
(2018) 12 JH CK 0105
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2749 Of 2010

Ashim Kumar Singh

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 12 JH CK 0105

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Saurav Arun, C. Prabha, Vishal Kumar Rai

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J

1. In the captioned writ application, prayer has been made for direction to respondents to correct the seniority position of the petitioner and place the name of the petitioner as per guidelines issued and put the name of the petitioner in appropriate place in the cadre of literate constable, after correcting of Force order no. 96/2008 dated 29.01.2008 by which seniority position of the petitioner has been changed without notice. Further, prayer has been made by the petitioner not to give effect the force order dated 29.01.2008 vide Annexure-8 to the writ petition.

2. The brief facts of the case is that the petitioner was initially appointed as Constable in Bihar Military Police on 24.09.1987, now known as Jharkhand Armed Police (JAP), after bifurcation of the State of Jharkhand. In the year 1989 different posts were created for Bihar Military Police including the posts of literate constable and four posts of literate constable were created for head office. It has been envisaged that appointment in Reserve Office will be made on the basis of option, seniority, service record and also in terms of passing the matriculation examination as evident from Annexure-2 to the writ petition. In pursuance to the

guidelines vide Annexure-1 & 2 to the writ application, the petitioner submitted his option for literate constable. As per the option exercised by the petitioner, the petitioner's seniority list was to be determined on the date of appointment, date of birth and date of passing of matriculation examination which is the basis of deciding the seniority as evident from Annexure-3 to the writ petition. The Force order no. 89 of 2002 dated 08.07.2002 vide Annexure-4 to the writ petition envisages that the seniority is to be determined on the basis of date of appointment, date of birth and date of passing of matriculation examination. Seniority list was prepared on 10.05.2007 vide Annexure-6 of the writ petition, strictly on the basis of the guidelines wherein, the name of the petitioner is found place at Serial No. 4 and the said seniority has been prepared basing on the guidelines vide Annexure-2, 3 & 4 to the writ petition. It has further been averred that the said seniority list has been cancelled vide Annexure-7 to the writ petition without any rhyme and reason and vide Force order no. 96 of 2008 dated 29.01.2008, the seniority position of the petitioner has been changed without any notice wherein, the petitioner has been placed at Serial No. 6. Being aggrieved by the improper placement in the seniority list vide Annexure-8 of the writ petition, the petitioner submitted representation dated 26.07.2008 for proper placement in the gradation list. Since, the said representation submitted by the petitioner did not evoke any response, the petitioner being aggrieved by the inaction of the respondents, has been constrained to approach this court under Article 226 of the Constitution of India for redressal of his grievance.

3. Learned counsel for the petitioner has strenuously urged that the impugned Force order no. 96 of 2008 vide Annexure-8 to the writ petition smacks of arbitrary exercise of power since the seniority position of the petitioner has been changed unilaterally without any notice. Learned counsel for the petitioner further submits that the respondents ought to have considered the force orders, circular issued by the department for deciding the seniority and due to the impugned force order vide Annexure-8 to the writ petition, the guidelines issued vide Annexures-2 to 5 have been given a go by, whereby the position of the petitioner in the seniority list has been incorrectly fixed. Learned counsel for the petitioner further submits that the impugned force order no. 96 of 2008 vide Annexure-8 to the writ petition being bald and cryptic, is liable to be set aside so far as the position of the petitioner in the gradation list is concerned.

4. Controverting the averments made in the writ application, the counter affidavit has been filed by the respondent nos. 2 & 3 wherein, it has been submitted that the Range (Standing) Order No. 89 of 2002 has been issued vide letter dated 08.07.2000 from the office of Inspector General of Police, Jharkhand Armed Police, Ranchi. In the Range order, the principle of selection and fixing of seniority of Literate Constable has been laid down. The second principle clearly states that the post of literate constable will be filled keeping in mind their seniority on joining, service record and date of passing the Matriculation Examination. Willingness will be asked for inclusion in the category of literate constable. In compliance of Range Order No. 89 of 2002 the willingness to be

included in literate constable was called for by the Commandant vide letter no. 2848/R.O. dated 18.07.2002 vide Annexure-A to the counter affidavit. It has further been averred that petitioner initially had given the written application that he would not be included in the category of literate constable as per Annexure-C of the counter affidavit. The Inspector General of Police, Jharkhand Armed Police, Ranchi vide letter no. 1504/G.S. approved the name of five persons to be included in the category of literate constable. He further approved the name of those constables who had given an application not to be included in the category of literate constable and accordingly, Force Order dated 27.09.2002 was issued to the effect vide Annexure-D & D/1 to the counter affidavit. Subsequently option for the category of literate constable again was asked to be submitted by the then Commandant, J.A.P-I vide letter dated 30.01.2004. After obtaining the willingness, the list was submitted to the Inspector General of Police, wherein the petitioner was one of the applicant who had given his willingness to be included in the category of literate constable. Accordingly, Range Order dated 20.05.2004 was issued which included the name of the petitioner vide Annexure-F to the counter affidavit. It has further been submitted that Force Order No.573 of 2007 was issued which wrongfully stated the seniority of the petitioner. Since the seniority of the petitioner was not according to the seniority list already existing in the force, therefore, it was cancelled vide Force Order dated 08.11.2007. It has further been submitted that Force Order dated 25.01.2008 and Range Order letter dated 07.10.2004 stands correct.

5. Learned counsel for the State apart from reiterating the submissions made in the counter affidavit has submitted that the gradation list vide Annexure-8 to the writ application has been correctly prepared basing on the options exercised by the petitioner. Since the petitioner did not exercise option initially in the year 2002 and subsequently he exercised his option in the year 2004, therefore, the inter se position of the petitioner vis a vis others have been correctly determined and there has been no breach of any guidelines as envisaged vide Annexure-2 to the writ petition.

6. Having heard learned counsel for the respective parties and on perusal of the record, this Court is of the considered view that the petitioner has been able to make out a case for interference, due to the following facts and reasons:

(I) On perusal of the counter affidavit, nothing has been disclosed as to how the impugned Force Order no.96/2008 dated 29.01.2008 has been issued by the respondents by changing the position of the petitioner which is not in consonance with the guidelines vide Annexure-2 to the writ application, wherein for deciding the seniority the date of appointment, date of birth and date of passing of matriculation examination are the relevant considerations. In the counter affidavit, a frivolous and feeble attempt has been made by the respondents that because the petitioner exercised his option later on, the position of the petitioner has been changed in Annexure-8 to the writ application.

(II) It is the settled position of law that if there is no statutory rule in that case

circular or guidelines are to be determined for seniority of the respective employees. In the instant case, Annexure-2 to the writ application is the guidelines for determining the inter se seniority amongst the literate constable. The exercise of options to be included in the literate constable is of little consequence while determining the seniority of the petitioner vis a vis others. If that would have been the criteria for determination of seniority then certainly that clause ought to have included in the guidelines. Therefore, on perusal of the impugned order vide Annexure-8 to the writ application, it appears that the same has been prepared in derogation of the guidelines vide Annexures-2 to 5 to the writ application.

7. This Court feels inclined to interfere in the Annexure-8 to the writ application, accordingly, the inter se position of the petitioner requires fresh consideration. Moreover, the petitioner has submitted his representation for correction of his position in the gradation list. In that view of the matter, the writ petition is disposed of with direction to the respondents to determine the seniority of the petitioner vis a vis others taking into consideration the guidelines vide Annexures-2 to 5 to the writ application and pass an appropriate order for determining the seniority and publish the fresh gradation list within a period of two months from the date of receipt/communication of a copy of the order. Till fresh gradation list, Annexure-8 shall not be given effect to so far as position of the petitioner is concerned.

8. With the aforesaid direction, the writ petition stands disposed of.