
(2013) 01 JH CK 0130

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3566 of 2003

Akshayar Ojha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Citation : (2013) 1 JLJR 258

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. In the instant writ application petitioner is aggrieved by the order contained in memo no. 195 dated 5.3.2003 (Annexure-5) issued by the respondent no. 4, the Superintending Engineer, Water Supply and Sanitation Circle, Hazaribagh as also the order contained in Annexure-8 dated 18.6.2003 vide memo no. 548 issued by the Regional Chief Engineer, Drinking Water and Sanitation Department, Ranchi, whereby according to the petitioner the temporary promotion granted to him in the year 1987 has been withdrawn after 16 years and direction has also been issued to recover the excess payment. The petitioner has also prayed for grant of regular promotion as juniors to him have also been promoted, subsequently.

2. Petitioner's case is that he was appointed in the year 1973 on a vacant sanctioned post of "Mistry" in the work charged establishment under the respondent in the district of Chatra and promoted to the post of Pipe-Line Inspector in the year 1981. Pursuant to the order passed by the respondent no. 4 contained at Annexure-1 dated 15.7.1987, the petitioner claims to have been promoted on temporary basis to the post of correspondence clerk in the scale of Rs. 580-860. He was allowed to continue on the said post and was also granted salary, increment and also revision of the said scale from time to time and his

name was also shown in the gradation list prepared by the respondent for correspondence clerk in Hazaribagh Circle dated 19.4.1990. According to him persons shown in serial nos. 31 to 37 of the said gradation list being junior to him have been promoted to the post of correspondence clerk in regular establishment, while he has been discriminated, although there was no adverse order against him. Further, the gradation list have been shown to have been prepared in the year 2001 but suddenly by the impugned orders (Annexures-5 and 8) dated 5.3.2003 and 18.6.2003 issued by the respondent nos. 4 and 3 respectively the petitioner's name has been removed from the gradation list of correspondence clerk and order has been issued for verification and recovery of the amount paid to him on account of such mistake. Petitioner has, therefore, come before this court being aggrieved by the impugned orders as the same have been issued without any notice or show cause and according to him the promotion granted to him 17 years back has been withdrawn suddenly without any rhyme and reason.

3. Respondents have filed their counter affidavit. According to them the petitioner was appointed in the work charge establishment and subsequently, granted promotion to the post of Pipe-Line Inspector. Further, in the order contained at Annexure-1 it is stated that although he was allowed to work as correspondence clerk by the order of Superintending Engineer of the concerned circle but he has not been taken in the regular establishment since this arrangement was continued by giving extension from time to time. When it was detected that his name has been included erroneously in the gradation list of the correspondence clerk the same has been rectified by the order contained at Annexures-5 and 8 by the respondents. According to the respondents persons named at serial nos. 31 to 37 of the gradation list (Annexure-3) are those who were promoted from Class-IV to Class-III on passing written test while the petitioner was already promoted from Class-IV to Class-III in the work charge department in the year 1981 and there was no occasion to promote him in regular establishment as clerk. When the gradation list was finalized in the year 1995 no objection was received from him, subsequently on detection of the mistake that petitioner was in work charge establishment and could not be included in the gradation list of the clerk in regular establishment impugned orders have been issued. The post of Pipe-Line Inspector is field staff post and there is no Rule for promotion from work charge to regular establishment for the post of correspondence clerk. Accordingly, the respondents have stated that petitioner is not entitled to be compared to the post of clerk in Grade-III in regular establishment, since promotion is granted only after passing written test. Lastly the respondents have submitted that order at Annexure-1 was simply an arrangement and no regular promotion was granted to the petitioner to the post of correspondence clerk.

4. I have heard counsel for the parties and gone through the relevant materials on record including the impugned orders. From perusal of Annexure-1 it appears that petitioner was allowed to work as correspondence clerk by the order of the

Superintending Engineer of the concerned circle on 15.7.1987 indicating therein that he would be entitled to the scale of Rs. 580-860. The petitioner was allowed to work on the post of correspondence clerk despite being in work charged establishment for 16 years. The impugned order contained at Annexure-5 was issued by the Superintending Engineer himself said to be made on detection of the earlier mistake. However, the petitioner was not responsible for the said mistake. Accordingly, the respondents cannot have any justification for recovery of the amount paid to him on the said scale on which he was allowed to work for 16 years and drawn salary and increments thereof. Although, the petitioner belongs to work charged establishment but it is surprising that even after working in the said establishment since 1973, respondents have not taken any decision regarding taking his services in the regular establishment, though some persons have been shown junior to the petitioner have been taken to the regular establishment.

5. Be that as it may, the respondents are required to take an informed decision in respect of taking services of petitioner in regular establishment after remaining in work charged establishment for 40 long years. However, no justification can be made for recovery of the amount paid to him for the post of correspondence clerk on account of admitted mistake by the respondents themselves. In that view of the matter, part of the order directing the recovery of the excess amount cannot be sustained in law and is accordingly, quashed. Respondents are directed to take an informed decision in respect of the claim of the petitioner for being taken in regular establishment within a period of 16 weeks from the date of production of the copy of this order. The writ petition is allowed in aforesaid terms.