
(2009) 05 JH CK 0038
In the Jharkhand High Court

Maheshwar Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 05 JH CK 0038

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for issuance of an appropriate writ(s), order(s), direction(s) for grant of notional promotion to Selection Grade from 1.5.1980 and Super Selection Grade from 2nd January, 1983 alongwith a direction for payment of the monitory benefits to which the petitioner is entitled to receive from such notional promotion as per the decision of the Full Bench of the Hon"ble Patna High Court in C.WJ.C. No. 2995 of 1990 and other analogous cases decided on 19.9.2000 Reported in 2000 (4) BLJR 262.

2. The main contention raised by the learned Counsel for the petitioner is that in his 30 years of service he had not received any promotion or benefit only because of not passing the final examination In Accounts as prescribed by Rule 157(3)(J) of the Bihar Boards Miscellaneous Rules 1958. He further submits that after the merger of the Lower Division Clerk and Upper Division Clerk in the year 1980 a new cadre of an Assistant has been created and the State Government accepted the recommendation of the 4th Pay Revision Committee on 30.12.1981 and the petitioner was entitled for promotion to Selection Grade after completion of 10 years of service and Senior Selection Grade after completion of 30 years of service but even after successful completion of 30 years of service the petitioner superannuated without getting any promotion In his entire service carrier.

3. The respondents in their counter-affidavit have submitted that the petitioner

has been granted 1st time bound promotion w.e.f. 1.4.1981. However, the second time bound promotion could not be granted since even after completion of 5 years i.e. till 1986 he had not passed the final Accounts Examination and the period of exemption as granted in terms of Annexure No. 3 fell between 1.5.1980 to 29.3.1982 only. Thus it is stated that he was not eligible nor entitled to the second time bound promotion.

4. The learned Counsel for the petitioner mainly relies upon a majority Judgement of the Full Bench reported in 2000 (4) PLJR 262 to support his contention and in particular he refers to and relies upon para-16, which is quoted as under:

16. The result of the above discussion is that the clerks of the Muffasil offices could/can not be promoted to the selection grade posts without passing final examination in Accounts except during the period between 1.5.80 and 29.3.82. Any promotion due to the clerks during that period, thus, cannot be denied on the ground that they had not passed the said examination.

5. I have considered the submission and the arguments of both sides and the Full Bench Judgement referred to and relied upon by both sides. The relevant Clause as amended under proviso to Article 309 of the Constitution of India vide statutory order 431 dated 29.4.85 is quoted as under:

(a) Any clerk, who has not passed preliminary examination in Accounts, will be neither confirmed nor be allowed to cross the efficiency bar;

(b) A clerk, who has not passed the final examination, will not be promoted to the Selection Grade;

(c) In case of non-availability of senior clerk, finally passed in Accounts Examination, any junior clerk, having passed the final Accounts Examination may be temporarily promoted to the Selection Grade:

Provided that the junior clerk temporarily promoted to the Selection Grade shall be reverted to the post of clerk if the clerk senior to him passes the final Accounts examination within two years from the date of his first suppression and is promoted with effect from any date within the said two years, otherwise the senior clerk would be treated junior to all the clerks promoted to the Selection Grade prior to him.

6. It will be also relevant to point out that the writ petitions preferred were specifically dismissed by the Full Bench order except for the observation made at paragraph-16 and it was specifically held at paragraph-17 that the order above with respect to 82 persons on 17.8.1982 cancelling their promotion to Selection Grade posts and/or shifting the effective date¹ of such promotion from the date of passing the Accounts examination cannot be said to be illegal and the only rider given in the said judgement was for those who could not be promoted to the Selection Grade post and for such clerks whose promotion became due between the period 1.5.1980 and 29.3.1982 and it was in these background held

that those who fell between the aforesaid period cannot be denied the promotion on the ground that they had not passed the said examination. This was in view of the fact that the amendment dated 29.3.1982 was the result of administrative instruction and that could not have any retrospective effect as held in *Md. Shamsuddin and Ors. v. State of Bihar*, by a Division Bench judgment reported in 1983 BLJR 347.

7. It is also relevant to refer paragraph-13 of the judgement which has been erroneously relied upon by the learned Counsel for the petitioner for claiming the second time bound promotion wherein it was held as under:

13. On the basis of the above discussion I have no hesitation in holding that the State Government was fully competent to amend Rule 157(3)(J) of the Board's Miscellaneous Rules by executive instructions and the amendment made vide correction slip No. 30 dated 29.3.82 was a valid amendment. Thus, clerks were required to pass the final examination in Accounts as a condition for promotion to the selection grades after 29.3.82.

8. There is no dispute about the fact that the petitioner was required to clear the examination which the petitioner could not pass. The exemption fell under the stipulated period between 1.5.1980 to 29.3.1982 and not beyond that and he was rightly in terms of the order of the Division Bench given the 1st time bound promotion since his 1st time bound promotion fell between that period of exemption and thus as per Bihar Board's Miscellaneous Rules No. 156-157 promotion to the Upper Division Clerks could be given only to such Lower Divisional Clerks who had passed the final examination in Accounts.

9. A Full Bench of this Court in 2000 (4) BLJR 262 *Maheshwar Prasad Singh v. State of Bihar (FB)* has specifically held that any rule, instruction and or circular which has come into effect subsequently, cannot be applied retrospectively. This issue is no more res-integra and the Hon'ble Supreme Court in *Secretary, A.P. Public Service Commission Vs. B. Swapna and Others*, while considering a similar issue with regard to the eligibility conditions of qualification/experience has conclusively held that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights, the Rule must be held to be prospective.

10. Thus in any case the Rules will apply after the cut off date of exemption i.e. 29.03.1982 and the petitioner admittedly having not passed final examination in question was rightly denied the claim of second time bound promotion.

11. Considering the aforesaid facts and circumstance of the case and even as per the Full Bench judgement and in particular paragraph-13, it will be evident that the clerks were required to pass the final examination in Accounts as a condition for promotion to the selection grade after 29.3.1982 and the claim of the petitioner with regard to his second time bound promotion fell only after 29.3.1982 and thus as per the Rules quoted hereinabove and also as per the Full

Bench judgement it was necessary and mandatory to clear the examination for claiming the second time bound promotion. The fact remains that he did not clear the final examination of Accounts paper.

12. Considering the aforesaid facts and circumstance of the case, this writ petition being devoid of any merit is accordingly dismissed.