
(2009) 06 JH CK 0019
In the Jharkhand High Court

Khaderan Sharma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-06-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 06 JH CK 0019

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Judgement

Ajit Kumar Sinha, J.—The petitioner has preferred two writ petitions. The first writ petition W.P.(S) No. 1644 of 2007 has been preferred for the following reliefs:

i) For issuance of an appropriate writ(s)/Order(s)/direction(s) commanding upon the respondent to provide him the benefit of assured career progression Scheme 2002 which provides that an employee shall be entitled to second financial progression on completion of 24 years of regular service.

ii) For issuance of an appropriate writ(s)/Order(s)/direction(s) commanding upon the respondents to pay the officiate pay as he officiated on the post of Boiler Supervisor in view of provision made u/s 103 of the Jharkhand Service Code.

2. During the pendency of first writ petition, he has preferred second writ petition W.P.(S) No. 6929 of 2007 for subsequent cause of action which arose vide impugned order dated 22.11.2007 by which he was reverted from class 3 to class 4 posts on the ground that his promotion was irregular and against the Circular.

3. The main contention raised by the counsel for the petitioner is that his promotion order was regular promotion to the post of Boiler Assistant on a regular pay scale vide order dated 8.7.86 issued by the Competent authority. He further submits that the order of promotion was confirmed vide memo No. 65 dated 22.2.91 and he continued to render his service on the promoted post for good 21 years till issuance of the order dated 22.11.2007. His main grievance is

that the order dated 22.11.2007 is on the face of it illegal and against the well settled cardinal principal of natural justice since no opportunity was granted. Even though the order is punitive in nature and involves civil consequences and has been given effect to retrospectively with direction to recover the amount.

4. The learned Counsel for the respondents submits that the promotion order was in contravention to the Circular and passed by incompetent authority and it was in this background that it was reconsidered and order was passed along with direction to initiate action against the authority who had passed the order of promotion. It has further been submitted that the petitioner himself has represented before competent authority asking for promotion.

5. I have considered the rival submissions and pleadings. Prima-facie, it appears that the Circular does not apply in the case of promotion since it relates to word "appointment".

6. Be that as it may, there is no dispute about the fact that the recovery order that also retrospectively have been passed without giving any opportunity or issuance of any show-cause notice and that too after lapse of good 21 years. The minimum bare requirement is to comply with the cardinal principal of natural justice and in absence of that the order impugned is on the face of it illegal, unsustainable and violative of the Article 14 of Constitution of India and is accordingly set aside. However, the respondent authority, if so advised, is at liberty to initiate action in accordance with law.

7. The respondent authority should also consider the pending representation of the petitioner for claim of Second A.C.P. and dispose it of on its own merit within a period of three months from the date of receipt of a copy of this order.

8. It goes without saying that if any recovery has been made from the salary of the petitioner, the same shall be refunded to the petitioner.

9. Both the writ petitions are accordingly disposed of.