
(2004) 02 JH CK 0075
In the Jharkhand High Court
Case No : C.W.J.C No. 3841 of 1996 (R)

Lalan Prasad Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 JCR 79

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Saurav Arun, for the Appellant; Indrani Sen Choudhary and Kundan Kumar, for the Respondent

Judgement

R.K. Merathia, J.—Heard the parties.

2. In this writ petition, the order dated 21.7.1995 (Annexure-9) has been challenged. By this order, petitioner who was a Peon, a class IVth employee, was provisionally appointed as dispatch clerk, a class IIIrd post with effect from 1.8.1995. Petitioner claimed that instead of 1.8.1995 he should have been appointed on the said post of dispatch clerk with effect from 8.7.1986. On 3.9.1997, during the pendency of this writ petition, on his purported representation, he was appointed on the post of dispatch clerk, with effect from 1.8.1986, without monitory benefits, vide Annexure-A, to the counter affidavit. Though this order dated 3.9.1997, not granting monitory benefits, has not been challenged by the petitioner in this writ petition but his learned counsel submitted that petitioner is entitled to the monitory benefits also with effect from 1.8.1986.

3. From the materials placed before this Court, it is not clear whether the said orders dated 8.7.1986 (Annexure-C), 21.7.1995 (Annexure-9) and 3.9.1997 (Annexure-A) are legal and valid, or not. Parties could not show the legal basis for passing the said orders.

On account of leave of the Despatch Clerk, petitioner officiated on that post from 8.1.1986 to 7.7.1986. But by the said order dated 8.7.1986 he was appointed on the post of Despatch Clerk by the Superintending Engineer, provisionally for three months in anticipation of approval by the headquarters.

There is nothing to show that such appointment was approved by the headquarters. The clerk on leave, joined. Petitioner started working as Peon from 8.1.1987. Then by letter dated 17.1.1987, the Superintending Engineer recommends petitioner's application for regularising him on the post of Despatch Clerk (Annexure-2). On 18.8.1990, the Registrar, PHED Department writes a letter to the Superintending Engineer referring petitioner's case on the basis of an endorsement made by the Chief Minister's Secretariat, Patna (Annexure-4). On 12.5.1992, the Chief Engineer writes that the Superintending Engineer is competent to promote/appoint 25% candidates from class IVth post to class IIIrd post for which necessary steps should be taken in accordance with law taking into consideration the eligibility, merit, seniority and after proper verification (Annexure-7). Petitioner filed a writ petition being CWJC No. 1324 of 1994 (R) for his regularisation on the post of Despatch Clerk. This Court disposed off the said writ petition on 6.4.1995 (Annexure-8), with a direction to the Superintending Engineer to take final decision in the matter in terms of the said directions of the Chief Engineer dated 12.5.1992.

This Court never said that the Superintending Engineer should act against the law. In order dated 21.7.1995, the Superintending Engineer found that there has been serious illegalities in promotion/appointments of the employees on the post of clerks, but as it was difficult to rectify it, he desperately appointed the petitioner provisionally on the vacant post of Despatch Clerk with effect from 1.8.1995.

He forgot that if illegality was committed in cases of other employees, it was a matter for initiating actions against them and the erring officers, but that could not be a basis for perpetuating the illegality. Further, he did not consider that from 1.3.1987, petitioner was working as a Peon.

Then on the purported representation of the petitioner, during the pendency of this writ petition, Annexure-A, order was passed on 3.9.1997 appointing him on the post of Despatch Clerk with effect from 1.8.1986 though without monitory benefits.

4. It prima facie appears that the Circulars issued from time to time have not been followed while passing the said orders dated 8.7.1986, 21.7.1995 and 3.9.1997. The Department of Personnel & Administrative Reforms, Government of Bihar issued a Circular on 31st March, 1992 superseding all earlier notifications and providing that appointments on class IIIrd post will be made through Bihar Subordinate Service Selection Board. The respondents have taken stand in paragraph 9 of the Supplementary Counter Affidavit filed on 12.1.2004 that the said notification is not applicable in the instant case because the

petitioner's case has been considered with effect from 1.8.1986, as per the Resolution prevalent at that time, and in view of the direction of this Court passed in CWJC No. 1324 of 1994. In my opinion, the Department was/is required to act, on the basis of the Circulars which are operative at the time of passing of the order. High Court never said that the respondents should ignore the law and procedure.

5. In these circumstances, the matter has to be remitted back to the Secretaryship the concerned Department. He by himself or by deputing a competent officer enquire into the entire matter afresh and pass a speaking order after hearing the petitioner, in accordance with law. He will examine whether the orders passed by the Superintending Engineer from time to time on 8.7.1986, 21.7.1995 and 3.9.1997 have been passed correctly in accordance with law or not. He will also examine whether the claim of the petitioner that he should be appointed/regularized with effect from 1.8.1986 on the post of Despatch Clerk with all monitory benefits, is tenable or not. It goes without saying that to whatever claim/relief, the petitioner is found entitled as per the law, should be given to him.

The Secretary will also initiate an enquiry to find out whether one or other employee has been illegally appointed/promoted/regularized or not, so that appropriate actions can be taken against them and the erring officers.

All these exercise should be completed within two months from the date of receipt/production of a copy of this order.

The registry will sent a copy of this order to the Secretary of the concerned department immediately.

6. It is made clear that in the absence of relevant materials, this Court has not gone into the merits of the claims of the petitioner. I have not decided which circular(s) of the Government including the said circular dated 31.3.1992 will be applicable in this case. The competent/concerned authority will be free to take decision in accordance with law.

7. At this stage, the judgments relied on by learned counsel for the petitioner to show that if promotion is given from a retrospective date, the monitory benefits should also be paid, are not relevant.

8. With these observations and directions this writ petition is disposed of.