

(2017) 02 JH CK 0151
In the Jharkhand High Court
Case No : 6298 of 2010, 6397 of 2010

Dharmendra Kumar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

Constitution of India, Article 14, Article 226, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomou

Citation : (2017) 02 JH CK 0151

Hon'ble Judges : Pramath Patnaik

Bench : SINGLE BENCH

Advocate : Manoj Tandon, Someshwar Roy, Ashok Kr Singh, Vikash Kishore Prasad, Pratyush Lala

Final Decision : Disposed

Judgement

1. Since common issues have been involved in both the cases, with the consent of learned counsel for the parties both the cases are being disposed of by this order.

2. In the aforesaid writ applications, the petitioners have sought for direction to the respondents to consider and promote/absorb the petitioners on the sanctioned and vacant Grade-III post of Accounts Clerk on the basis of recommendation made by the respondents as per the norms and established procedure for filling of 50% of the vacant posts through internal candidates. The petitioners have further prayed for direction to the respondents to allow the officiating allowance of the higher post of Accounts Clerk on which the petitioners had been discharging their duties since 1991 and 1993 respectively. The petitioners have further prayed for commanding upon the respondents more particularly the respondent nos.2 and 3 as to how and under what circumstances a similarly situated Class-IV Junior employee namely Sri Brahmadeo Singh, who had also been appointed in similar fashion on Grade-IV post of Chowkidar has

been absorbed on Grade-III post of Typist cum Clerk whereas the petitioners, who had been rendering continuous service have been denied.

3. The facts, as averred in the W.P.(S) No.6298 of 2010, in a nutshell, is that on 02.11.1979 the petitioner was appointed as a Chowkidar on daily wage basis. In the year 1991 in 94th meeting of the respondent Board, it has been resolved to absorb the daily wage employees working on Muster Roll prior to 21.01.1985 and accordingly, several employees including the petitioner has been converted/absorbed under work charge establishment. Considering the qualification and eligibility of the petitioner, the respondents posted the petitioner in accounts division and the petitioner was entrusted the work of higher post of Accounts Clerk. Being satisfied with the performance of the petitioner from time to time several recommendation for promotion of the petitioner have been made by the respondents as evident from Annexure-4 series of the writ petition. As evident from Annexure-5 and 6 of the writ petition, the Executive Engineer wrote to the respondent Managing Director to consider and promote the petitioner to the post of Grade-III. The respondents vide its 22nd meeting decided to fill up the vacant

post of Grade-III through internal candidates working on the Grade-IV post through a departmental examination. The respondent, Personnel Department, Government of Jharkhand directed all the departments in the State to hold internal examination for absorption of eligible candidates of Grade-IV employees on Grade-III category. In the meantime, the petitioner has reached the upper most pay scale, and is being paid the pay scale of GradeIII w.e.f. 01.01.2008, in view of the resolution of the Government dated 28.02.2009 vide Annexure-10 to the writ application. It has further been averred in the writ application that the respondents vide order dated 14.10.2009, vide Annexue-11, has absorbed one similarly situated Grade IV employee namely Brahmadeo Singh, who was appointed on the post of Chowkidar on the higher post of Typist cum Clerk with retrospective effect. Since the petitioner is senior to the said Brahmadeo Singh both in terms of appointment and qualification, has submitted representations before the respondent authorities on various occasions, ventilating his grievance as per Annexure-12 series. Since, the grievance of the petitioner could not be redressed, left with no alternative the petitioner being constrained has approached this Court, invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievance.

4. The facts, as averred in the W.P.(S) No.6397 of 2010, in a nutshell, is that on 03.01.1978 the petitioner was appointed as a Carpenter on daily wage basis. In the year 1990 in 94th meeting of the respondent Board, it has been resolved to absorb the daily wage employees working on Muster Roll prior to 21.01.1985 and accordingly, several employees including the petitioner has been converted/absorbed under work charge establishment. Considering the qualification and eligibility of the petitioner, the respondents posted the petitioner as Typist cum Clerk and the petitioner was entrusted the work of higher post. Being satisfied with the performance of the petitioner recommendation for promotion of the

petitioner has been made by the respondents as evident from Annexure-4 of the writ petition. The petitioner has been discharging his duties since 1993 to the said post without pecuniary benefit. But, one similarly situated Grade IV employee namely Brahmadeo Singh, who was appointed on the post of Chowkidar has been absorbed on the higher post of Class-III Typist cum Clerk with retrospective effect. Since, the grievance of the petitioner could not be

redressed, left with no alternative the petitioner being constrained has approached this Court, invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievance

5. Learned counsel for the petitioners has vehemently submitted that as per the norms and procedure 50% of Grade-III posts are to be filled up through internal candidates but the respondents by resorting to adhocism has adopted dilatory tactics to initiate process of promotion/absorption of the eligible persons including the petitioners. Learned counsel for the petitioners further submits that the petitioners have been discharging their duties on higher posts i.e. Grade-III without any officiating allowance, but the respondents by dillydally tactics has lingered the process of absorption of the petitioners on Class-III posts. Learned counsel for the petitioner further submits that one similarly placed employee namely Brahmadeo Singh has been absorbed on Class-III post, but the petitioner has been subjected to hostile discrimination, which is violative of Article 14 and 16 of the Constitution of India.

6. A Counter affidavit dated 12.03.2015 has been filed on behalf of the respondent nos.1 to 4, wherein it has been stated that in exercise of powers vested in it by the relevant section of the Jharkhand State Housing Board Act, 2000, the Jharkhand State Housing Board (hereinafter referred to as JSHB) has framed Jharkhand State Housing Board Service Regulation 2013 and the Clause 39 and 40 of the Service Regulation, 2013 provides for the criteria, eligibility and procedure for promotion of the employee of the Jharkhand State Housing Board. As per the schedule of the promotional posts, Class-IV employees of the JSHB are eligible to be considered for promotion as LDC provided that they have the academic qualification of Intermediate or with 10 years experience vide Annexure-A to the counter affidavit. It has further been stated that subject to the conditions as laid down in Clause 40 of the aforesaid regulation, the selection for consideration for promotion is to be done on the basis of seniority cum merit. On 25.09.2013 the JSHB sent the Hindi translation of the JSHB service regulation to the State Government for approval but the approval of the State Government have not been received so far. It has further been submitted that as soon as the State Government communicates its approval to the above mentioned service Regulation with or without modification, the JSHB will proceed to

give effect to the same and the claim of the petitioner for promotion to Class-III post would be examined as soon as the above mentioned JSHB Service Regulation, 2013 are approved by the State Government.

7. A reply to the counter affidavit has been filed on behalf of the petitioner. In the said reply, the petitioner has mentioned the inter se position of the petitioner vis a vis Brahmadeo Singh, working in work charged establishment. The name of the petitioner is at serial no.54, whereas the name of Sri Bhahmadeo Singh is at serial no.154 of the list of 257 work charged employees and the said Brahmadeo Singh has been promoted to the post of Typist cum Clerk on 23.01.2001 with consequential benefits, in view of the order dated 17.09.2008 passed in W.P. (S) No.3851 of 2002.

8. A reply to the rejoinder has been filed on behalf of the respondents, wherein it has been submitted that JSHB is prepared to consider the case of the petitioner for promotion to a Class-III post, after the Service Regulations framed by the JSHB is approved by the State Government.

9. A counter affidavit dated 04.12.2015 has been filed on behalf of the respondents, wherein it has been submitted that the said Rules (Jharkhand State Housing Board Service Regulation, 2013) after being scrutinized by Urban Development and Housing Department, Jharkhand certain clarifications and modifications of the Rules was sought from the Housing Board. In this regard, the Housing Department vide its letter dated 06.08.2015 asked the Housing Board to make the amended rules available to the department but to no avail. Again the Housing Department vide dated 09.09.2015 reminded and requested the same. It is further stated that the modified and amended Jharkhand State Housing Board Service Regulation has been submitted by the Housing Board vide its letter dated 09.09.2015 to incorporate certain other provisions in the draft rules. Thereafter, Urban Development and Housing Department vide letter dated 30.11.2015 intimated the opinion of the Finance Department to the Managing Director, Jharkhand State Housing Board. Therefore, only after the approval of both the departments i.e. the Personnel, Administrative Reforms and Rajbhasa Department and Law (Justice) Department, Jharkhand the Housing Department will send the approved draft rules to the Cabinet for its approval.

10. A counter affidavit dated 11.05.2016 has been filed on behalf of respondents, wherein it has been submitted that new draft rule has been

framed and approval of Departmental Minister is being sought. Soon after the approval of Departmental Minister, the proposal would be sent to Planning-cum-Finance, Personnel Department and the Law Department for approval.

11. A supplementary affidavit dated 21.06.2016 has been filed by the petitioner, wherein vide Annexure-IX, the name of the petitioner vis a vis Brahmadeo Singh appears at serial no.54 and 154 respectively of the list of 257 work charge workers. Since, the petitioner has made out a case for discrimination, the petitioner is entitled to be promoted with consequential benefits at par with his junior namely Brahmadeo Singh in the light of the Annexure-11 of the writ petition.

12. After giving my anxious consideration to the respective counsels at bar and

on perusal of the records, I am of the considered view that there is no gainsaying of the fact that the draft rules i.e. Jharkhand State Housing Board Service Regulation, is on the final stage of enactment as disclosed by various affidavits referred to supra, and both the petitioners namely Ashok Kumar Singh (petitioner in W.P(S) no.6298/2010) as well as Nawal Kishore Sharma (petitioner in W.P(S) no.6397/2010) though have been absorbed in Class-IV posts, have been discharging their duties in Class-III posts since 1991 and 1993 respectively. Petitioner has cited the case of one Brahmadeo Singh, who has been absorbed in Class-III post though stoutly denied by the respondents, Housing Board, who according to learned counsel for the Housing Board appointed as Class-III post from the day one. In reply to the rejoinder dated 28.07.2015, the respondent-Housing Board has denied the averment made in paragraph 25 of the writ petition and submitted that mistake has been corrected and it has been submitted at para 6 that Sri Brahmadeo Singh, who also worked as a work charged staff was promoted from a Class-IV to Class III post. Since, the petitioners have discharged their duties in Class-III for more than two decades, the case of the petitioners deserves to be considered for promotion to Class-III posts provided that they possess the requisite experience and qualification for the promotion/absorption for Class-III posts.

13. In view of the admitted factual position, it would be apposite to direct the respondents more particularly respondent no.1 to 4-Housing Board to consider the case of the petitioners for promotion/absorption in Class-III

posts as per the eligibility criteria for selection in accordance with law within a period of two months from the date of receipt/communication of a copy of the order.

14. With the aforesaid direction, both the writ petitions stand disposed of.