
(2018) 12 JH CK 0118
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4530 Of 2015

Chandrashekhar Prasad

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:

Citation : (2018) 12 JH CK 0118

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Vishal Kumar Tiwary, Sandeep Verma

Final Decision : Disposed Off

Judgement

1. This writ petition has been preferred with a prayer to grant promotion to the petitioner to Grade-IV since according to the petitioner he has become eligible for consideration of his case for promotion to Grade-IV, but decision has not yet been taken, even though after pronouncement of the judgment by this Court in W.P.(S) No.638 of 2006 (Arun Sinha & Others Vrs. State of Jharkhand and Others). There is no dispute now in counting the seniority since in that case it has been decided that the seniority of all the appointees would be counted from the date of initial appointment.

2. Mr. Vishal Kumar Tiwary, learned counsel appearing for the petitioner has referred to para 12 of the counter affidavit wherein it has been stated by the State-authority that for promotion in higher cadre, a gradation list of all the teachers working in different grade is under preparation and after finalisation of grade, proper decision to the promotion of teachers working in different grade shall be taken, as per the Bihar Taken Over Elementary School Teachers Promotion Rule, 1993. He further submits that the aforesaid affidavit has been filed by the respondent way back on 6th February, 2017 but even after lapse of substantial period of two years, no decision has yet been taken as stipulated in para 12 of the counter affidavit, therefore, appropriate direction has been sought

to be issued upon the State-respondent to complete the exercise within a reasonable period so that the candidature of petitioners along with others may be assessed for their promotion in Grade-IV in accordance with the provision of Rule, 1993.

3. Learned counsel for the State-respondent has fairly submitted that the writ petition may be disposed of by directing the competent authority to complete the exercise within a reasonable period.

4. Having heard learned counsel for the parties and after appreciating their rival submissions and before passing any direction upon the State-respondent, it needs to refer that the right to consideration for promotion is a fundamental right and if the rule permits for consideration of promotion, there cannot be any denial from the end of the respondent-authority.

5. The respondents are not disputing that the petitioner along with other similarly situated are not entitled to be considered for promotion rather they have taken stand in para 12 of the counter affidavit that the process of preparation of seniority list is going on and immediately after finalisation of the same, the decision for promotion would be taken as per the provision of Rule, 1993. But the aforesaid stand was taken in the counter affidavit sworn by the respondent-authority on 6th February, 2017 and thereafter substantial period has gone.

6. This Court, after considering the aforesaid stand taken by the State-respondent is of the view that the matter needs to be expedited and therefore, appropriate direction needs to be issued upon the competent authority to complete the exercise of promotion after consideration of candidature of one or the other candidate who was eligible to be considered for promotion as per provision of Rule, 1993.

7. Accordingly, respondent No.2 i.e. the Director, Primary education, Human Resources Development Department, Government of Jharkhand, Ranchi is directed to look into the matter and complete the process of preparation of gradation list, if not already completed as yet, and complete the process of promotion in accordance with law within a period of three months from the date of receipt of a copy of this order.

8. It is made clear that this order cannot be considered to be an order passed in favour of the petitioner, rather it will be treated to be a general direction for consideration of candidature of one or the other candidate who are to be brought under the consideration zone for their assessment and the authorities will take into consideration the eligibility criteria from the provision contained in Rule, 1993 before granting promotion to one or the other candidate.

9. With the above observations and directions, this writ petition stands disposed of.