
(2015) 12 JH CK 0012
In the Jharkhand High Court
Case No : W.P. (S) No. 858 of 2015

Krishnadeo Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-12-2015

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2015) 12 JH CK 0012

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Manoj Tandon, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. The legal issued involved in this writ petition is in relation to the construction of Rules 7(3) of the Jharkhand Secretariat Services Rules, 2010. Petitioner is Upper Division Clerk having qualification of Matriculation which was the minimum eligibility criteria required at the time of entering in service as a typist in undivided State of Bihar when he was appointed on 01.07.1987. Post of Secretarial Typist was converted as Upper Division Clerk and the petitioner was designated as Upper Division Clerk in 2007. He got allocated to the State of Jharkhand upon bifurcation of the parent State of Bihar by virtue of the Provisions of Bihar Reorganization Act, 2000 vide notification dated 03.02.2011 issued by the Deputy Inspector General of Police(Provision), Bihar, Patna, Annexure-4 in terms of the decision of the Ministry of Personnel, Public Grievances and Pension, Government of India order No. 13 Jhr./10 dated 12.10.2010 (Annexure-3). The Jharkhand Secretariat Service Rule, 2010 were framed in exercise of powers conferred under proviso to Article 309 of the Constitution of India by the order of Governor of the State. It provides for the Constitution of Jharkhand Secretariat Services, Appointment and Service Conditions etc. and such other incidental matter. It has been made effective from

the date of Gazette Notification i.e. 03.08.2010. Different cadre of Secretariat service are enumerated in Rule 3 starting from Assistant Grade, Section Officer Grade, Grade-I, Selection Grade (equivalent to the rank of Deputy Secretary) and Senior Selection Grade (equivalent to the rank of Joint Secretary). The post of Assistants are Non Gazetted Post while rest of them are gazetted post. The relevant provisions which relate to the petitioner's case are contained in Rule-7, which lays down the provisions for recruitment to the post of Assistant Grade and Section Officer. Both Hindi and English version of the Rules as published in the Extraordinary Gazette Notification and are enclosed by the petitioner. Provisions of Rule 7 are quoted hereinunder:--

"7. RECRUITMENT TO GRADE I, SECTION OFFICERS" AND THE ASSISTANTS" GRADE:--

(1) Grade-I

Vacancies in Grade I shall be filled up by promotion on the basis of Seniority-cum-fitness of the Section Officers who have rendered not less than eight year of approved service.

(2) Section Officers Grade

50% of regular posts in the Section Officers" Grade shall be filled by promotion on the basis of seniority-cum-fitness of Assistants who have rendered not less than eight years of approved service in the Assistant Grade. Remaining 50% shall be filled up through Limited Departmental Competitive Examination (LDCE) for Assistants who have completed three years of service in the Assistants Grade and having graduate qualification.

"Provided that UDC"s having graduate qualification and at least seven years of approved service in the respective grades, may also be allowed to appear in the Limited Departmental Competitive Examination to be conducted for appointment to the post of Section Officers as a one time measure, but such a concession shall be limited to be availed of in the first Limited Departmental Competitive Examination (LDCE) only to be held immediately after the extant recruitment rules have become effective. Thereafter this one time special provision shall be deemed to have lapsed permanently."

(3) Assistants" Grade

Seventy five per cent of the regular posts in the Assistants" Grade shall be filled up by direct recruitment on the basis of a competitive examination held by the Commission for this purpose, from time to time. The minimum educational qualification for appointment to Assistant Grade shall be Graduation.

Fifteen percent of regular posts shall be filled up by promotion of Upper Division Clerks included in the select list for the Assistant Grade.

Remaining ten percent of regular posts shall be filled up through LDCE for Upper Division Clerks of JSCS and Stenographers(both having 5 years of approved

service and Graduate Qualification) to be held by the Commission for the purpose, from time to time.

(4) Department of Personnel, Administrative Reforms and Rajbhasa shall frame Rules for the competitive examination and will allocate candidates on the basis of the results of such examinations to various departments and offices."

3. Learned counsel for the petitioner has made following submission in relation to the provisions of Rule 7(3). According to him, perusal of Rule 7(3) shows that for the purposes of direct recruitment to 75% regular posts in the Assistants" Grade, the minimum educational qualification for appointment is graduation. Remaining 10 % of regular posts should be filled up through Limited Departmental Competitive Examination for Upper Division Clerks of JSCS i.e. Jharkhand Secretariat and Clerical Services and Stenographers, who qualified 5 years of approved service and have Graduate Qualification. It is submitted that Rule making authority has consciously not prescribed qualification of Graduation for 15% quota for promotion of Upper Division Clerks to the Assistants" Grade. Respondents have, however, taken a contrary view and insisted upon qualification of Graduation for the purposes of promotion also, which has aggrieved the petitioner to approach this Court.

4. Leaned counsel for the petitioner has relied upon the provisions of Section 73 of the Bihar Reorganization Act and submitted that petitioner"s service conditions cannot be altered without consent of the Government of India. In this case those incumbents of the Upper Division Clerk Cadre who has been retained in successor State of Bihar have got promotion to the post of Assistants" Grade, based upon their matriculation qualification and no higher qualification was required. The provisions of the instant Rule if read in the manner otherwise would amount to change in the service conditions of the petitioner to his detriment. He would be denied chances of promotion. Consideration for promotion is a fundamental right and cannot be taken away.

5. Learned counsel for the State has harped upon the construction adopted by the respondent-Department of Personnel, Administrative Reforms and Rajbhasa. According to their view, for recruitment to the post of Assistants" Grade either through direct recruitment or promotion or through Limited Departmental Competitive Examination, minimum educational qualification of graduation is a must. It is their case that only those incumbents in the cadre of Upper Division Clerks, who have obtained qualification of graduation have been considered for promotion to Assistants" Grade after coming into force of the Rules. It is also their case that in the hierarchy of the cadre as referred to hereinabove, the Assistants" Grade being in the bottom, an uniformed educational qualification is required to be applied as incumbents are also entitled to be considered for next higher promotion to the post of Section Officer Grade or Grade-I or even thereafter as necessary higher educational qualification is required for discharge of such duties. It is submitted that as per Rule-19, if there is any doubt relating to interpretation of the rules or the regulations made therein, it is opinion of the

Department of Personnel, Administrative Reforms and Rajbhasa, which is to be treated as final. Petitioner, therefore, cannot insist upon the lower qualification for being promoted to the next higher post.

6. I have considered the submissions of the parties and gone through the relevant materials pleaded including the Rules 2010. In the construction of provision of any statute, the context and text both are to be kept into regard. As it appears that Rules of 2010 have been for the first time framed providing for Constitution of the Jharkhand Secretariat Services and its recruitment and service conditions. The Assistants' Grade is in the bottom of hierarchy of the grades as prescribed under Rule 3. Upon perusal of Rule-7, which is quoted hereinabove., it is apparent that recruitment to Assistants' Grade, which is the feeder to the next higher grade of the Section Officer is to be undertaken from three sources i.e. through direct recruitment; through promotion from the UDC and through Limited Departmental Competitive Examination of Upper Divisional Clerk. Rule 7(2), provides for promotion from the Assistant Cadre to the Section Officer Grade, up to 50 % on the basis of Seniority-cum-fitness of Assistants, who have rendered not less than eight years of approved service in the Assistant Grade. Remaining 50% shall be filled up through Limited Departmental Competitive Examination for Assistants who have completed three years of service in the Assistant Grade and are having graduation qualification. Rule 7(2) proviso indicates that Upper Division Clerk, who have graduation qualification and are having at least 7 years of approved service in the respective grades, may also be allowed to appear in the Limited Departmental Competitive Examination to be conducted for appointment to the post of Section Officers as a one time measure, to be availed in the first Limited Departmental Competitive Examination only, to be held after the recruitment rules are made effective. This special provision would be deemed to have lapsed permanently.

7. The construction of relevant provisions of Rule 7(3) relating to promotion of UDC in 15% quota of regular post cannot be read out of the context to mean that those who have lesser qualification than graduation are also entitled for promotion to the next higher post of Assistants' Grade, which is in the bottom of the hierarchy of Secretarial Services and from which promotional ladders are available up to the level of Senior Selection Grade, which is Joint Secretary to the Government of Jharkhand or equivalent post in the State Civil Services Grade-A (Ministerial). In the matter of promotion from Section Officers Grade to the next higher Grade-I, the same are to be filled up by promotion on the basis of seniority-cum-fitness in the Section Officers who have rendered not less than 8 years of approved service. Higher qualifications has relevance in so far as holding of higher promotional post is concerned in view of the nature of the function and duties attached to the post. It has got a nexus with the object sought to be achieved. Efficiency which comes in the trail of higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunities to those possessing higher educational qualifications. As has been held in the case of the State of Jammu and The State of Jammu and Kashmir Vs. Shri Triloki

Nath Khosa and Others, by the constitution Bench of the Hon''ble Supreme Court, classification on the basis of educational qualification made with a view to achieving administrative efficiency, cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of the classification. Educational qualifications have been recognized by the Hon''ble Apex Court as a safe criterion for determining the validity of the classification. Hardship to one or the other candidate like the petitioner who is only a matriculate, would not overshadow the wider consideration of achieving administrative efficiency considering the nature of duties and functions attached to the higher post. The hierarchies of post in the Secretarial services go up to the rank of Joint Secretary or equivalent post in the State Civil Services Grade-A (Ministerial). Therefore, while constituting the basic cadre of Assistant from the category of direct recruits or promotee, a qualification of graduation is prescribed for the integrated cadre. This is perfectly in consonance with the requirement of the services for the purposes of future promotion to the next higher post of such incumbent.

8. Opportunity to be promoted to the Assistants Grade is not altogether denied, it is, however, subject to attaining educational qualification of graduation. As is also evident from the stand of the respondents, those incumbents, who have obtained higher qualification of graduation, have been considered and promoted to the Assistant Cadre. In this context Rule 7(3) which contains the provisions relating to recruitment to the post of Assistants'' Grade laying down a minimum educational qualification for appointment to Assistants'' Grade i.e. Graduation cannot be read in the manner what learned counsel for the petitioner has interpreted. The Assistants'' Grade cadre is to be constituted in terms of 2010 Rules. The State is not denied the power to lay down an uniform educational qualification for Constitution of the said cadre. This in no way can be said to have taken away any vested right of promotion of the petitioner to the next higher post i.e. Assistants'' Grade. A higher qualification, which has been laid down in the light of governing factors, which determine the Constitution of service, cannot be said to be irrational or arbitrary. In that sense, contention of the petitioner that his service conditions have been altered to his disadvantage upon allocation of successor State of Jharkhand also does not merit acceptance. It is not that petitioner has been reduced in rank or his scale of pay has been changed at the time of allocation of cadre. There is no vested right to be promoted to the next higher post. The promotion to any next higher post is to be guided by the Rule which are in vogue on the date of consideration of promotion. The opinion laid down by Hon''ble Supreme Court in this regard in the case of Deepak Agarwal and Another Vs. State of Uttar Pradesh and Others, at para-26 is quoted hereunder:--

"26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the

date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.."

9. Laying down of higher qualification has therefore relevance, in so far as holding higher post is concerned, in view of the nature of functions and duties attached to the post. It has a rational nexus with the object sought to be achieved. The Hon"ble Supreme Court after survey of several precedents has, in the case of Dhole Govind Sahebrao and Others Vs. Union of India (UOI) and Others , held as follows. Para-40 of the judgment is quoted hereunder:--

"40. As a proposition of law it is imperative for us to record that chances of promotion do not constitute conditions of service, and as such, mere alteration of chances of promotion, would not per se call for judicial interference. The above general proposition would not be applicable in case the chances of promotion are altered arbitrarily, or on the basis of considerations which are shown to be perverse or mala fide."

10. A chance of promotion do not constitute conditions of service and as such, mere alteration of chance of promotion would not per se call for judicial interference, unless they are altered, arbitrary or are shown to be perverse or malafide.

11. Considering in totality the aforesaid facts and the reasons recorded hereinabove, this Court is of the view that the provisions of Rule 7(3) do mandate the requirement of minimum educational qualification for appointment of Assistants" Grade as graduation whether it be through direct recruitment or promotion or through Limited Departmental Competitive Examination from the cadre of UDC. This interpretation would be inconsonance with the aim and object of the Rules, which has been framed for the first time in 2010 for the purposes of Constitution of Jharkhand Secretariat Services laying down the provisions relating to its recruitment and service conditions.

12. In view of the aforesaid discussion, therefore, petitioner has failed to make out any case for interference. Accordingly, the writ petition is dismissed.