions is that there were no vacancies for their appointments and that they are not similarly situated to the Writ Petitioners. Dissatisfied with dismissal of LPAs, the intervenors in the Writ Petitions and the State Government have filed these Appeals.

¹ (2013) 14 SCC 494

5. We have heard Mr. P.S. Patwalia and Mr. Venkataramani, learned Senior Counsel appearing on behalf the intervenors in the Writ Petitions, Mr. Deepak Nargolkar, learned Senior Counsel appearing on behalf of the intervenors in these Appeals, Mr. Tapesk Kumar Singh, learned Additional Advocate General for the State of Jharkhand and Mr. Prashant Bhushan, learned counsel appearing on behalf of some of the Writ Petitioners.

6. The main contention on behalf of the Appellants is that admittedly they are more meritorious than the Writ Petitioners. After giving a direction for reinstatement of the Writ Petitioners, the High Court erred in not directing appointment of the intervenors in the Writ Petitions as they are higher in merit. It was submitted on their behalf that relief was not given to them by the High Court only because of the statement made by the State Government that there were no vacancies in which they could be adjusted. It was brought to our notice that there were 1214 vacancies of Sub-Inspectors as on 31.10.2011 which information was revealed pursuant to an application under the Right to Information Act, 2005. It was further submitted that an advertisement was issued on 13.07.2017 for appointment to the post of Sub-Inspectors. Selections pursuant to said advertisement were

finalized and 3019 posts were filled up on 27.06.2018. Even after finalization of the selections pursuant to the advertisement dated 13.07.2017, 550 posts are still vacant. There were hardly 120 persons who are more meritorious than the Writ Petitioners and they can be appointed in the existing vacancies.

7. The State Government contended that the High Court ought not to have directed the appointment of the Writ Petitioners as they were initially appointed due to irregularities committed by the authorities in the selection process. After the revision of the select list, the Writ Petitioners were replaced by others who secured more marks than them. Learned Additional Advocate General made an attempt to distinguish the judgment of this Court in **Vikas Pratap Singh's case** (supra) by arguing that the period of service rendered by the Writ Petitioners is much lesser than the period of service of those in the case decided by this Court. Learned Additional Advocate General submitted that 39 out of 42 Writ Petitioners were reinstated due to the orders passed in Contempt proceedings after being informed that the reinstatements were subject to the result of these Appeals. According to the learned Additional Advocate General, the statement made on behalf of the Government

that there were no vacancies for appointing the intervenors cannot be found fault with. He submitted that the vacancies that arose after 2008 were due to the restructuring of the police force. He further submitted that the intervenors in the Writ Petitions have no right to seek appointment as only 384 posts of Sub-Inspectors were advertised.

8. On behalf of the Writ Petitioners, it was argued that though the selections initially were made on the basis of preference to the 3 categories of posts that were advertised. It was later found that the select list should have been prepared on the basis of merit and thereafter, preference has to be taken into account. Having realized the mistake that was committed, the authorities revised the select list pursuant to which the appointment of the Writ Petitioners was cancelled. By the time a decision was taken to revise the select list and cancel their appointments. The Writ Petitioners had completed their training and had worked for a considerable period of time. According to them, the High Court correctly granted relief to the Writ Petitioners by taking into account the fact that they were not responsible for the irregularities committed in the preparation of the initial select list.

9. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the Writ Petitioners. The High Court directed reinstatement of the Writ Petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the Writ Petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the Writ Petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the Writ Petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in ***Vikas Pratap Singh's case*** (supra), where this Court considered that the Appellants-therein were appointed due to an error committed by the Respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the Appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the Appellants-therein had successfully undergone training and were serving the State for more than 3 years was another reason that was

given by this Court for setting aside the orders passed by the High Court. As the Writ Petitioners are similarly situated to the Appellants in **Vikas Pratap Singh's** case (supra), we are in agreement with the High Court that the Writ Petitioners are entitled to the relief granted. Moreover, though on pain of Contempt, the Writ Petitioners have been reinstated and are working at present.

10. The second issue relates to the claim of the intervenors in the Writ Petitions for appointment. There is no doubt that selections to public employment should be on the basis of merit. Appointment of persons with lesser merit ignoring those who have secured more marks would be in violation of the Articles 14 and 16 of the Constitution of India. The intervenors in the Writ Petitions admittedly have secured more marks than the Writ Petitioners. After cancellation of the appointments of the Writ Petitioners, 43 persons have been appointed from the revised select list. Those 43 persons have secured more marks than the intervenors. By the appointment of 43 persons, the number of posts that were advertised *i.e.* 384 have been filled up. The intervenors have no right for appointment to posts beyond those advertised. The contention on behalf of the intervenors in the Writ Petitions is that they cannot be ignored when relief is

granted to the Writ Petitioners who were less meritorious than them. We are unable to agree. Relief granted to Writ Petitioners is mainly on the ground that they have already been appointed and have served the State for some time and they cannot be punished for no fault of theirs. The intervenors are not similarly situated to them and they cannot seek the same relief. The other ground taken by the intervenors in the Writ Petitions before us is that relief was denied to them only on the basis of a wrong statement made on behalf of the State Government that there were no vacancies. No doubt, the intervenors have placed on record material to show that there was no shortage of vacancies for their appointment. One of the reasons given by the High Court for not granting relief to the intervenors is lack of vacancies. However, we are not inclined to direct appointment of the intervenors as selections in issue pertain to an advertisement issued in 2008. Subsequently, selections to posts of Sub-Inspectors have been held and a large number of persons were appointed. The number of posts advertised in 2008 is 384 and the intervenors have no right for appointment for posts beyond those advertised. They cannot claim any parity with the Writ Petitioners.

11. For the aforementioned reasons, the judgment of the High Court is upheld and the Appeals are dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[INDIRA BANERJEE]

**New Delhi,
February 18, 2021.**