
(2003) 03 JH CK 0118
In the Jharkhand High Court
Case No : CWJC No. 1858 of 1995 (R)

Baidnath Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Citation : (2003) 4 JCR 121

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; A.K. Mehta, for the Respondent

Judgement

M.Y. Eqbal, J.—The petitioner has prayed for quashing the order as contained in letter No. 275 dated 1.7.1995 issued by respondent No. 2, Superintendent Engineer, PHE Circle, Dhanbad, whereby the claim of the petitioner for grant of first time bound promotion has been rejected.

2. The petitioner's case is that the petitioner along with others was appointed as Junior Accounts Clerk in 1979. In 1993 a seniority list was prepared wherein the petitioner was shown senior to respondent Nos. 4 to 6. On completion of 10 years of service the petitioner filed a representation on 11.12.1989 for grant of first time bound promotion. It is contended that no decision was taken by the respondents on the representation of the petitioner and in the meantime respondent Nos. 4 to 6 were granted first time bound promotion ignoring the case of the petitioner.

3. The respondents in their counter-affidavit have stated that the petitioner and the concerned respondents were appointed in Class-III post in the years 1979 and 1980 in the scale of Rs. 220-315. The said scale was subsequently merged on 1.5.1980 @ 260-408 which was again revised w.e.f. 1.4.1981 at Rs. 730.1080. The petitioner and respondents 4 to 6 were given benefits of that revised scale w.e.f. 1.4.1981. The stand of the respondents is that as per the circular dated 30.12.1981 of the Finance Department whereby it has been clerks

mentioned that those junior account clearly appointed in the scale of Rs. 220-315/- and who have availed the merger scale of Rs. 260-408 (revised to 730-1080) are not entitled to get first time bound promotion. The aforesaid circular was communicated to all the Superintending Engineers. It is contended by the respondents that promotion was wrongly given to respondent Nos. 4 to 6 and for that appropriate action has already been taken for recalling the order of promotion and recovery of the benefits given to those respondents.

4. I have heard Mr. A.K. Sahani, learned counsel for the petitioner and Mr. A.K. Metha, learned counsel for the respondents.

5. It has not been disputed that as per the Finance Department's circular those Junior Account Clerks whose pay scale was merged and who were placed in the scale of Rs. 730-1080 are not entitled to get first time bound promotion. It is, therefore, clear that respondent Nos. 4 to 6 were illegally given the benefits of first time bound promotion. Respondent Nos. 4 to 6, on whom notices have been served, have not appeared and contested the case by filing any counter-affidavit. In the absence of any counter-affidavit on their behalf and also taking into consideration the Finance Department's circular it can safely be held that those account clerks who have been given the new pay scale after merger of the pay scale are not entitled to first time bound promotion. Consequently it can also be held that respondents Nos. 4 to 6 have been wrongly and illegally given time bound promotion. This Court cannot perpetuate the illegality by going into the question of discrimination inasmuch as it is well-settled that if any act is done illegally in favour of one person, another person can not raise the issue of discrimination and ask the Court to perpetuate the illegality. At the same time the respondents are duty bound to correct their mistake and recall the order of promotion given to the respondents 4 to 6 and other employees. The respondents are therefore directed to take final decision in the matter of first time bound promotion given to respondent Nos. 4 to 6 within a period of 30 days from the date of production of a copy of this order.

6. With the aforesaid observation this writ application is disposed of.