

(2003) 03 JH CK 0122
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3976 of 2002

Jagdish Mahto

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Citation : (2003) 4 JCR 352

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : J.C. to A. Allam, Sheela Prasad, for the Appellant; Government Pleader-IV, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioner has prayed for quashing the order as contained in memo No. 2119 dated 8.5.2002 issued under the signature of respondent No. 5, the Additional Secretary, Government of Bihar, Water Resources (Irrigation), department, Bihar, Patna whereby a direction has been issued to demote the petitioner from the post of Junior Engineer to the post of Surveyor and to fix his pay scale in the post of Surveyor and to recover the difference of pay from him with effect from 1.7.97.

2. The petitioner was appointed as Surveyor in 1965. In 1979 a decision was taken by the Government to promote the Surveyors to the post of Junior Engineer and consequent upon that a list of surveyors who were eligible for promotion including the name of the petitioner was sent and the petitioner along with six others were promoted to the post of Junior Engineer on the recommendation of the Establishment Committee vide office order dated 3/1/84. The petitioner submitted his joining on the post of Junior Engineer and continuously worked to the satisfaction of all concerned since 1984. All of a sudden the petitioner received a copy of the letter addressed to the Chief Engineer, Water Resources Department issued by the Additional Secretary to the Government of Bihar vide the impugned memo dated 8.5.2002 asking him to

revert the petitioner from the post of Junior Engineer to the post of Surveyor.

3. Petitioner's case is that no show cause was issued to the petitioner prior to issuance of the impugned order of reversal and the action of the respondents is wholly illegal and without jurisdiction.

4. The respondent-State of Bihar filed counter affidavit stating, inter alia, that for appointment on the post of Junior Engineer the recommendation of the Public Service Commission was mandatory. In 1987 it was brought to the notice of the State Government appointments on the post of Junior Engineer was being done by violating the recruitment rules. After considering the matter the personnel and administrative department, Government of Bihar issued a resolution under the signature of the Chief Secretary, Government of Bihar vide memo No. 11585 dated 2.11.87 fixing the norms and method for appointment to the post of Junior Engineer and in the Works Department and all the previous circulars with regard to appointment were cancelled w.e.f. the date of issuance of the Government resolution. It is further stated that since the appointment were contrary to the Government resolution dated 14.3.77 and 2.11.87 and was without getting the recommendation of the Bihar Public Service Commission, such appointments were cancelled after giving opportunity of hearing. Accordingly the Water Resources Department issued reasoned orders dated 11.6.96 and 1.7.97. Xerox copies of those orders have been annexed as B series.

5. In a separate counter affidavit filed the respondents-State of Jharkhand it is stated that the impugned letter was issued by the Government of Bihar and not by the Government of Jharkhand and therefore, the present writ application is not maintainable against the State of Jharkhand. It is stated that the petitioner is the employee of Water Resources Department, Government of Jharkhand and is posted under the Chief Engineer, Water Resources Department as Junior Engineer and it is the Government of Bihar who issued direction to demote the petitioner from the post of Junior Engineer to the post of surveyor and to fix his pay scale and to recover the difference of the pay.

6. It have heard Mrs. Sheila Prasad, learned counsel for the petitioner and learned JC to Mr. A. Allam, counsel for the State of Bihar and the learned GP IV.

7. From perusal of the Xerox copy of the order dated 11.6.96 (Annexure-B) issued by the Engineer in Chief cum Commissioner cum Special Secretary, it appears that a direction was issued to all the departments brining to their notice that as per the Government resolution dated 2.11.87 appointment shall have to be made with the recommendation of the Bihar Public Service Commission. I was therefore ordered that all appointment of Junior Engineer made on promotion from the post of surveyor after 2.11.87 are illegal and they are cancelled. It is therefore, clear that any promotion made from the post of Surveyor to the post of Junior Engineer after 2.11.87 without any recommendation of the Bihar Public Service Commission were declared illegal and were fit to be cancelled.

8. In the instant case, as noticed above the petitioner was promoted to the post

of Junior Engineer on the recommendation of the Establishment Committee vide office order No. 46 dated 3.1.84. A Xerox copy of the office order has been annexed as annexure-2 to the writ application. After the said promotion the petitioner joined on the post of Junior Engineer and has been continuously working on the said post. Prima facie therefore, the promotion of the petitioner to the post of Junior Engineer which was made prior to 2.11.87 cannot be said to be illegal. Consequently, reversion of the petitioner from the post of Junior Engineer to the post of surveyor and direction for recovery of difference of salary is wholly without jurisdiction.

9. In course of argument learned counsel appearing for the State of Bihar has not disputed the fact that by virtue of the resolution dated 2.11.87 any promotion to the post of Junior Engineer could not have been made without the recommendation of the Bihar Public Service Commission. Learned counsel very fairly submitted that since the petitioner was promoted prior to 2.11.87 i.e. in 1984, the resolution referred to hereinabove is not applicable to him.

10. Be that as it may, since admittedly the petitioner was promoted to the post of Junior Engineer in 1984 and he was allowed to function in the said higher post for more than 15 years with due deliberation, it would be certainly unjust to hold that he has no sort of claim to such post and can be reverted unceremoniously. In this connection reference may be made to the decision of the Supreme Court in the case of Narender Chadha and Others Vs. Union of India and Others, .

11. Taking into consideration the entire facts of the case and the submission made by the learned counsel, I have no option but to set aside the impugned order reverting the petitioner from the post of Junior Engineer to the post of Surveyor. This writ application is therefore allowed and the impugned order of reversion of the petitioner from the post of Junior Engineer to the post of Surveyor and the direction for recovery of the difference of salary is set aside.