
(2013) 04 JH CK 0070
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6033 of 2007

Bachchu Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 73

Citation : (2013) 04 JH CK 0070

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Ayush Aditya and Shashank Shekhar, for the Appellant; Saket Upadhyay, J.C. to AAG., for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.

I.A. No. 471 of 2013

1. Heard learned counsel for the parties. The grievance of the petitioner arose because of Memo No. 2198 dated 01.12.2006, Annexure-11 issued by the Inspector General (Prison), Home (Prison) Department, Ranchi, respondent No. 2 whereby he rejected the claim of the petitioner for being treated as Head Clerk.

2. The case of the petitioner in short is that initially in the year 1976 he was appointed as Clerk at the Central Jail, Hazaribagh w.e.f. 01.06.1976. By resolution of the State Government dated 28.03.1979, several-posts were sanctioned for Jail Training Institute including that of Head Clerk. On recommendation being made, the petitioner was appointed on the sole sanctioned post of Head Clerk in the scale of Rs. 284-372/-. However, for certain period, the scale of all these posts i.e. Clerks as well as Head Clerk was same i.e. Rs. 284-372/-. Later on, by the Government Resolution dated 18.12.1999, the pay scale of Clerk was fixed at Rs. 4000-6000/- and that of Head Clerk was fixed on a higher scale at Rs. 4500-7000/-. It is the contention of the petitioner by

relying upon the excerpts of the service book contained at Annexure-2 to the supplementary affidavit filed on 12.02.2013 that even in the year 1999 his scale was fixed on the post of Head Clerk as Rs. 4500-7000/-. The petitioner further relies upon the resolution dated 21.09.2007, Annexure-3 to the supplementary affidavit where the revised scale for the post of Head Clerk shown as Rs. 5000-8000/- from Rs. 4500-7000/- which he was earlier holding. It is the contention of the petitioner that after bifurcation of the State, the respondents did not confirm the appointment of the petitioner on the post of Head Clerk in the tentative allocation of cadre and he was described as Clerk. He, therefore, approached this Court in W.P. (S) No. 5471 of 2005 wherein vide order dated 07.12.2005, Annexure-8, it was also observed that the petitioner was already getting pay scale of Head Clerk, if he had any grievance, he may approach the Inspector General (Prisons), Jharkhand, Ranchi, who shall look into the matter and take a decision in accordance with law.

3. Learned counsel for the petitioner submits that the impugned order contained at Annexure-11 dated 01.12.2006 was passed rejecting his claim for the post of Head Clerk Primarily on two grounds:- (a) that the post of Head Clerk was never allocated to the successor State of Jharkhand at the time of bifurcation of the cadre in the parent State. (b) that the petitioner's appointment as Head Clerk in the year 1979 was never confirmed for which correspondence was also made with the Inspector General (Prisons), Bihar as late as in August, 2006. However, it has been indicated in the impugned order that all along he was posted in different Divisional jails at different places where he was holding the post of Clerk. Learned counsel for the petitioner relies upon the information furnished under the RTI which is annexed to I.A. No. 471 of 2013 as Annexure-1 wherein the post of Head Clerk has been shown in the Class-III post of the Jail Training Institute, Hazaribagh. By relying upon further document contained at Annexure-3 of the instant I.A. dated 28.04.2012 issued by the Assistant Inspector General-cum-Public Information Officer, it is submitted that the posts, which were existing at the Jail Training Institute, Hazaribagh at the time of bifurcation of the parent State have not been subjected to cadre division. Based on these documents brought on record, which has been obtained through RTI, learned counsel for the petitioner submits that the ground for rejecting the petitioner's claim by the impugned order passed by the respondent No. 2 is contrary to the records. He further submits that the excerpts of the Service Book which are evidenced and indicated hereinabove has shown that at the time of bifurcation of parent State, he was getting the scale of Head Clerk Rs. 4500-7000/-, which has been arbitrarily denied by the respondent No. 2 by passing the impugned order. In the circumstances, after the allocation of the petitioner to the successor State of Jharkhand, in teeth of the Section 73 of Bihar Reorganisation Act the service condition existing prior to the bifurcation cannot be changed unilaterally without consent of the Central Government.

4. Learned counsel for the respondent-State submits by relying upon the submission made in the counter affidavit that the petitioner's case hinges upon

the order of appointment dated 23.05.1979 Annexure-3 which was wholly temporary in nature and never been confirmed till date. Even correspondence made with the Inspector General (Prisons), Bihar by the respondent No. 2 did not change the position as no order of confirmation was passed in respect of the appointment of the petitioner on the post of Head Clerk. Moreover, even after such designation was granted in the year 1979, but he has continued on the post of Clerk in different Divisional Jails like Chapra, Banka, Munger, Buxur and Bhagalpur etc. Learned counsel for the respondents, however, is not able to refute the contention of the petitioner based on the documents obtained through the RTI that the post of Head Clerk does exist in the Jail Training Institute, Hazaribagh as has been shown by the petitioner through documents brought on record by way of I.A. No. 471 of 2013 Annexure-1 dated 23.01.2008 as also Annexure-3 dated 28.04.2012. Learned counsel for the respondent has also not able to refute the documents i.e. excerpts of service book brought on record by way of the supplementary affidavit wherein he has been shown to have granted the scale of Head Clerk i.e. Rs. 4500-7000/-.

5. I have heard learned counsel for the parties at length and gone through the relevant materials on records. The claim of the petitioner for grant of designation for the post of Head Clerk has apparently been denied on two grounds, which has also already indicated hereinabove. The first ground that the post of Head Clerk was not allocated after bifurcation of the cadre is contrary to the records as even information obtained under the RTI in the year 2008 and 2012, the post of Head Clerk has been shown to be existing in the Jail Training Institute, Hazaribagh. So far as other ground for rejecting the claim of the petitioner is concerned it is not in dispute that the petitioner was given designation to the post of Head Clerk in the year 1979 by the appropriate Competent Authority and thereafter though confirmation might not have been made by the Competent Authority later on, but the petitioner has continued in the scale of Head Clerk even before and after bifurcation of the State as also evident from the excerpts of the service book in the scale of Rs. 4500-7000/-. Therefore, though the petitioner might have been shown to be working on the post of Clerk but was enjoying the pay scale of Head Clerk after bifurcation of the State. In these circumstances, the impugned order rejecting the claim of the petitioner for treating him as working on the post of Head Clerk does not appear to be based on reasonable grounds and factum of the case. Moreover, the petitioner has enjoyed the scale of Head Clerk on the basis of order passed in the year 1979 till the bifurcation of State. Any change in the designation of the petitioner or any change in the service condition of the employee is impermissible u/s 73 of the Bihar Reorganisation Act 2000 without the consent of the Central Government. Therefore, the impugned order does not stand the test of legal scrutiny and it is accordingly quashed.

6. It is informed that the petitioner has retired on 31.03.2010. In such circumstances, there is no reason to remand the matter to the respondent once again. Accordingly, the respondent No. 2, Inspector General, (Prison), Jharkhand,

Ranchi is directed to grant the scale of Head Clerk to the petitioner from due date since it has been stopped pursuant to the impugned order passed by the respondent authorities. Any consequential revision in the post retirement benefits and other salary benefits of the petitioner resulting therefrom should also be granted to him within a period of 12 weeks from the date of receipt of a copy of this order. This writ petition and I.A. are, accordingly, allowed in the aforesaid terms.