
(2003) 01 JH CK 0035
In the Jharkhand High Court
Case No : CWJC No. 866 of 2000

Girja Shankar Tiwary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-01-2003

Acts Referred:

Citation : (2003) 2 JCR 350

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Shila Prasad and Saurav Arun, for the Appellant; A.K. Mehta, SCI and Rupesh Kumar Singh, JC to SC I, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.

Heard both sides

1. The point to be determined in this writ is whether acquiring of higher qualification changes the original seniority?

2. The question aforesaid arises out of the fact that the petitioner was appointed in the year 1965 as Assistant Teacher. One Md. Jasmuddin was appointed in the year 1966 on the same post. Then it transpires that Md. Jasmuddin acquired a qualification of B.A. in the year 1979 and the petitioner acquired his B.A. degree in the year 1981. A gradation list was subsequently prepared and since Jasmuddin Khan had obtained the B.A. degree in the year 1979, he was made senior to the petitioner. Then the promotion was taken up in the year 1987 and Jasmuddin was promoted to the exclusion of the petitioner on two grounds, firstly Jasmuddin has acquired the qualification of B.A. prior to the petitioner and secondly while the petitioner's case was considered due to roster policy in the district no vacancy was available for his promotion,

3. In the counter affidavit it has not been stated by the respondents that

whether Jasmuddin's case was also covered by the roster policy or not. Thus the case of the petitioner is that the case of Jasmuddin also falls in category of the petitioner and therefore both of them should have been considered and since the petitioner was senior ab initio in service to Jasmuddin he should have also been promoted along with Jasmuddin.

4. There is no statute shown to me which gives the power to the authorities to alter the seniority on the ground of acquisition of a higher qualification. Therefore if a person acquires higher qualification and he is made senior to a person on that basis alone, in my opinion, it is prima facie wrong and against the provisions of Law.

5. It is well settled principle of law that the seniority has to be computed from the date of entering into the service and admittedly the petitioner was senior to Jasmuddin. As stated earlier only acquisition of higher qualification does not entitle a person to become senior. The only effect of that acquisition of qualification is that a person who acquires such qualification becomes eligible for being considered for the higher grade, if the higher post requires that qualification. Eligibility for consideration for higher grade is quite a different fact than the inter se seniority. If the promotion to the higher grade would have taken in the year 1979 or prior to 1981 when the petitioner had not got the qualification of B.A. then the petitioner could have been excluded on the ground that the petitioner was not eligible for being considered. But since the promotions were given in the year 1987 when both the petitioner and Jasmuddin had come within the consideration Zone for promotion then in that circumstances as the enhanced qualification is not the only basic criteria for promotion, because denying the promotion to petitioner ignoring original seniority was unjustified. As it has been stated earlier that nothing has been shown that Jasmuddin was not under the District Roster Policy and therefore he was promoted earlier and no vacancy was there for the petitioner. Therefore on this ground also the promotion of the Jasmuddin who was junior to the petitioner can not be held valid. I am not dealing with the validity of the promotion of Jasmuddin but I am only concerned with the promotion of the petitioner. The posed question is answered accordingly,

6. In the aforesaid circumstance, the respondents are; directed to reconsider the case of the petitioner in the light of the observation made above within a period of two months from the date of receipt/ production of a copy of this order and Annexure 8 is quashed. The respondents are also directed to consider the question of granting the post of Headmaster to him, besides B.A. Trained scale. The writ is allowed at the admission stage itself.