
(2008) 02 JH CK 0060
In the Jharkhand High Court

Bal Krishna Singh and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 2 JCR 137

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Judgement

Narendra Nath Tiwari, J.—Petitioner No. 1, Bal Krishna Singh, seeks permission to abandon his prayer in the writ petition, as he has already gone to Bihar on mutual cadre allocation and joined as Executive Engineer.

2. Prayer is allowed. Petitioner No. 1 is permitted to do so.

3. In this writ petition, the petitioners have prayed for a direction on the respondents to allocate the final cadre of Executive Engineer to the petitioners and to allow them to work as regular Executive Engineer.

4. It has been stated that the petitioners have been allocated Jharkhand Cadre after bifurcation of the State and from Bihar, they have been sent after promotion from the post of Assistant Engineer to the post of Executive Engineer in pay scale of Rs. 10,000-15,000/-. It has been stated that the said promotion was given to the petitioners by Notification No. 12231(s) dated 1st November, 2006 before relieving them from Bihar Cadre. The petitioners claimed that In view of their promotion as Executive Engineer, they are entitled to the said post. After allocation of the Jharkhand Cadre, the petitioners joined, but they were not given posting as Executive Engineer. Thereafter, they filed representation for their posting as Executive Engineer, but the same was not heeded upon. Hence, the petitioners filed this writ petition.

5. By order dated 9th February. 2007 this Court had directed the respondents to see that if the petitioners have joined, necessary arrangement be made for payment of their salary.

6. During the pendency of the writ petition, a supplementary affidavit has been filed, stating, inter alia, that the petitioners have been now posted as In-charge Executive Engineer, whereas they are entitled to be posted as regular Executive Engineer.

7. A counter-affidavit has been filed on behalf of the respondents, stating, inter alia, that the Government of Bihar has issued provisional promotion order during the process of final allocation of the cadre and as such, the promotion was not in accordance with the rule as well as in terms of the cadre allocation. During the process of cadre allocation, the Government of Bihar should not have taken decision for promotion without consultation of the Jharkhand Government. It has been stated that as the Jharkhand Government was not consulted and the promotion has been given to the persons in excess of 67% they cannot be given promotional post of Executive Engineer.

8. Mr. Rajiv Ranjan, learned Counsel, appearing on behalf of the petitioners submitted that before issuing the notification, regarding promotion of the petitioners and others, the Jharkhand Government was consulted, but by Letter No. 2026(s) dated 22nd May, 2006 issued under the signature of the Deputy Secretary, Road Construction Department, Government of Jharkhand, contained in Annexure-8, a clear reply was given that since all the persons are posted in Bihar, no consent of Jharkhand Government is required for such promotion. It has been stated that once the petitioners were given promotion to the post of Executive Engineer before allocation of the cadre, their rank cannot be reduced. It has been submitted that large number of vacant posts of Executive Engineers are available in the department and the petitioners have been posted as Incharge Executive Engineer and now they have been discharging their duties as Executive Engineer and there is no impediment in declaring their cadre and giving regular post of Executive Engineer.

9. Mr. R.N. Sahay, Sr. SC-II submitted that the petitioner's grievance have already been redressed and in that way, they have already been posted as In-charge Executive Engineer. The petitioners may approach the concerned authority for consideration of their posting as regular Executive Engineer.

10. In view of the submissions made by learned Counsel for the parties and considering the material brought on record, this writ petition is disposed of giving liberty to the petitioners to file representation. along with a copy of this order, regarding their claim(s) before the Secretary-cum-Commissioner, Road Construction Department, Government of Jharkhand, respondent No. 2. If such representation is filed, the said respondent shall consider the same and take appropriate decision by passing a reasoned order, in accordance with law, within a period of two months from the date of receipt of the representation. At the end, it has been submitted on behalf of the petitioners that in spite of the interim order passed by this Court for consideration of payment of salary to the petitioners for the intervening period, the same has not been paid.

11. The petitioners may also file representation for payment of salary of the intervening period before the concerned authority. If such representation is filed, the same shall be considered and appropriate order shall be passed within the said period.