
(2012) 05 JH CK 0032

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3170 of 2003

Jyotish Prasad Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 3 JCR 4

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Ashutosh Anand and Amrendra Pradhan, for the Appellant; S.P. Roy for the State of Bihar and Ajit Kumar, JC to GP-IV for the State of Jharkhand, for the Respondent

Final Decision : Allowed

Judgement

P.P. Bhatt, J.—Petitioner by way of filing this writ petition under Article 226 of the Constitution of India has prayed for issuance of appropriate writ, order or direction, directing the respondents to give effect of promotion to the post of Superintending Engineer w.e.f. 21.4.2003 i.e. the date on which the respondent Nos. 5 to 9, who are juniors to the petitioner have been promoted to the post of Superintending Engineer with all consequential benefits. It is the case of the petitioner that he was initially appointed as Engineer Assistant in February, 1970 under the respondents after following due procedure and subsequently promoted to the post of Assistant Engineer on 22nd of June, 1974. Thereafter on due recommendation of Bihar Public Service Commission, petitioner has been promoted to the post of Executive Engineer w.e.f. 30th of June, 1987. According to the petitioner, his promotion fell due in 1994 for the post of Superintending Engineer as required length of service as Executive Engineer is seven years, but the petitioner has been punished in a departmental proceeding vide order No. 978 dated 2.9.1998, whereby recovery of Rs. 90,750/-from the salary of the petitioner as well as stoppage of promotion for five years from due date of

promotion have been inflicted upon the petitioner.

2. Learned "counsel for the petitioner submitted that the petitioner has challenged the said order of punishment by way of preferring W.P.(S) No. 4519 of 2003 and therefore, if the petitioner succeeds in that writ petition, as a consequential relief, petitioner will also be entitled to get, the benefit of promotion from the due date, meaning thereby, the date on which the officers junior to the petitioner have been promoted to the post of Superintending Engineer vide order dated 21.4.2003.

3. As against that, the learned counsel for the respondent-State, while referring counter-affidavit filed by the respondent-State, submitted that petitioner has been inflicted punishment vide order dated 2.9.1998, whereby recovery of Rs. 90,750/-from the salary of the petitioner as well as stoppage of promotion for five years from due date of promotion have been inflicted upon the petitioner and therefore, in view of the order of punishment, petitioner's case cannot be considered for his next promotion. It is submitted that the case of the petitioner can only be considered after five years from his due promotion, in view of the order dated 2.9.1998. It is further submitted that respondent-authorities have not committed any error while passing the order dated 21.4.2003 whereby respondent Nos. 5 to 9 have been promoted to the post of Superintending Engineer. Learned counsel appearing for the State, while referring para-9 of the reply filed by the respondent Nos. 8 & 9, submitted that no irregularity or illegality has been committed by the respondent-State while passing the order with regard to grant of promotion dated 21.4.2003.

4. Considering the aforesaid rival submissions and on perusal of the materials on record, it appears that the petitioner's case was considered by the respondents-authority before issuance of notification dated 21.4.2003 whereby the respondent Nos. 5 to 9, who are juniors to the petitioner, have been promoted to the post of Superintending Engineer by the order of Government of Bihar, although they are working and posted under the State of Jharkhand, but on account of the order passed by the disciplinary authority dated 2.9.1998 inflicting punishment of recovery as well as stoppage of promotion for the period of five years from the due date, petitioner was debarred from promotion. Being aggrieved and dissatisfied with the orders passed by the disciplinary authority as well as appellate authority, petitioner preferred W.P.(S) No. 4519 of 2003 and the said writ petition has been allowed by this Court and thereby, the impugned orders dated 2-09-1998 (Annexure-3) as well as dated 14.06.2002 (Annexure-11) in W.P.(S) No. 4519 of 2003 have been ordered to be quashed and set aside and therefore, now the case of the petitioner is required to be considered by the respondent-authorities for promotion from the due date i.e. the date on which other officers, who were juniors to the petitioner, have been promoted vide notification dated 21.4.2003. Accordingly, respondent-authorities are directed to give effect of promotion to the post of Superintending Engineer w.e.f. 21.4.2003 i.e. the date on which the respondent Nos. 5 to 9 have been

promoted to the post of Superintending Engineer, with all consequential benefits, including arrears of difference of salary and also take necessary steps for fixation of revised pension, as the petitioner has already superannuated. This writ petition is allowed, accordingly.