
(2017) 02 JH CK 0087

In the Jharkhand High Court

Case No : Cont. Case (Civil) No. 45 of 2015

Lalita Minz

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Citation : (2017) 2 JBCJ 5 : (2017) 2 JCR 242

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Anil Kumar Sinha, Sr. Advocate, for the Petitioners; Ms. Aparajita Bhardwaj, J.C. to A.A.G, for the Opposite parties

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J.—Heard learned Senior Counsel for the petitioners and counsel for the State representing the opposite parties.

2. In compliance of the judgment dated 19th August, 2014, the operative portion of which reads as under, the department undertook an exercise and promoted several officers including petitioner no. 2, Agapit Tete. Petitioner nos. 1 and 3 were not promoted on the grounds that they had not passed Departmental Exam mandatory in terms of Rule 11 of the Jharkhand Welfare Service Rules, 2013 notified on 2nd August, 2013. Moreover, petitioner, Sri Ishdaur Soren had superannuated on 31st March, 2015 while petitioner, Smt. Lalita Minz had superannuated on 31st August, 2015.

"In the aforesaid circumstances, it appears proper to direct the respondent authorities of the State to act in terms of the service rules of 2013 for consideration of the cases of promotion of eligible persons of petitioners" cadre, as per the terms and conditions prescribed under the rules of 2013.

Needless to say, while undertaking such an exercise, all eligible persons who fulfil the necessary criteria and conditions, would be considered for promotion to the next higher post and if the petitioners are otherwise found eligible and fulfil the

necessary laid down criteria, their cases be also considered along with other eligible persons. Let the respondents undertake such an exercise within a period of four months from the date of receipt of a copy of this Judgment. Needless to say, dependent upon such exercise, persons who are found eligible be conferred promotion to the next higher post thereafter with all consequential benefits.

The writ petition stands disposed of.

3. Opposite parties have explained the reasons for delay in completion of the exercise by way of their detailed third supplementary show cause filed on 14th September, 2016. According to them, the exercise of promotion contemplates fulfilment of eligibility criteria by the persons in the zone of consideration and passing of departmental exams such as Hindi Writing, Hindi Oral, Accounts (with books), Account (without books) and Departmental Legal (without books). Swatchtha Certificate from the office of Lokayukt and Clearance from the Cabinet Vigilance Department as well as Roster Clearance is also required in terms of Rule 12 of 2013 Rules. Office of Lokayukt communicated its certificate through letter dated 4th February, 2015, Vigilance Department through its letter dated 24th March, 2015 and Roster Clearance from the Personnel Department was received on 30th April, 2015. Due to these facts, the preliminary exercise required for consideration before Departmental Promotion Committee took sometime, thereafter only the Departmental Promotion Committee held its meeting on 25th/26th August, 2015. On consideration of recommendation of Departmental Promotion Committee, the notification for promotion was finally issued on 29th January, 2016. The Member, Board of Revenue intimated through letter dated 24th December, 2015 that 1st and 2nd half yearly Departmental Examination, 2014 & 15 has been scheduled in between 16th to 22nd of January, 2016 for Gazetted Officer by the Revenue Board in all five Commissionerary Head Office in the State of Jharkhand. All the then Sub Divisional Welfare Officer were directed to appear in the departmental exam and last date of filling up application was 5th January, 2016. In these circumstances, some of the persons superannuated like the petitioner nos. 1 and 3 also. Opposite parties therefore are not guilty of wilful disobedience of the order of this Court.

4. Learned Senior Counsel for the petitioners submits that there is no explanation worthwhile on the part of opposite parties for failure to complete the exercise within a period of 4 months from the date of judgment dated 19th August, 2014. It is submitted that the notification of promotion also shows that six months time has been allowed to those, who had not passed the departmental exam. The latches and delay on the part of the opposite parties have denied valuable right of promotion to the petitioner nos. 1 and 3. These petitioners' case could also be considered for notional promotion, which would have enabled them to avail of at least enhanced post retirement benefits.

5. I have considered the submission of the parties and perused the relevant materials on record. The operative portion of the order dated 19th August, 2014 quoted above goes to show that the respondent authorities of the State were

directed to act in terms of the Service Rule, 2013 for consideration of cases of eligible persons of petitioner" cadre for promotion. Definitely the time period of 4 months from the date of receipt of a copy of judgment were not met in undertaking exercise by opposite parties, for which no prayer for extension of time was either made before this Court. The instant contempt petition is pending since 3rd February, 2015 itself.

6. The opposite parties, in their show cause, especially third supplementary show cause when asked to explain the reasons for delay, have given chronology of events leading to the completion of exercise for promotion, which left some persons like the petitioner nos. 1 and 3 out of promotional exercise. One of the reasons could also be the delay in completion of preliminary exercise. In the meanwhile, petitioner nos. 1 and 3 had retired on 31st August, 2015 and 31st March, 2015. Had the exercise been completed within the time line prescribed, the case of such persons would have also been considered.

7. It however also cannot be lost sight of that in case of such an exercise which involves clearance from various departments like the office of Cabinet Vigilance Department and Personnel Department, the movement of files consumes sufficient time. This may not be wholly within the control of the opposite party officials of the welfare department.

8. The requirement of eligibility laid down under the Rules can also not be waived in case of any such exercise of promotion as it is the mandate of law. As a consequence of that, petitioner nos. 1 and 3 seems to have lost in the race and are naturally aggrieved. However, in the promotional exercise those, who have been considered for promotion were in service on the date Departmental Promotion Committee meeting was held.

9. In administrative law, claim for promotion to a higher post is tenable even if a person has superannuated on the date of Departmental Promotion Committee, in case the promotion to a junior has been granted from a date anterior to the date of retirement of the person concerned. This however has not been the case here. These issues however are not within the contempt jurisdiction of the Court as they relate to the merits of the matter. In exercise of contempt jurisdiction, it is to be seen whether the action or omission of opposite parties are in wilful and deliberate disobedience of the order. On that count, it can only be said that the opposite parties have not taken due diligence and efforts to complete the exercise within a strict time frame despite the mandate of law under 2013 Rules and the direction passed by this Court in the writ petition. However, though in the aforesaid circumstance, the respondents may be guilty of delay in concluding the exercise, petitioner nos. 1 and 3, cannot as a matter of right claim promotion.

10. Therefore, on a consideration of the totality of facts and the reasons recorded above, the contempt petition is disposed of, however, with a cost of Rs. 10,000/- upon opposite parties to be paid to the petitioner nos. 1 and 3 in equal proportion within a period of 4 weeks from the date of receipt of a copy of this

order.