
(2004) 09 JH CK 0059

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1408 of 2004

Dr. Murli Manohar Sengupta

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 4 JCR 167

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : P.K. Prasad, for the Appellant; V. Shivnath, A.K. Sahani, S.K. Verma and S.C. Mines, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Heard the parties.

2. Petitioner has prayed for quashing that part of Notification No. 101 (4) dated 26.2.2004 (Annexure-6), whereby respondent No. 5 has been posted as District Tuberculosis Officer, (DTO for short), Lohardaga and petitioner has been ordered to work as Medical Officer in the centre. The main grounds of challenge are that petitioner was transferred on the said post of DTO, Lohardaga only four months ago i.e. on 11.10.2003 (Annexure-2) and secondly he has been made to work as Medical Officer, District Tuberculosis Centre, Lohardaga under respondent No. 5, who is junior to the petitioner.

3. Learned counsel for the petitioner submitted that on 8.4.2002, respondent No. 5, who was Medical Officer cum Civil Surgeon, Lohardaga was given additional charge of the District Tuberculosis Centre, Lohardaga. On 11.10.2003, petitioner was posted as DTO, Lohardaga but just after four months petitioner was again made Medical Officer, District Tuberculosis Centre, Lohardaga by impugned order dated 26.2.2004. Petitioner represented to respondent No. 2 in this regard by letter dated 1.3.2004. Petitioner's further case is that in the provisional seniority

lists of the Government of Bihar as well as Government of Jharkhand, petitioner is much senior to respondent No. 5. Learned counsel for the petitioner relied on unreported order of this Court in the case of Dr. Akhilesh Pratap Singh Vs. State of Jharkhand and Others, rendered on 16.7.2003 in WP (S) No. 1013 of 2003 (Annexure-10). It was submitted that in the said case irrespective of grant of Senior Selection Grade this Court declined to determine the seniority and on the basis of the provisional seniority list, this Court held that it was desirable that the senior person should be allowed to hold charge of higher post. Learned counsel for the petitioner further relied on a judgment reported in 1987 PLJR 838, Jaibir Mishra v. L.N. Mithla University and Ors., in support of his contention that senior person should be given charge of the higher post. Learned counsel for the petitioner further submitted that petitioner's substantive pay is higher than respondent No. 5. He further submitted that respondent No. 5 cannot rely on the alleged Senior Selection Grade in view of the Resolution of the Finance Department of the Government of Bihar dated 8.2.1999 whereby the State Government decided to abolish the existing facilities of time bound promotions and Selection Grade with effect from 1.1.1996. It is lastly submitted that petitioner also completed training on 31.2.2004 i.e. before the impugned order dated 26.2.2004 was issued.

4. The stand of the respondent-State is that a training was required to be completed in view of the guidelines of the Revised National Tuberculosis Control Programme (RNTCP). Respondent No. 5 completed the training on 13.10.2002, whereas petitioner completed the same on 31.1.2004 and therefore respondent No. 5 was given additional charge of the District Tuberculosis Officer on 8.4.2002, though petitioner is senior to respondent No. 5 in appointment. State has also said in its counter affidavit that if this Court directs, the respondents are ready to take decision of the petitioner's representation within time fixed by the Court.

5. The case of respondent No. 5 is that he is senior to petitioner and he has filed objection against the provisional seniority list. It is further contended by respondent No. 5 that he was granted Junior Selection Grade on 18.7.1998 with effect from 1.4.1993 but petitioner has not been granted such grade as yet. In these circumstances, he justified the impugned orders. It was further submitted that petitioner was posted on 11.10.2003 as District Tuberculosis Officer, Lohardaga wrongly as he was not trained and therefore the said mistake was corrected by asking him to work as Medical Officer in the District Tuberculosis Centre, Lohardaga under respondent No. 5.

6. In the facts and circumstances noticed above and on the basis of materials placed on record, it is not possible for this Court to decide the seniority of petitioner vis-a-vis respondent No. 5. Petitioner is senior in appointment. He is also senior as per the provisional seniority lists although objection of respondent No. 5 to the same is pending. So far as training in RNTCP is concerned, respondent No. 5 completed the same on 13.10.2002, whereas petitioner

completed it on 31.1.2004. It is not disputed that training was compulsory for posting as a District Tuberculosis Officer. Admittedly when the petitioner was posted as Tuberculosis Officer on 11.10.2003 he was not trained. Similarly, respondent No. 5 was given additional charge of District Tuberculosis Officer, Lohardaga on 8.4.2004 though he completed the training on 13.10.2002. However, on 26.2.2004 when the impugned order has been passed, petitioner and respondent No. 5 both were trained. The seniority between the petitioner and respondent No. 5 is to be decided by the Department. The question is as to who should be allowed to continue as District Tuberculosis Officer, Lohardaga.

7. Following the said order passed in the case of Dr. Akhilesh Pratap Singh Vs. State of Jharkhand and Others, in WP (S) No. 1013 of 2003, I find that on the basis of the provisional seniority list, the impugned part of order dated 26.2.2004 is liable to be set aside. Petitioner will continue to work as District Tuberculosis Officer, Lohardaga as per the Notification dated 11.10.2003 and respondent No. 5 will continue to work as Civil Surgeon, Lohardaga. This order will not stand in the way of the respondents in making any transfer and posting in accordance with law.

8. However, the Department must take decision in accordance with law, in the matter of seniority including the seniority of petitioner and respondent No. 5, as expeditiously as possible and preferably within a period of three months from the date of receipt/production of a copy of this order. If the department takes such a decision expeditiously, it will be in the interest of work and it will also avoid further litigations about seniority.

9. In the result, this writ petition is allowed with the aforesaid observations and directions.