
(2014) 07 JH CK 0088
In the Jharkhand High Court
Case No : W.P.S. No. 2631 of 2005

Akhileshwar Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Citation : (2014) 07 JH CK 0088

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Naresh Prasad Singh, Advocate for the Appellant; Rakhi Rani, J.C. to Sr. S.C. II and Y.N. Mishra, CGC, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties.

2. The original writ petition has been amended with few additional prayer. Those additional prayers sought to be incorporated were allowed on 19.7.2013 when I.A. No. 3931 of 2013 was pressed for the said purpose by the learned counsel for the petitioner. Amongst the original and additional prayer, learned counsel for the petitioner has confined himself to the following two prayers:-

A. For issuance of a writ in the nature of certiorari for quashing the reasoned order as contained in Memo No. 962 Ranchi dated 07.05.2013 of the Deputy Secretary to the Government of Jharkhand, Welfare Department, Annexure-1 of I.A. No. 3931 of 2013 and Annexure-D to the Supplementary Counter affidavit dated 9.5.2013, whereby the recommendation made in favour of the petitioner for his promotion by the respondent No. 3 has been disallowed on the basis of the provisions contained in the Jharkhand State Clerk/Clerk cum Typist/Typist and other Clerical Service Cadre(Appointment, Promotion & other Service Conditions) Rules, 2010 which is not at all applicable to the case of the petitioner on the ground that his post of "Computer(Sanganak)" is a Graduate Level Statistical Supervisory post.

B. For issuance of a writ in the nature of Mandamus thereby:-Directing the

respondent No. 1 to 3 to consider the case of the petitioner for regular promotion to the post of Research Officer with effect from 29.07.1986, further to the post of Assistant Director with effect from 30.07.1991 and further to the post of Deputy Director with effect from 31.7.1996 as recommended by the respondent No. 3 through letter No. 635 Ranchi dated 20.12.2001(Annexure-6) and letter No. 477 Ranchi dated 6.10.2004(Annexure-6/1)

Prayer for financial up gradation is also no longer subsisting as the petitioner has been granted the benefit of first and second A.C.P. as is evident from the impugned order dated 7.5.2013 issued by the Deputy Secretary of the Welfare Department. Therefore, learned counsel for the petitioner has chosen to press the two subsisting prayers

3. The brief background of the factual road map is required to be indicated to appreciate the controversy now being agitated on behalf of the petitioner. The petitioner was appointed on the post of Computer in the Tribal Welfare Research Institute on 28.7.1981, which is now known as Jharkhand Tribal Welfare Research Institute, Ranchi. The petitioner was having the qualification of Graduation in Mathematics at the time of entry in service. It is also not in dispute that the Tribal Research Institute is functioning under the Welfare Department of the State and Board of Directors to govern. From the pay revision committee report being the 4th PRC report which is Annexure-11 to the petitioner's rejoinder filed on 21.6.2013 it is evident that post of Computer in the Tribal Welfare Research Institute had been existing in the scale of Rs. 296-460 which was recommended to Rs. 785-1210 under the 4th PRC. From Annexure-12, a report of Pay Anomaly Removal Committee, it appears that grievances of the petitioner were also raised in respect of the pay anomaly and considered by the said committee which granted the scale of Rs. 850-1360 to the petitioner as was allowed in cases of Statistical Assistant having the same existing scale. The petitioner was granted the scale of Rs. 5000-8000 in the 5th PRC implemented w.e.f. 1.1.1996 by the respondents. It is also evident from the impugned order dated 7.5.2013 that by the grant of first and second A.C.P. he has been given the scale Rs. 5500-9000 and Rs. 6500-10,500. In the wake of all these facts, learned counsel for the petitioner has relied upon Annexure-5 which is the minutes of the meeting of the Governing Council of the Tribal Welfare Research Institute held on 17.5.1998. According to him vide para 12 thereof, it has been submitted that recommendation was made for regular promotion of the petitioner holding the post of Computer and few other persons holding different post of Research Officer and Research Investigator. According to the petitioner the Director of the Institute on 20.12.2001(Annexure-6) categorically recommended for promotion of the petitioner on completion of 5 years of service to the post of Research Officer and thereafter to the post of Assistant Director and Deputy Director successively upon completion of each 5 years w.e.f. 29.7.1986, 30.7.1991 and 31.7.1996. These recommendations of promotion, according to the petitioner were never acted upon and subsequently the recommendation of the Director of the Tribal Welfare Research Institute was withdrawn by the department itself.

4. Learned counsel for the petitioner submitted that despite being in service since 1981 he has been holding the post of Computer till today and has not been given the substantive promotion, though he has the qualification of Graduation in Mathematics and is entitled to the higher post of Research Officer, Deputy Director in the Institute after having acquired the higher qualification of Master Degree and Rural Management while in service. It is submitted that all these facts have been overlooked by the respondents when they have chosen to pass the impugned order on 7.5.2013 during the pendency of the writ application. It is submitted that the respondents have chosen to be guided by the Jharkhand State Clerk/Clerk cum Typist/Typist and other Clerical Service Cadre(Recruitment, Promotion & other Service Conditions) Rules, 2010. However, by referring to Rule 4 thereof, learned counsel for the petitioner has submitted that the minimum qualification for entry in such service as laid down is Intermediate, while the post on which the petitioner was appointed was having entry level qualification of Graduation. In support of the aforesaid contention he has again relied upon Annexure 13 and 13/1 dated 13.12.1990 and 18.9.1990 which indicate that post of Computer required the minimum educational qualification of Graduation with Mathematics or Statistics. It is therefore submitted that the entire case of the petitioner has been addressed on wholly incorrect approach and in the process any substantive promotion which he deserves to next higher post has been denied. This is also not reasonable as it would lead to stagnation in service after having remained for more than 30 years on the same post in the Institute in question. The grant of A.C.P. alone is not enough when there are no promotional avenues for the said post. He has also referred to Rule 3 of 2010 Rules as per which the post of Head Clerk is a promotional post and enjoys the scale of R. 5000-8000 like that of the petitioner who is holding original post of Computer in the Institute till date. In the aforesaid circumstances, learned counsel for the petitioner submits that impugned order deserves to be quashed and further, case of the petitioner should be considered for grant of regular promotion to the next higher posts.

5. Learned counsel for the State has defended the impugned action of the respondents largely relying upon the supplementary counter affidavit filed on 10.5.2013 which encloses the impugned order as Annexure-D as well. It is argued on her part that the petitioner is not entitled for promotion to the post of Assistant Director, Deputy Director or Director in the Institute as he belongs to ministerial post under Rule 30 of the Jharkhand Service Code, Annexure-B to the supplementary counter affidavit. It is categorically argued that Annexure-A, Rule 2010, which has been framed in respect of clerical cadre appointment, promotion and service condition refers to the post of the petitioner i.e. Computer, therefore his claim has been rejected by the impugned order. Reference has been made to the appendix annexed to Annexure-B where the post of Computer has been shown to be ministerial post. Therefore, according to the respondents considering the grievances of the petitioner that he has not been granted regular promotion in his career he has been conferred benefit of two financial

upgradation as permissible under the ACP scheme. Therefore, petitioner is not entitled to be promoted to the post of Deputy Director or Director.

6. I have heard learned counsel for the parties at some length and gone through the relevant materials on record.

The factual matrix of the case, as indicated earlier, shows that the petitioner was initially appointed in the Tribal Welfare Research Institute on 28.7.1981 on the post of Computer, which requires minimum educational qualification of Graduation with mathematics or statistics. It is also evident that upon recommendation of the 4th Pay Revision and the Pay Anomaly Removal Committee under the 5th Pay Revision, the petitioner was granted respective scales of Rs. 850-1360/- and the next revised scale of Rs. 5000-8000/- with effect from 1.1.1996.

7. From the impugned order dated 7.5.2013 also it is corroborated that upon grant of first and second ACP he has been given a scale of Rs. 5500-9000/- and 6500-10500/-. It is also clear that under the Clerical Service Cadre (Recruitment, Promotion and other Service Conditions) Rules, 2010 the scale of Rs. 5000-8000/- is given to the promotional post of Head Clerk, which is the second substantive promotion from the post of Lower Division Clerk to that of Upper Division Clerk and then the Head Clerk. However, the petitioner was enjoying the said scale of Rs. 5000-8000/- only on the original post of Computer in the respondent-Institute on which he has initially been appointed in the year 1981 itself. At the same time it is also apparent from the Rules of 2010 that for appointment on the entry level post of Lower Division Clerk the minimum qualification is Intermediate while the petitioner was appointed in the year 1981 on the entry level qualification of Graduation. The respondent Department in the reasoned order has, however, treated the post of Computer as a ministerial level post and come to a decision that the Rules of 2010 would govern the service condition of the petitioner and he would not be entitled to the promotion to the post of Research Officer, Assistant Director or Deputy Director in the respondent Institute. If the reasons given in the impugned order are accepted then also if the petitioner fulfills the eligibility criteria laid down under the Rules of 2010, he ought to have been considered for promotion to the next higher post of office Superintendent after having remained on the same post since 1981 in the respondent Institute. On the other hand, if the said rules do not apply in view of the fact and reasons indicated in the earlier part of this judgment that the petitioner on the original post of Computer is drawing a scale of Rs. 5000-8000/-, which is available to the employee on substantive promotion to the post of Head Clerk then it is evident that there are no rules laying down avenues of promotion and service conditions of an employee like the petitioner in the Tribal Research Institute. On both counts, therefore, the impugned order dated 7.5.2013 suffers from non-application of mind. Simply on the ground that the petitioner has been granted two ACP during his service career, it cannot be stated that no promotional avenues for substantive promotion of an employee

posted as a Computer in the institute is required. It is one of the necessary requirements of the service condition that an employee, who enters into a particular service, does have avenues of substantive promotion in his career to the higher post to avoid stagnation in service and prevent loss of interest in his employment in discharge of his duties. It defies reasons that after having entered in service in the year 1981 the petitioner continues on the same post of Computer till date. Therefore, the respondents are required to reconsider the matter with due and proper application of mind to the claim of the petitioner for substantive promotion upon consideration of all attendant facts as aforesaid. The impugned order dated 07.05.2013 is quashed.

8. Therefore, the matter is remitted to the respondents to once again pass a reasoned order in accordance with law. While considering the claim of the petitioner for substantive promotion, it would be open to the respondents to consider the desirability of framing of rules for recruitment, promotion and other service conditions of employees like the petitioner, who are serving in the Tribal Research Institute as it appears from Annexure C to the supplementary counter affidavit dated 10.05.2013 filed by the respondents that such a proposal for framing service Rules for employees of the respondent-Institute was under contemplation though turned down by the Personnel and Administrative Reforms Department, Government of Jharkhand. Since the petitioner has remained in the same post of Computer from his original date of appointment on 28.7.1981 and has been pursuing his claim before this Court since 2005, the respondents should take a decision in the matter expeditiously, preferably within a period of 16 weeks from the date of receipt of a copy of this judgment. Needless to say that Dependant upon such decision, consequential benefits would flow to the petitioner in the matters of fixation of pay and arrears of salary as may be found admissible to him.

9. This writ petition is allowed in the aforesaid manner.