
(2017) 01 JH CK 0013

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4077 of 2013

Bishwanath Prasad Gupta

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

Citation : (2017) 2 JBCJ 367

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Rajendra Krishna, Mr. Manish Kumar and Mr. Bibhash Sinha, Advocates, for the Petitioners; Mr. Anup Kumar, JC to GA, for the State; Mr. Rahul Kumar, Advocate, for the Respondent Nos. 6, 7 & 8

Final Decision : Allowed

Judgement

Mr. Shree Chandrashekhar, J.—Grievance of the petitioners is that they were illegally excluded from consideration for promotion to the post of Assistant Planning Officer. Another prayer is for quashing the promotion order dated 09.10.2013, whereby promotion to the respondent nos.6,7 and 8 has been granted.

2. Heard.

3. Briefly stated, the petitioners were appointed on the post of Senior Statistical Assistant between the period 1984 to 1999 and the respondent nos. 6,7 and 8 were also appointed on the said post between 1992 and 1999. All of them were confirmed in service by an order dated 14.05.2008, with effect from 01.03.1996. A meeting of the Departmental Promotion Committee for promotion to the post of Assistant Planning Officer was convened on 19.09.2013. There were 48 vacant posts, out of which 12 posts were to be filled up by promotion. Pursuant to the recommendation of the Departmental Promotion Committee, promotion order dated 09.10.2013 was issued whereby 5 persons including, the respondent nos.6, 7 and 8 were promoted to the post of Assistant Planning Officer. The

grievance of the petitioners is that they were not considered for promotion to the post of Assistant Statistical Officer on a non-existent ground, i.e., lack of educational qualification.

4. Mr. Rajendra Krishna, the learned counsel for the petitioners contends that the Recruitment Rules of 2012 do not require that the Senior Statistical Assistants must possess a Post Graduate degree in Economics, Commerce, Physics, Statistics or Mathematics with 55% marks, for promotion to the post of Assistant Planning Officer. It is contended that exclusion of the petitioners from consideration by the Departmental Promotion Committee is de hors the Recruitment Rules and while so, a direction may be issued to the respondent-State to consider the claim of the petitioners for promotion to the post of Assistant Planning Officer, without insisting upon Post Graduate qualification.

5. Per contra, Mr. Anup Kumar, the learned State counsel referring to Rule 10 of the Jharkhand Planning Service Rules, 2012 submits that the minimum educational qualification for appointment on the post of Assistant Planning Officer has been laid down under Rule 10(ii), whereby it is provided that a candidate must possess a Post Graduate degree in Economics, Commerce, Physics, Statistics or Mathematics with 55% marks and since the petitioners do not possess the aforesaid qualification, they were rightly not granted promotion. Referring to the decision in Rajendra Kumar Srivastava & Ors v. Samyut Kshetriya Gramin Bank & Ors reported in (2010) 1 SCC 335, the learned counsel for the respondent-State contends that no one has a right to claim promotion de hors the qualification prescribed under the Recruitment Rules.

6. Mr. Rahul Kumar, the learned counsel appearing for the respondent nos.6,7 and 8 supporting the impugned order dated 09.10.2013 submits that the respondent nos. 6, 7 and 8 who possess requisite qualification have rightly been promoted to the post of Assistant Planning Officer.

7. Relevant provisions of the Jharkhand Planning Service Rules, 2012 are extracted herein-below :

v/;k;&2

HkrhZ

6- HkrhZ dk L=ksr%& vU;Fkk micaf/kr ds flok;] bl lsok esa HkrhZ fuEu izdkj ls dh tk;sxh%&

d & bl fu;ekoyh ds v/;k; 3 ds vuqlkj lh/kh HkrhZ }kjkA

[k & bl fu;ekoyh ds v/;k; 4 ds vuqlkj izksUufr ds }kjkA

v/;k;&3

lh/kh HkrhZ

9- lh/kh HkrhZ dk L=ksr%& bl lsok dh ewy dksfV ds 75 izfr''kr in lh/kh HkrhZ ls Hkjs tk;saxsA

10- lh/kh HkrhZ gsrq vgrkZ%&

(i) vH;FkhZ dh vk;q% U;wure 21 o"kZ rFkk vf/kdre ogh gksxh tks jkT; ljdkj ds dkfeZd] iz"kklfud lq/kkj rFkk jktHkk"kk foHkkx ds }kjk le; le; ij fu/kkZfjr fd;k tk,A

(ii) vH;FkhZ dh U;wure "kS{kf.kd ;ksX;rk%& fdlh ekU;rk izkIr fo"ofokj; ls vFkZ"kkL=] okf.kT;] HkkSfrdh] lkaf[;dh] xf.kr esa LukrdsRrj esa U;wure 55 izfr"kr vadksa ds lkFk fMxzh gksuk vfuok;Z gksxkA

11- p;u dk vk/kk%& bl lsok dh ewy dksfV dk in vk;ksx ds }kjk le; le; ij vk;ksftr la;qDr izfr;ksfxrk ijh{kk ds ek;/e ls Hkjs tk;sxsA ewy dksfV ds in ij fu;qfDr gsrq vH;kFkhZ dks >kj[k.M yksd lsok vk;ksx }kjk vk;ksftr izfr;ksfxrk ijh{kk ds fy, fyf[kr izkfHkad ijh{kk ,oa vk;ksx }kjk fu/kkZfjr fyf[kr eq[; ijh{kk ,oa varohZ{kk esa Hkkx ysu gksxkA

v/;k;&4

izksUufr }kjk HkrhZ

16- izksUufr }kjk HkrhZ ds L=ksr%& 1 bl lsok dh ewy dksfV ds 25 izfr"kr inksa ij ;kstuk ,oa fodkl foHkkx ds iz"kklfud fu;a=.kk/khu ftyk ;kstuk bdkbZ;ksa esa dk;Zjr ojh; lkaf[;dh lgk;d IEizofrZr voj ;kstuk inkf/kdkjh ls ojh;rk&lg&;ksX;rk ds vk/kkj ij izksUufr }kjk Hkjs tk;sxsA

2- bl fu;ekoyh ds izo`Rr gksus ds izHkko ls bl lsok dh ewy dksfV ls fHkUu mPprj inksa ij iwoZ ls lh/ks fu;qDr bl lsok ds lnL;ksa dks lacaf/kr in Lrj ij ewy :i esa inLFkkfir le>k tk;sxk rFkk bls mPprj dksfV ds inksa dks buds inoy ds vuqlkj ojh;rk&lg&;ksX;rk ds vk/kkj ij budh izksUufr ls Hkjk tk;sxkA

3- ftyk ;kstuk inkf/kdkfj;ksa dh fjfDr;ksa dks ojh;rk&lg&;ksX;rk ds vk/kkj ij izksUufr n~okjk lgk;d ;kstuk inkf/kdkfj;ksa dh p;u lwph ls Hkjk tk;sxkA

4- mi funs"kd dh fjfDr;ksa dks ojh;rk&lg&;ksX;rk ds vk/kkj ij izksUufr }kjk ftyk ;kstuk inkf/kdkfj;ksa dh p;u lwph ls Hkjk tk;sxkA

5- la;qDr funs"kd dh fjfDr;ksa dks ojh;rk&lg&;ksX;rk ds vk/kkj ij izksUufr }kjk mi funs"kd dh p;u lwph ls Hkjk tk;sxkA

6- vij funs"kd dh fjfDr dks ojh;rk&lg&;ksX;rk ds vk/kkj ij izksUufr }kjk la;qDr funs"kd dh p;u lwph ls Hkjk tk;sxkA

In English

Chapter-II

Appointments

6. Source of appointment:- Appointment in this service, unless otherwise specifically provided, shall be done by the following methods:-

(a) direct appointment in accordance with chapter 3 of this rule.

(b) appointment by promotion in accordance with chapter-4 of this rule.

Chapter-III

Direct Appointment

9. Source for direct appointment: 75% of the post of this service will be filled through direct appointment.

10. Eligibility for direct appointment:- (i) Age: The minimum age limit will be 21 years and the maximum age limit will be such as time to time determined by the department of Personnel, Administrative reforms and Rajbhasa for the other state services.

(ii) Minimum Education eligibility: A post graduate degree in Economics, Commerce, Physics, Statistics and Mathematics with at least 55% marks will be the essential minimum qualification for this service.

11. Selection criterion:- The basic grade post of this service will be filled by the commission on the basis of combined competitive examination. The candidate has to appear in the written preliminary, written main and interview examinations conducted by the Jharkhand Public Service Commission.

Chapter-IV

Appointment by Promotion

16. The source of filling the post by promotion:- (i) 25% posts of basis grade of this service will be filled by promotion from amongst those working in district Planning unit under the administrative control of the Department of Planning & Development as Senior Statistical Assistants (changed nomenclature of Sub-Planning Officer) on the basis of seniority-cumeligibility.

(ii) The Officers earlier directly appointed on higher than basis grade posts of this service will automatically be deemed as posted in the suitably adjusted posts of this service from the date this rule comes into effect, and the higher grade posts of this service will be filled by promotion from amongst them on the basis of seniority-cum-eligibility.

(iii) The vacancies in the grade of District Planning Officer will be filled by promotion from the selection list of Assistant Planning Officers on the basis of senioritycum-eligibility.

(iv) The vacancies in the grade of Deputy Director will be filled by promotion from amongst the selection list of District Planning Officers on the basis of senioritycum-eligibility.

(v) The vacancies in the grade of Joint Director will be filled by promotion from amongst the selection list of Deputy Directors on the basis of seniority-cumeligibility.

(iv) The vacancies in the grade of Additional Director will be filled by promotion from amongst the selection list of Joint Directors on the basis of seniority-cum-

eligibility.

8. The Jharkhand Planning Service Rules, 2012 provides two sources of recruitment for the post of Assistant Planning Officer. Rule 6 provides that appointment in the service can be by way of direct recruitment under Chapter-III and by promotion under Chapter-IV. Chapter-III and Chapter-IV lay down separate procedures for appointment. Rule 9 under Chapter-III provides that 75% posts in the cadre of Assistant Planning Officer shall be filled up through direct recruitment whereas, Rule 16 provides that 25% posts in the basic cadre (i.e. Assistant Planning officer) shall be filled up through promotion to Senior Statistical Assistants. Under Rule 11 which deals with procedure for direct recruitment, a joint competitive examination through Jharkhand Public Service Commission is contemplated. It is provided that appointment shall be made on the basis of recommendation of the Commission which would prepare a merit list on the basis of the written test and the interview. In contra-distinction to the procedure laid down under Chapter-III, Rule 16 under Chapter-IV provides that promotion to the post of Assistant Planning Officer shall be on the basis of seniority-cum-eligibility. There cannot be a quarrel to the proposition that Departmental Promotion Committee assesses the eligibility of the candidates. Provisions under Chapter-IV of 2012 Rules do not indicate that a Senior Statistical Assistant, only upon attaining the essential qualification for direct recruitment on the post of Assistant Planning Officer, would become eligible for promotion to the post of Assistant Planning Officer. Rule 16 under Chapter-IV is clear and there is no ambiguity in the said rule. The criteria for promotion to different posts has also been provided in different sub-rules under Rule 16, which reiterate that the promotion to the higher grades shall be on the basis of seniority-cum-eligibility. By insisting upon an educational qualification which was not the essential qualification for appointment on the post of Senior Statistical Assistant, the Departmental Promotion Committee has acted contrary to the extant rules. Moreover, if qualification for direct recruitment is applied for promotion from feeder cadre, the provision for promotion would be frustrated. Merely because some of the candidates had acquired higher qualification, that is, Post Graduate qualification at the time of appointment on the post of Senior Statistical Assistant cannot be a ground for insisting upon Post Graduate qualification for promotion.

9. The petitioners, who were working on the post of Senior Statistical Assistant at the time when a meeting of the Departmental Promotion Committee was convened on 19.09.2013, were duly qualified and eligible for promotion to the post of Assistant Planning Officer. There were 48 posts of Assistant Planning Officer, out of which 12 posts are to be filled up under Chapter-IV i.e., by promotion. Out of those 12 posts, 5 Senior Statistical Assistants working under the Department have been promoted vide Office Order dated 09.10.2013. It is pleaded that there are as many as 7 posts still vacant. Considering the provisions under the 2012 Rules, I am of the opinion that claim of the petitioners for promotion to the post of Assistant Planning Officer was illegally rejected. It is

stated that, in the meantime, petitioner nos.6-8 have superannuated from service. Be that as it may, on the date when a meeting of the Departmental Promotion Committee was convened i.e., on 19.09.2013 they were still in service and therefore, it is hereby ordered that their claim for promotion shall also be considered by the Departmental Promotion Committee, a meeting of which shall be convened within two months from a copy of the order is communicated to the Departmental Secretary. The decision in Rajendra Kumar Srivastava & Ors v. Samyut Kshetriya Gramin Bank & Ors is not applicable in the facts of the case. In the said case, a dispute was raised in respect of seniority on the ground that some of the employees were granted promotion in breach of the rules.

10. The instant writ-petition stands allowed in the aforesaid terms, however, challenge to the order dated 09.10.2013 fails for the reason that respondent nos. 6, 7 and 8 were also qualified for promotion.