

SUPREME COURT OF INDIA

Administrator, Ranchi Municipal Corpn.

Vs.

Rajnish Kumar

C.A.No.72 of 2003

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

27.01.2011

JUDGEMENT

G.S.Singhvi,J.,

1. This appeal is directed against order dated 18.01.2002 passed by the Division Bench of the Jharkhand High Court in CWJC No.3015/98(R), whereby the draft scheme presented by the Administrator of Ranchi Municipal Corporation for recruitment of class-III and class-IV employees was approved by the High Court with certain modifications.

2. Respondent No. 1, Mr. Rajnish Kumar filed a petition in the name of public interest litigation questioning the functioning of appellant, Ranchi Municipal Corporation and its financial accountability. During the pendency of the writ petition, the Division Bench of the High Court passed an order dated 12.8.1999 whereby the appellant was restrained from making appointment on any post. As a consequence, no recruitment could be made against 1333 sanctioned class-III and class-IV posts. Since the appellant was facing acute shortage of staff, an application was filed in the High Court for vacating the interim order. After considering the grievance made in the application, the Division Bench of the High Court passed order dated 27.9.2001, which reads as under:

"In this application, the Ranchi Municipal Corporation has prayed for a suitable modification in the order dated 12.8.1999 passed by a Division Bench of this court whereby the corporation and its officials were restrained from making any appointment on any post till further orders from this court.

In this application (Flag 'Z') it is contended by the corporation that there are altogether 1333 sanctioned class III and class IV posts in the Ranchi Municipal Corporation and that at present as many as 363 class IV posts are lying vacant. Various reasons and grounds including those relating to the cleaning operations, removing garbage etc. have been given in the application seeking the court's permission to make appointments on these posts.

3. We have carefully read the writ application. We have gone through the annexures also filed alongwith the writ application. We find from a very close reading of the writ application that the petitioner has not at all made out any case with respect to any challenge to any class III or class IV posts either in the past or for any future appointments. Despite the fact that the petitioner did not either challenge any appointment on class III or class IV posts made in the past, nor sought any quashing of any such order, nor did the petitioner make out any case in favour of restraining the respondent corporation from making any such appointment on any such posts in future, why and under what circumstances did this court have to issue the aforesaid restrain order against the corporation on 12.8.1999 is at all not understood by us. Since we were at a total loss to understand as to why did it have to issue such a blanket restraint orders against the corporation, we tried our best to take the assistance of the learned counsel appearing for the petitioner to explain to us and educate us as to the reasons and circumstances under which such an order had to be passed by this court.

4. We must say very, very painfully that the learned counsel appearing for the petitioner was not able to explain to us any reason or ground for this court having done so. We repeatedly told him so that because we do not want to vacate an interim order unless we are very sure of the reasons and grounds for doing so, he should explain to us the aforesaid reasons. But he could not offer any help to us.

5. Since no one has been able to explain to us the *raison d'etre*, objective, purpose, background or the circumstances under which such a blanket order has to be passed by this court, we have no hesitation in vacating that order, specially in view of the fact that an utility service like Ranchi Municipal Corporation cannot be perpetually restrained from keeping so many posts vacant. Keeping posts vacant would vitally affect the functioning of the corporation in a public interest matter.

6. We are, therefore, inclined to vacate the aforesaid restraint order passed by this court on 12.8.1999.

7. However, before permitting the corporation to make appointments, we would like to know from the corporation the manner and *modus operandi*, which it would adopt in making these appointments. We are saying so because we do not want the corporation to make appointments in an arbitrary manner. We, therefore, direct the corporation to formulate a scheme whereby it proposes to make those appointments. Undoubtedly, such a scheme should ensure that the widest possible participation of all eligible candidates would be invited and that no appointment would be made in any arbitrary manner. If Rules already exist for such a purpose, the corporation need not formulate any fresh scheme and can inform us about the existent rule position. The corporation is, therefore, directed to file an affidavit in the court by the next date explaining to us as to how and in what manner does it propose to make appointments. We shall pass final order only after going through the said affidavit."

On the next date of hearing, the administrator of the appellant presented a scheme for recruitment along with the relevant rules. By the impugned order, the High Court approved the scheme subject to various modifications and vacated the interim order dated 12.8.1999. We have heard learned counsel for the appellant and perused the record.

8. In our opinion, the impugned order is legally unsustainable inasmuch as it runs contrary to the provisions of the Act applicable to Ranchi Municipal Corporation and the Rules framed thereunder for recruitment of class-III and class-IV employees. In the writ petition filed by him by way of public interest litigation, the respondent had not challenged vires of the Act or the Rules which regulate recruitment in the services of the Municipal Corporation. Therefore, the High Court was not, at all, justified in requiring the appellant to present the scheme regulating the recruitment of class-III and class-IV employees elaborating the procedure and methodology for recruitment against the advertised post and then issue directions for effecting modifications in the scheme.

9. The appeal is accordingly allowed, the impugned order is set aside.

10. We are further of the view that the writ petition filed by respondent No.1 was clearly misconceived and the Division Bench of the High Court committed a serious error by entertaining the same and passing various interim orders. Therefore, the writ petition is withdrawn to this Court and is dismissed. The Ranchi Municipal Corporation shall now make recruitment against the vacant posts in accordance with the relevant provisions of the Act and the Rules framed thereunder. However, it is made clear that any regular recruitment made during the pendency of the appeal before this Court shall not be adversely affected by this direction.