

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 2325 of 2022

Nageshwar Majhi, aged about 45 years son of Manohar Majhi,
resident of Letemda, P.O. Kukru, P.S. Tiruldih, District Seraikella-
Kharsawan.

... .. Petitioner

Versus

1. The State of Jharkhand.
2. Deputy Commissioner, Seraikella-Kharsawan, P.O. and P.S. Seraikella, District-Seraikella-Kharsawan.
3. District Land Acquisition Officer, Seraikella-Kharsawan, P.O. and P.S. Seraikella, District-Seraikella-Kharsawan.
4. Special Land Acquisition Officer, Subernarekha Multipurpose Project, P.O. and P.S. Chandil, District-Seraikella-Kharsawan.
5. Rehabilitation Officer No.2, Chandil, Subernarekha Multipurpose Project, Chandil, P.O. and P.S. Chandil, District-Seraikella-Kharsawan.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner :	Mr. Binod Kumar Jha, Advocate
For the Respondents	: Mr. Indranil Bhaduri, SC-IV
	Mr. Vineet Prakash, AC to SC-IV

06/Dated 31st March, 2023

1. The instant writ petition is under Article 226 of the Constitution of India, whereby and whereunder, direction has been sought for commanding upon the respondents to consider and grant employment to the petitioner as per the quota of displaced persons in view of Clause 9 of the Revised Rehabilitation Policy of the year 2012 of the Jharkhand State as also to issue direction upon the State to publish appropriate advertisement for filling up vacancies of Class-III and Class-IV posts in the Water Resources Department, Government of Jharkhand in view of Clause 9 of the Revised Rehabilitation Policy, 2012.
2. The brief facts of the case as per the pleading made in the writ petition which require to be enumerated herein, read as under:

In the year 1986-87, for the purpose of Subarnarekha Multipurpose Project, the State Government has acquired the land of the petitioner's family situated at Mouza Kashipur, total area of 4.41 acres, District Seraikella-Kharsawan and for the acquisition of land concerned, the respondent have issued Displaced Vikash Pustika in the name of father of the petitioner in the year 1990 in which the name of the petitioner is mentioned at serial no.4 as Nageshwar Majhi.

It is the case of the petitioner that although the land of the petitioner was acquired way back in the year 1986-87 but till date the rehabilitation process of the displaced families is going on.

The State of Jharkhand prepared as Revised Rehabilitation Policy in the year 2012 which contains a clause 9 that displaced persons will be entitled for getting priority in the employment in the vacancies of Class-III and Class-IV posts in the Water Resources Department with three years of age relaxation.

It is the specific case of the petitioner that till date no such advertisement has been issued for such appointment.

3. It has been contend that the case of the petitioner is also in the teeth of Article 14 of the Constitution of India since different parameters is being adopted so far as the case of the petitioner is concerned while in the case of Md. Ahsanullah Khan vs. The State of Jharkhand and Ors. [W.P.(S) No. 5132 of 2016], the co-ordinate Bench of this Court has already passed an order commanding the State to come out with the advertisement as would appear from the order dated 20.12.2018 passed in the aforesaid case which has been appended as Annexure-3 to the writ petition.
4. Counter affidavit has been filed on behalf of the State and referring to para-8 thereof, Mr. Indranil Bhaduri, learned counsel for the respondent-State has submitted that now the State instead of providing employment on the ground of displacement has made a provision to give self-employment grant though the project itself in lieu of appointment as would appear from the scheme so floated as appended as Annexure-A to the counter affidavit.

5. It has further been contended by referring to Annexure-B which is in support to the statement at paragraph-8 of the counter affidavit wherein the co-ordinate Bench of this Court has taken the view that the appointment in the project on the basis of displacement is not a fundamental right.
6. It has orally been contended by Mr. Bhaduri that the judgment so passed by the co-ordinate Single Bench of this Court in the W.P.(S) No. 6990 of 2002 [Dev Narayan Mahato and Ors. vs. The State of Jharkhand and Ors.] is based upon the order passed by the Division Bench of this Court in L.P.A. No. 264 of 2004 [Steel Authority of India Ltd. vs. Jamuna Prasad Mahto and Ors.].
7. Learned State counsel on the basis of the aforesaid ground has submitted that it is not a fit case where the direction may be issued commanding upon the respondents to appoint the petitioner on the ground of displacement and to do needful the State be commanded for issuance of advertisement.
8. So far as the argument advanced on behalf of the petitioner by placing reliance upon Annexure-3 of the writ petition is concerned, argument has been advanced by referring to the very first paragraph thereof that the said case cannot be said to be at par with the case of the petitioner since the petitioner of the said case, namely, Md. Ahsanullah Khan, was already working in the capacity of daily rated capacity since long and considering the same, the co-ordinate Single Judge has passed the order while the aforesaid fact is not available, therefore, the said order passed by the co-ordinate Single Judge is not applicable in the facts of the given case.
9. This Court has heard the learned counsel for the parties, perused the documents available on record.
10. The fact which is not in dispute in this case is that the land of the petitioner was acquired for the purpose of construction of Subernarekha Multipurpose Project way back in the year 1986-87. It has been contended that for the purpose of extending the benefit under the displacement scheme the respondent have issued Displaced Vikash

Pustika in the name of father of the petitioner in the year 1990 in which the name of the petitioner is mentioned at serial no.4.

The State of Jharkhand prepared as Revised Rehabilitation Policy in the year 2012 which contains a clause 9 which speaks about the appointment of displaced persons but as yet the petitioner has not been provided with the appointment, therefore, the instant writ petition has been filed.

11. The ground has been taken while filing this writ petition that the petitioner has been subjected to discrimination since the case of one similarly situated, according to the petitioner, i.e., Md. Ahsanullah Khan, has been considered by the co-ordinate Single Judge of this Court in W.P.(S) No. 5132 of 2016 wherein direction for issuance of advertisement has been passed, as such, in the same line, the writ petition may be disposed of directing the State to issue advertisement for the purpose of consideration of the case of the petitioner.
12. While, on the other hand, State has contended that the petitioner has got no right for appointment under the Rehabilitation Scheme even if the case of the petitioner will be accepted by taking into consideration the clause 9 of the Revised Rehabilitation Policy of the year 2012 wherein it has been mentioned that whenever the advertisement will be issued, the displaced persons will be given weightage, therefore, the petitioner cannot seek a direction from this Court sitting under Article 226 of the Constitution of India for issuance of advertisement rather whenever the advertisement will be issued as per clause 9, the due weightage is to be given to one or the other displaced persons.
13. This Court, after appreciating the aforesaid rival submissions, is now first required to deal with the issue of parity which the petitioner is claiming as per Annexure-3 which is a case of Md. Ahsanullah Khan.

It is evident from the factual aspect as is available from the face of the order as contained under Annexure-3 that the said Md. Ahsanullah Khan was working under daily rated capacity since the year 1987 and in that view of the matter, when the said petitioner came to the Court twice, thereafter, the direction was given for his

appointment for issuance of advertisement. But, herein, facts and circumstances is quite different since the petitioner is not being allowed to work in the daily rated capacity rather he still is a displaced person and seeking direction for consideration of his case for appointment.

14. The position of law is well settled that there cannot be universal application of the judgment rather its applicability depends upon the facts and circumstances of the case as has been held by the Hon'ble Apex Court in ***Dr. Subramanian Swamy vs. State of Tamil Nadu and Others, (2014) 5 SCC 75***, paragraph 47 of which reads hereunder as:

“47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. “The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.””

15. This Court, after considering the fact involved in the case of Md. Ahsanullah Khan (Annexure-3) and coming to the facts of the given case, is of the view that the facts involved in the given case is quite different to that of the case of Md. Ahsanullah Khan since in the case of Md. Ahsanullah Khan, he was allowed to work in a different project, i.e., Khatri Dam Project since the year 1987 but was being paid remuneration for the period of three months considering him to be seasonal labour and in that pretext, he had filed two writ petitions being W.P.(S) No. 6949 of 2011 and W.P.(S) No. 1055 of 2014 wherein the direction was passed to complete the exercise regarding the appointment within a reasonable time but even then, the exercise was not completed. Then, he again filed W.P.(S) No. 5132 of 2016 wherein the co-ordinate Single Judge of this Court considered the fact in entirety and directed the State to come out with the advertisement within a period of six months and whenever the advertisement will be issued, the case of the petitioner will be considered by giving relaxation of age and weightage of marks.

This Court, therefore, is of the view on the basis of the discussion made hereinabove that the factual aspect of the case in hand is quite different to that of the case of Md. Ahsanullah Khan.

16. Now, the question which has been raised on behalf of the petitioner by putting reliance upon the Rehabilitation Policy of the year 2012 which contains clause 9, according to the petitioner, on the basis of clause 9, direction may be passed for issuance of advertisement so as to consider the case of the petitioner.
17. This Court, in order to appreciate the said argument, has considered the clause 9 of the said Rehabilitation Policy and for ready reference, the same is being reproduced as under:

“9.0 विस्थापित को जल संसाधन विभाग की वर्ग 3 एवं 4 की नियुक्तियों में छूट

9.1 विस्थापित व्यक्ति को जल संसाधन विभाग की अधीन वर्ग-3 एवं वर्ग-4 की नियुक्तियों में 3 वर्ष आयु सीमा में छूट दी जायेगी।

9.2 जल संसाधन विभाग की विभिन्न परियोजनाओं के वर्ग-3 एवं 4 के रिक्त पदों पर आवश्यकताओं को देखते हुए आहर्ता रखने वाले विस्थापितों को कार्मिक एवं प्रशासनिक सुधार विभाग का परामर्श लेकर नियुक्ति में उच्चतम प्राथमिकता दिया जायेगा।

विस्थापितों की संख्या के सापेक्ष चूँकि सामान्यतः जल संसाधन विभाग की परियोजनाओं अन्तर्गत उपलब्ध नौकरियों की संख्या बहुत कम होती है अतः सीमित संख्या में ही विस्थापितों को सरकारी नौकरी दी जा सकेंगी।

9.3 जिन विस्थापित परिवार को विस्थापन के आधार पर सरकारी नौकरी दिया जाता है उन्हें पुनर्वास अन्तर्गत मात्र गृह स्थल आबंटन एवं परिवहन की सुविधा देय होगी (बशर्ते की उनका आवास अर्जित किया गया है) तथा अन्य सभी पुनर्वास संबंधी सुविधा जो उन्हें नियुक्ति के पूर्व दी गई है, उस सुविधा के समतुल्य राशि उनके वेतन से किस्तों में वसूली की जायेगी, जो उनके वेतन के 10% से अधिक नहीं होगी।”

18. It is evident from the said clause that there is no stipulation as per the aforesaid policy decision of the State for issuance of advertisement to provide appointment to the displaced persons rather policy decision has only been taken that whenever advertisement will be issued, the case of the displaced persons will be considered by giving due weightage.
19. If the order passed by the co-ordinate Single Judge will be seen, therein also, observation has been made that whenever the advertisement will be issued, the petitioner will be eligible to make an application and the State will consider it by giving relaxation of age and weightage to the marks.

However, the co-ordinate Bench has also passed an order in that writ petition directing the State to take decision for advertisement within a period of six months which was by taking into consideration the fact that there were two earlier directions for issuance of advertisement and perhaps for the reason that the State has not challenged the orders passed in both the writ petitions showing any dissatisfaction with the part of the order, whereby and whereunder, the co-ordinate Bench has passed an order for issuance of advertisement, meaning thereby, the co-ordinate Bench has taken the note of the clause 9 of the Rehabilitation Policy of the year 2012.

20. The whole case of the petitioner is based upon the Rehabilitation Policy of the year 2012 but it is not evident from the said policy that the State has come out with policy decision for consideration of the case of displaced persons by issuing an advertisement rather only decision has been taken for giving relaxation in the age and weightage whenever the advertisement will be issued.
21. The question will be that when the case of the petitioner is based upon the Rehabilitation Policy of the year 2012, then how the prayer sought for by the petitioner regarding issuance of advertisement by issuing command upon the State, be issued.
22. The position of law is well settled that the High Court in exercise of power conferred under Article 226 of the Constitution of India cannot command State to issue advertisement as has been held by the Hon'ble Apex Court in ***State of Orissa and Anr. vs. Rajkishore Nanda and Ors., (2010) 6 SCC 777*** wherein at para-18, the Hon'ble Apex Court has held which reads as under:

“18. It is the exclusive prerogative of the employer/State Administration to initiate the selection process for filling up vacancies occurred during a particular year. There may be vacancies available but for financial constraints, the State may not be in a position to initiate the selection process for making appointments. Bona fide decision taken by the appointing authority to leave certain vacancies unfilled, even after preparing the select list cannot be assailed. The courts/tribunals have no competence to issue direction to the State to initiate selection process to fill up the vacancies. A candidate only has a right to be considered for appointment, when the vacancies are advertised and selection process commences, if he possesses the requisite eligibility.”

Further, the Hon'ble Apex Court *in Union of India and Ors. vs. Ilmo Devi and Anr., 2021 SCC OnLine 899*, has been pleased to hold at para-25 which reads as under:

“25. ... The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts.”

23. Considering the aforesaid position of law, this Court is of the view that so far as the prayer no.2 is concerned pertaining to issuance of direction upon the State to issue advertisement, cannot be extended in favour of the petitioner.

Further also for the reason that the reliance having been placed by the petitioner on the policy decision of the year 2012, it also does not speak about the same.

Considering the same, prayer no.2 is hereby rejected.

24. However, so far as the prayer no.1 is concerned, this Court on the basis of the discussion so made hereinabove, is of the view that whenever the advertisement will be issued, the case of the petitioner will be considered as per the clause 9 of the Rehabilitation Policy of the year 2012.
25. Accordingly, the instant writ petition stands disposed of.

(Sujit Narayan Prasad, J.)