
(2007) 03 PAT CK 0080

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14568 of 2005

Bihar Mining Engineering Service Association and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 — Rule 2
Mineral Concession Rules, 1960 — Rule 22(4A)
Mineral Conservation and Development Rules, 1988 — Rule 42
Mines and Minerals (Development and Regulation) Act, 1957 — Section 18, 18(2)

Citation : (2007) 2 BLJR 1909 : (2007) PLJR 190 Supp

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Narendra Prasad, Adv, Akashdeep and Shyameshwar Kumar Singh, for the Appellant; Ashok Kumar Singh, Spl. PP Mines and Rajendra Prasad, Shiv Nandan Ray and Rama Sinha for Respondent No. 6, Chitranjan Sinha and Sanjay Kumar, for Respondents 7 and 9, Raj Nandan Prasad and Jai Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Shorn of verbiage, the petitioners' objection is to the posting of employees/officers of the Geology Directorate, even on adhoc basis or as working arrangement, as Assistant Mining Officer or Deputy Director, Mines that, according to them, are posts belonging to the Directorate of Mines.

2. Petitioner No. 1 before the Court is described as Bihar Mining Engineering Service Association; it is represented through its General Secretary. Petitioners 2 and 3 are individual employees. Petitioner No. 2 was posted as Mining Inspector, District Mining Office, Patna and petitioner No. 3 as Assistant Mining Officer (Incharge), District Mining Office, Purnea. They seek to challenge, a few, among a series of notifications, dated 28.10.2005 by which a number of employees/officers of the Mining Department were posted at different places. The petitioners

are aggrieved by notification Nos. 2055M, 2056M, 2058M, 2059M and 2060M. By notification No. 2055M, respondent No. 6 who was posted as Incharge, Deputy Director, Geology, Muzaffarpur Circle was given the additional charge of the Deputy Director, Mines, Muzaffarpur. By resolution No. 2056M, respondent No. 7 who was posted as Incharge Deputy Director, Geology, Bhagalpur Circle, Bhagalpur was given the additional charge of Deputy Director, Mines, Bhagalpur. By the other three resolutions coming under challenge, respondents 8, 9 and 10 who were Geologists were posted as Assistant Mining Officers at Gaya, Purnea and Aurangabad respectively. All the postings were made in administrative exigencies and till further orders.

3. The case of the petitioners is simple and straight forward. It is stated that the posts of Assistant Mining Officer, Deputy Director and Director, Mines are in the cadre of Mines and are the promotional posts for employees/officers at the respective lower levels. Hence, those posts could be occupied, even on adhoc basis and as working arrangement, by employees/officers of that cadre and not by anyone from outside. It is further stated that the employees/officers of Geology cadre did not possess the requisite qualifications to hold those posts.

4. On behalf of the petitioners, it is stated that in the Department of Mines, there are two separate directorates of mines and geology. The hierarchy of posts in the Directorate of Mines is (i) Assistant Mining Officer, (ii) District Mining Officer, (iii) Deputy Director, Mines, (iv) Additional Director, Mines & (v) Director of Mines. It is further stated that appointment as Assistant Mining Officers was made either by direct recruitment or by promotion from Mining Inspectors, the post immediately below it, in certain ratio that underwent some changes from time to time.

5. Mr. Narendra Prasad, Senior Advocate appearing for the petitioners invited my attention to different resolutions of the State Government (Annexure-1 series) fixing the quota and the minimum qualification for promotion of Mines Surveyor Overseer (Mines Inspector) to the post of Assistant Mining Officer. The resolution, dated 7.8.1976 provided that the vacancies in the post of Assistant Mining Officer would be filled up in the ratio of 70:30 by direct recruitment and by promotion from the post of Mines Surveyor Overseer (Mines Inspector) respectively, subject to the condition that only those Mines Inspectors who had the diploma in mining and mines surveying from the Bihar State Technological Education Council would be eligible for promotion. By resolution, dated 22.02.1978, the quota of promotion was extended to 50 per cent out of which 30 percent was reserved for diploma-holder Mines Inspectors and the remaining 20 per cent for non-diploma-holder Mines Inspectors, subject to the stipulation that in case of their non-availability, the 20 percent quota would also be filled-up by direct recruitment. Finally, by resolution, dated 30.07.2004, further modifications were made in the promotional quota of 50 per cent. It was provided that 40 per cent posts would be filled-up by promotion of diploma-holder Mines Inspector and the balance 10 per cent by promotion of those Mines Inspectors who, during their service

tenure, had obtained a mining degree or requisite qualification from AMIE. In case of non-availability of Mines Inspectors of the latter category, the remaining 10 per cent would also be available for promotion to diploma-holder Mines Inspectors.

6. On the basis of the aforesaid three resolutions, Mr. Prasad submitted that it was indisputable that the post of Assistant Mining Officer was the next promotional post for Mines Inspectors, and hence, it could be occupied even as working arrangement only by a Mines Inspector and not by any geologist belonging to a different cadre.

7. Mr. Prasad further submitted that the issue was no longer open and it was concluded by earlier decisions of this Court. He referred to the judgment and order, dated 19.08.1996 passed by a learned Single Judge in CWJC No. 115 of 1996 (R). In this case, the posting of a geologist as Assistant Mining Officer, Ranchi was challenged on the same grounds, as noted above, in a writ petition filed by petitioner No. 1 and some individual employees of the Mining Department. The learned Single Judge upheld the contentions advanced by the petitioners and quashed the notification by which the respondent geologist was posted as Assistant Mining Officer. It is a judgment in some detail and it is undeniable that it upholds practically all the submissions advanced on behalf of the petitioners. Against the judgment in CWJC No. 115 of 1996(R), the State preferred an appeal being LPA No. 228 of 1996 which was dismissed by a bench of the Court by a brief order, dated 2.5.2000.

8. Apart from these two, Mr. Prasad referred to a number of other judgments and orders of the Jharkhand High Court and of this Court. Some of the judgments/orders are annexed with the writ petition and some others were submitted in a separate volume in course of hearing before the Court.

9. On behalf of the State, it was submitted that the petitioners' claim was quite misconceived and untenable. It was submitted that after the decision of the Court in CWJC No. 115 of 1996(R), rendered on 19.08.1996 some basic changes took place with regard to the facts relevant to the case. In light of the direction of the Planning Commission and in order to augment its revenue collection and for better utilization of manpower, the Government took the policy decision to amalgamate the Directorates of Mines and Geology. To that end, the Government issued resolution No. 3464M, dated 27.08.1998 (Annexure-E) directing for the amalgamation of the Directorates of Mines and Geology and creation of a unified Directorate of Mines and Geology. In the resolution, sufficient safeguards were made to protect the seniority and promotional avenues of the employees/Officers belonging to the cadres of Mines and Geology consequent upon the amalgamation of the two. But at the same time provision was made (vide paragraph 6) for posting of Officers of the Directorate of Geology on the available equivalent posts of Additional Director, Deputy Director, District/Assistant Mining Officer under the previously separate Directorate of Mines. Further to that, the State Government issued resolution, dated 12.04.1999 (Annexure-F) published

in the Official Gazette of 5.5.1999, laying down guidelines for the transfer and posting of the Gazetted Officers of Mines and Geology Directorate. Paragraph 11 of the resolution stated that the service cadres of the employees/Officers of Mines and Geology Directorate were separate; nonetheless, in accordance with the Departmental resolution No. 3464M, dated 27.08.1998 (Annexure-E), excepting in the matter of cadre promotion, the separate cadres would not stand in the way of transfer/posting made in administrative exigencies and in the interest of revenue collection.

10. On behalf of the State, it was submitted that the decision in CWJC No. 115 of 1996 (R) came before the above developments and it was rendered on facts as stated by the petitioners. However, by the time the appeal was taken up the changes in the relevant provisions were already introduced and those changes were sought to be presented before the Court. But the Division Bench declined to consider them and rejected the appeal simply observing that the case was concluded by findings of facts.

11. On behalf of the State, it was further stated that coupled with the changes in the basic facts as indicated above, there was another development that made the earlier resolutions with regard to promotions (Annexure-1 series), relied upon by the petitioners, completely redundant and irrelevant.

12. It was pointed out that the State Government had constituted a Fitment Committee for giving its employees the Central Government scales of pay as per their demand. The Fitment Committee in its report recommended that no promotion should be allowed to Mines Inspectors who did not have a mining degree even if the rules permitted that 50 per cent posts of Assistant Mining Engineer would be filled-up from Mines Inspectors. The relevant portion of the recommendation of the Fitment Committee is contained in paragraph 21.2.6 of its report which is reproduced below:

13. Having looked at the mining cadre in detail we recommend as follows

(i) Not promoting those Mines Inspectors who do not have a degree in mines even if rules permit that 50 per cent of the posts of Assistant Mining Engineers will be filled from Mining Inspectors in the pay scale of Rs. 5000-8000.

(ii) Making Post Graduate Degree in Mining Engineering a desirable qualification as is prevalent in the Indian Bureau of Mines. At present in Bihar the Assistant Mining Engineers are promoted as District Mining Officers after 5 years. In the Indian Bureau of Mines the Assistant Controller of Mines take 10 years to be promoted as Deputy Controller of Mines but there is a jump in the scale. In the Government of India there is 75% direct recruitment in the Assistant Controller of Mines and 66.6% direct recruitment in the grade of Deputy Controller of Mines whereas in the Government of Bihar 50% of the posts of Assistant Mining Engineers are directly recruited and 50% are filled-up by promotion. The adoption of Government of India pattern may perhaps encourage induction of better Mining Engineers.

(iii) x x x x

14. The State Government accepted the report of the Fitment Committee on parity of pay scales with the Central Government employees by its resolution, dated 8.2.1999. In paragraph 2 of the resolution, it was stipulated as under.

15. In certain cases, the Fitment Committee have recommended enhanced educational/recruitment qualifications or prescribed other conditions. These have been accepted by the Government.

16. In light of the Government resolution, dated 8.2.1999, it was submitted that the petitioners could not claim promotion to the post of Assistant Mining Officer simply on the basis of the earlier resolutions as contained in Annexure-1 series. The Mines Inspector would now be eligible for promotion as Assistant Mining Officer only on acquiring a Mining degree.

17. Mr. Ashok Kumar Singh, Standing Counsel, Department of Mines submitted that in view of the Government resolutions, dated 27.08.1998 (Annexure-E) and 12.04.1999 (Annexure-F), there was no longer any obstruction in the way of posting of Geologists as Assistant Mining Officers in administrative exigencies and in the interest of revenue collection and further in light of the Government resolution, dated 8.2.1999 (Annexure-B) the petitioners could not lay claim for promotion as Assistant Mining Officer until the Mines Inspector acquired the Mining degree. Mr. Singh submitted that this took away the main plank of the petitioners' case based on separation of Directorates/cadres. In this regard, Mr. Singh submitted that after the aforesaid developments, the question once again came up for consideration before the Jharkhand High Court in CWJC No. 2112 of 2001 filed on behalf of the Awar Abhiyanta Sangh, Jharkhand. In that case, the Court took notice of the resolution, dated 27.08.1998 and declined to interfere with the appointments/postings of Assistant Mining Officers from different cadres of Geologists.

18. Mr. Singh further submitted that in some later cases, the Court gave direction to fill up the vacancies in the post of Assistant Mining Officer, available under the promotional quota on a regular basis. In pursuance of the direction of the Court, the Government ascertained the vacancies and took action to fill up the posts according to the statutory provisions and the prescribed norms. There were altogether 11 posts of Assistant Mining Officer for eligible Mines Inspector. 3 of those vacancies were filled up and 1 person from Jharkhand, belonging to the SC quota, came to Bihar as a result of cadre division. As a result, only 7 posts remained to be filled up by promotion to Mines Inspectors possessing the necessary qualifications. Against the 7 available vacancies, only 2 Mines Inspectors were found eligible for promotion in light of resolution No. 660, dated 8.2.1999 and the proposal for their promotion was sent to the Departmental Promotion Committee vide letter No. 2213/M, dated 22.11.2005.

19. Coming now to the objection that the Geologists did not have the qualification for being posted as Assistant Mining Officer or Deputy Director,

Mines, Mr. Singh submitted that compared to a non-degree-holder Mines Inspector, a Geologists was better qualified to be posted as Assistant Mining Officer. In this regard, he referred to certain statutory provisions. Learned Counsel submitted that Section 18 of the Mines and Minerals (Development & Regulation) Act empowered the Central Government to frame rules on matters specified under Sub-section (2). Clause (j) of Sub-section 2 was with regard to employment of qualified Geologists or Mining Engineers to supervise prospecting or mining operations. He further referred to Rule 22(4A) of the Mineral Concession Rules that empowered the State Government to approve mining plan of open cast mines in respect of certain minerals. The proviso to the rule stipulated that the State Government could exercise the powers of approval of mining plan through an Officer/Officers who should possess a degree in Mining Engineering or Post Graduate degree in Geology. He also referred to the Mineral Conservation and Development Rules, 1988 and submitted that Rule 42 under Chapter VI put a Mining Engineer and a Post Graduate degree-holder Geologist almost at par. He also referred to the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 and submitted that "competent Officer" under Rule 2(iii) was defined as meaning Assistant Mining Officer/District Mining Officer/Geologist posted as Mining Officer in the District and any other Officer authorised by the State Government.

20. Mr. Singh submitted that in view of the aforesaid statutory provisions, no objection could be raised against the posting of a Geologist, with a Post Graduate degree, as Assistant Mining Officer, or Deputy Director, Mines on grounds of lack of qualification.

21. On a careful consideration, it appears to me that the submissions made on behalf of the respondents in light of the later Government resolutions, dated 27.08.1998 (Annexure-E) and 12.04.1999 (Annexure-F) and further resolution No. 660, dated 8.2.1999 (Annexure-A) have much substance and the case of the petitioners based on the earlier resolutions as contained in Annexure-1 series can not be accepted.

22. Coming now to the several decisions relied upon by the petitioner. The first decision, dated 19.08.1996 (Annexure-4) was in CWJC No. 115 of 1996(R) (The Bihar Mining Services Engineering Association and Anr. v. State of Bihar and Ors.). As noted above, this decision undoubtedly supported the petitioners' case. An appeal preferred against the decision being LPA No. 228 of 1996(R) was also dismissed by a brief order, dated 2.5.2000. But as explained earlier after that decision the material facts concerning the issue underwent some fundamental changes and it would be no longer of any help to the petitioners after the Government resolutions as contained in Annexures E, F and A.

23. The petitioners next relied upon the order, dated 16.03.2005 by which a Bench of the Jharkhand High Court dismissed LPA No. 78 of 2005. In this case, a Geologist had gone to the Court challenging his recall from the post of Assistant Mining Officer to which he was earlier posted. In that case, the Court noted that

as a matter of policy, those Geologists who had been posted as Assistant Mining Officers in different districts were recalled and posted in their parent directorate. It was further observed that the Establishment Committee that considered the transfer matter also took into consideration the fact that all those Officers had completed three years service in their respective places of posting. Thus, the order was apparently on basically different facts. The Jharkhand Government seems to have taken a policy decision to recall Geologists posted as Assistant Mining Officers and to post them in their parent directorate. The position in Bihar as would appear from Annexures- E & F is just the opposite.

24. The next order relied upon by the petitioners is dated 30.06.2005 passed by a learned Single Judge of the Jharkhand High Court in W.P.(S) 3287 of 2005. This is only an interim order.

25. Another order, dated 5.10.2005 passed by another Single Judge of the same Court in W.P.(S) 3782 of 2005 is also an interim order.

26. The petitioners also relied upon two orders passed by single Judges of this Court in CWJC Nos. 679 of 2000 and 9250 of 2004. These two orders are not on the point at issue. In the two orders, directions were given to the State Government to fill up the vacancies in the post of Assistant Mining Officer on a regular basis. In pursuance of the direction, the State Government has already taken steps as stated by Mr. Ashok Kumar Singh and noted earlier in this judgment.

27. The petitioners also relied upon the judgment, dated 4.9.2001 by a learned Single Judge of the Jharkhand High Court in W.P.(S) No. 2675 of 2001. In this case, the posting of an I.A.S. Officer as Director. Science & Technology came under challenge. The decision does not seem to have much relevance on the issue involved in this case.

28. The petitioners also relied upon the order, dated 5.4.2006 passed by a Single Judge of the Jharkhand High Court. In this order, the notification by which certain Geologists were posted as Assistant Mining Officers was cancelled by the Government during the pendency of the writ petition filed to challenge it. The Court, therefore, held that the writ; petition had become infructuous and declined to discuss the rival contentions and the circular etc. referred to by the parties. This order too, therefore, can not be relied upon by the petitioner.

29. The other decisions submitted by the petitioners do not seem to have any direct bearing on the point at issue in this case.

30. None of the decisions/orders relied upon by the petitioners thus advance their case.

31. On a careful consideration of the matter, I am inclined to accept the submissions made on behalf of the respondent-State and I am plainly of the view that the petitioners are not entitled to the relief(s) as claimed by them.

32. The writ petition is without merit and it is accordingly dismissed.