

**11.03.2025.
02
Ct.No.654.
as**

WPA 3308 of 2024

**Sukanta Apat & Ors.
Vs.
Union of India & Ors.**

Mr. Sarajit Sen,
Mr. Sasanka Kr. Mondal.
...for the Petitioners.

Mr. Sukanta Chakrabarty,
Ms. Rubi Saha Das.
...for the Union of India.

1. The present writ petition has been filed primarily seeking a direction to the concerned respondent to publish the select list prepared following the selection process conducted by the respondents in accordance with the notice dated 16th November, 2010, and in terms of the order dated 3rd November, 2017 passed in W.P. (S) no. 234 of 2012. Additionally, the petitioners seek a further direction for granting retrospective effect to their promotion to the position of Assistant Sub Inspector, RPF, from the date of their initial selection under Rule 72 of the RPF Rules, 1987, as initiated pursuant to the notification dated 16th November, 2010, along with the consequential benefits.

2. Before addressing the contentious issues involved in this writ petition, it would be appropriate to

outline the key facts that have led to the filing of this petition.

3. In 2010, a selection process was undertaken by the respondents to fill 40 posts of Assistant Sub Inspector of the Railway Protection Force (RPF) in the South Eastern Railway, open to in-service Constables and Head Constables. The selection process involved three layers: a written test, an outdoor test, and a viva voce. In response to the notification, the petitioners, who were Constables and Head Constables of RPF, offered their candidature for the posts and participated in the selection process, and emerged as successful candidates. However, citing certain procedural irregularities, the concerned respondent issued a fresh notification dated 2nd February 2012, canceling the earlier selection process. Subsequently, another notification was issued, inviting in-service Constables and Head Constables, who had completed 10 years of service, to express their willingness to participate in the proposed fresh selection.

4. These events prompted the petitioners to approach the High Court at Jharkhand with Writ Petition WP (S) No. 234 of 2012. Initially, an interim order was passed in the writ petition stating that any selection for promotion to the rank of Assistant Sub Inspectors in the RPF, made pursuant to the impugned order, would be subject to the result of the writ petition.

5. During the pendency of the aforementioned writ petition in the High Court at Jharkhand, a batch of writ

petitions was filed before this Hon'ble Court, which were disposed of by a Coordinate Bench of this Court by an order dated 24th December 2013, inter alia, directing the respondents to publish merit list and to operate the same, in accordance with law.

6. Subsequently, the writ petition pending before the Hon'ble High Court at Jharkhand, Ranchi, was finally disposed of by an order dated 3rd November, 2017. The concluding part of the said order is as follows:

“As a cumulative effect of the aforesaid facts, rules, guidelines, observations and judicial pronouncements, I hereby set aside and quash the order of cancellation dated 08.12.2011 and also letter dated 02.02.2012, whereby a fresh willingness were called for by letter dated 07.02.2012 from the Head Constables and Constables, who have completed 10 years of service on the date of this fresh notification dated 02.01.2012. The respondents are directed to take immediate steps for publication of the select list and for withdrawal of the fresh notification dated 02.02.2012, preferably within a period of six weeks from date of receipt of a copy of this order.”

7. Assailing the order passed in WP (S) No. 234 of 2012, a Letters Patent Appeal (LPA) No. 206 of 2018 was filed before the Hon'ble Division Bench of the High Court of Jharkhand at Ranchi. The record reveals that the appeal was dismissed by an order dated 14th July 2022. The order passed by the Hon'ble Division Bench was subsequently challenged by filing a Special Leave Petition (SPL Civil) Diary No. 28814 of 2023, which was

dismissed on grounds of delay as well as on merits by an order dated 18th August 2023.

8. Since no further action has been taken regarding the selection process undertaken by the respondents in 2010, despite directions issued in W.P. (S) No. 234 of 2012 and LPA No. 206 of 2018, this writ petition has been filed seeking a direction to the respondents to publish the select list prepared based on the selection process conducted pursuant to the 2010 notification, in accordance with the order passed by this Court in that batch of writ petitions.

9. At the outset, Mr. Chakraborty, learned advocate representing the petitioner, submits that the writ petition is barred by the principle of res judicata. In support of his contention, he argues that the issue has been finally decided by the Hon'ble High Court of Jharkhand at Ranchi, and therefore, the present petitioners cannot be allowed to reopen the issue that has been conclusively settled by the Hon'ble High Court of Jharkhand through this writ petition.

10. However, Mr. Sen, learned advocate representing the petitioner, strongly disputes Mr. Chakraborty's contention. He submits that the writ petitioners do not seek a judicial determination of any issue from this Court. Instead, the petitioners, in essence, have made an innocuous prayer for the enforcement of the order passed by this Court, as well as by a Coordinate Bench of the Ranchi High Court, which was subsequently

affirmed in a Letters Patent Appeal and also by the Hon'ble Supreme Court while dealing with the Special Leave Petition. Referring to the decision reported in *2011 (3) CLJ (Cal) 72 (Sri Dhiren Soren v. The State of West Bengal & Ors.)*, Mr. Sen argues that a writ petition seeking the enforcement of an order passed in a previous writ petition is maintainable.

11. In response to Mr. Sen's contention, Mr. Chakraborty argues that the petitioners are effectively seeking the retrospective effect of their promotion. He draws my attention to paragraphs 34 and 35 of the order passed in LPA 206 of 2018 and contends that, after considering the entire facts and circumstances of the case, the Hon'ble Division Bench of the High Court of Jharkhand at Ranchi compensated the petitioners by awarding Rs. 50,000/- each, which the petitioners have accepted. Mr. Chakraborty asserts that the petitioners cannot now re-agitate the same issue and claim promotion from any earlier date. He further claims that the petitioners have already been promoted to the post of Assistant Sub Inspector. Therefore, their claim for retrospective promotion from an earlier date cannot be accepted.

12. Heard the learned Advocates finally and perused the materials on record.

13. Admittedly, citing procedural irregularities and administrative lapses, the selection process initiated in 2010 was cancelled. It is also an undisputed fact that all

three stages of the selection process were completed, and the petitioners emerged as successful candidates. However, subsequently, the entire selection process was cancelled through a notification, and an attempt was made to initiate a fresh selection process to fill the 40 posts of Assistant Sub Inspector by way of promotion from in-service Constables and Head Constables

14. As noted earlier, a writ petition, WP (S) No. 234 of 2012, was filed challenging the subsequent notification and the letter that cancelled the earlier selection process and invited in-service Constables and Head Constables to offer their candidature for the proposed fresh selection process. By order dated 3rd November 2017, the notifications that cancelled the selection process, as well as the letter calling in-service Constables and Head Constables to express their willingness to participate in the proposed selection, were quashed. The respondents were directed to take immediate steps to publish the selection list.

15. In the Letters Patent Appeal, LPA 206 of 2018, taking note of all facts and circumstances related to the selection process, the Hon'ble Division Bench observed that the petitioners were selected under Rule 72 of the RPF Rules. However, due to the illegal and arbitrary cancellation of the selection list, they suffered a loss of seniority. The Hon'ble Bench further observed that while it is a settled proposition of law that a candidate selected in the process has no inherent legal right to selection, this

does not imply that the respondent or employer has the arbitrary power to cancel the selection process at its discretion. Therefore, acknowledging the fact that the petitioners suffered a loss of seniority due to such arbitrary cancellation, the Court awarded compensation to all the petitioners, and directed that the candidates selected under Rule 70, be promoted by creating supernumerary posts.

16. As noted previously, during the pendency of the writ petition, W.P. (S) No. 234 of 2012, four writ petitions were filed before this Court, which were disposed of by a Coordinate Bench of this Court through an order dated 24th December 2013. For the effective adjudication of the matter, it is crucial to reproduce the operative part of the order dated 24th December 2013, which is as follows:

“In view thereof, I dispose of this batch of writ petitions by directing the respondents to publish the merit and to operate the same, in accordance with law.

However, it is made clear that any appointment that might be made from such merit list would be subject to and abide by the result of the writ petition pending before the Ranchi High Court.”

17. Admittedly, in the order dated 14th July 2022 passed in LPA 206 of 2018, which was disposed of along with LPA No. 79 of 2018, the Hon'ble Division Bench, taking note of the fact that the candidates, including the petitioners, who were declared successful pursuant to the

notification dated 16th November 2010, had since been promoted, observed that directing the Union of India to give effect to the select list prepared pursuant to the 16th November 2010 notification from the date of the initial selection would create a cascading effect in the cadre. However, at the same time, the select list could not be ignored in its entirety.

18. Therefore, it goes without saying that this Court should not pass any order which may go contrary to the decision taken by the Hon'ble Division Bench of the Hon'ble High Court at Jharkhand. Thus, part of the order dated 24.12.2013 whereby direction was given to operate the merit list cannot be directed to be given effect to in view of the order of the Hon'ble Division Bench passed in LPA 206 2018 and LPA 79 of 2018. However, undeniably, the direction to publish the merit list passed in that batch of writ petitions has not been challenged by the respondents and the same has attained finality. Though Mr. Chakraborty claims that the merit and/or selection list prepared pursuant to the notification dated 16.11.2010 has become redundant, it is to be noted that the Hon'ble Division Bench observed that the select list cannot be ignored *in toto*.

19. Therefore, for the sole reason that the order passed in that batch of writ petitions, directing the respondents to publish the merit list, has attained finality, and in light of the Hon'ble Division Bench's observation that the select list cannot be ignored in its

entirety, I dispose of this writ petition by directing the respondents to publish the merit list and/or select list prepared pursuant to the notification dated 16th November 2010, as expeditiously as possible, preferably within three months from the date of receipt of a copy of this order. However, it is clarified that this order shall not have any effect contrary to the decisions rendered in LPA 206 of 2018 and LPA 79 of 2018, nor shall it revive them if they have become redundant due to any subsequent development or by virtue of the order passed in LPA 206 of 2018 and LPA 79 of 2018.

20. There can be no dispute regarding the binding precedent set by the decision cited by Mr. Chakraborty, learned advocate. However, the proposition laid down in that decision will not assist the respondents in this case, as it was rendered in a completely different factual context.

21. With these observations the writ petition is disposed of. However, there shall no order as to the costs.

22. Urgent xerox certified copy of this order be supplied to the parties on usual undertaking.

(Partha Sarathi Chatterjee, J.)