

(2016) 09 JH CK 0075

In the Jharkhand High Court

Case No : Cont. Case (Civil) No. 18 of 2015.

Akhileshwar Singh, S/o Mr. Kanhaiya Singh, Computer (Statistics)-cum-Research Officer, Jharkhand Tribal Welfare Research Institute, Morabadi, Ranchi-834008 resident of House No. L.S.-85, Near Harmu Power Sub-Station, At and P.O.-Harmu Housing Colony, P.S.

Date of Decision : 08-09-2016

Acts Referred:

Citation : (2016) 4 JBCJ 317 : (2017) 1 JCR 74 : (2016) 4 JLJR 446

Hon'ble Judges : D.N. Patel, J.

Bench : Single Bench

Advocate : M/s. Naresh Pd Singh, Advocate, for the Petitioner; M/s. H.K. Mehta (A.A.G.) and M. Patra, Advocate, for the Opposite Parties

Final Decision : Dismissed

Judgement

D.N. Patel, J. - The applicant had preferred the writ petition being W.P. (S) No. 2631 of 2005 which was disposed of by an order dated 18th July, 2014 in which it has been canvassed by the counsel for the applicant that this applicant was appointed as "Sanganak" and he was consistently in search of promotion. Much has been argued by the counsel for the applicant in the writ petition that the so-called Rules framed by the respondents-State, viz., Jharkhand State Clerk/Clerk-cum-Typist/Typist and other Clerical Service Cadre (Appointment, Promotion & other Service Conditions), Rules, 2010, are not applicable to this applicant and some new Rules have been drafted by the respondents-State opening an avenue of promotion.

2. At length the counsel for the applicant has re-agitated this point, but, looking to the order passed by learned Single Judge in W.P. (S) No. 2631 of 2005 vide order dated 18th July, 2014, it has been observed that the State has to decide afresh the matter of this applicant and the applicant should be considered for promotion.

3. After the aforesaid order is passed by learned Single Judge, now, the respondents have taken a decision by a detailed speaking order dated 18th

February, 2016 which is annexed as Annexure A to the supplementary counter affidavit filed by the Opposite Parties in which it has been observed that as per the aforesaid Rules, the applicant is not entitled to the promotion. Whenever any promotion is not granted to any employee, they are always given Assured Career Progression Scheme benefit which is always in lieu of actual promotion.

4. Looking to the order passed by the respondents-State dated 18th February, 2016, which is annexed as Annexure A to the supplementary affidavit filed by the Opposite Parties, there is no wilful disobedience by the respondents of the order passed by this Court in W.P. (S) No. 2631 of 2005 dated 18th July, 2014.

5. It ought to be kept in mind that promotion is not a matter of right at all. Highest right vested in the employee is to be considered for promotion and nothing beyond that.

6. As per the service jurisprudence developed in this country, all cannot be promoted, because promotional avenue are like pyramid. Promotional posts are always lesser in number, in comparison with feeder cadre. At the bottom in the service, there are several posts available. As one goes up in the hierarchy, the promotional posts are lesser than the feeder cadre. In the second promotion, the number of posts available are much lesser than the feeder cadre. So on and so forth. At the last, the highest post will be one and, therefore, in the service jurisprudence, it has been developed that if a person, who is not entitled to get the promotion for any reason whatsoever, not always because of his inefficiency, but, may be because of non-availability of the promotional posts, or, sometimes, there is no promotional post avenue at all, like in the present case, such type of employees are entitled to the benefits of 1st, 2nd and 3rd Assured Career Progression Scheme, which is of higher pay scale.

7. Thus, the present employee has got higher pay scale, but, not the promotion.

8. Much has been argued out about the promotion by the counsel for the applicant, but, the same is not helpful to this applicant, because,

(a) promotion is not a matter of right;

(b) promotion cannot be given to each & every employee, even though they are qualified;

(c) those who are unable to get promotion as per Rules applicable to them, then, they are always entitled to get the benefits of Assured Career Progression Scheme and as many as three benefits of Assured Career Progression Scheme have been given to this applicant.

9. Enough is enough. Nothing more is left to be decided by this Court, at least, in this contempt application. If the petitioner is further aggrieved by the order passed by the respondents dated 17th February, 2016, he is always at liberty to challenge the same in accordance with law before the appropriate forum.

10. In view of the aforesaid facts, circumstances and reasons, there is no

substance in this contempt application, as, there is no wilful disobedience by the respondents of the order passed by this Court in W.P. (S) No. 2631 of 2005 dated 18th July, 2014. Hence, this Contempt application is, hereby, dismissed.