
(2013) 04 JH CK 0103

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3602 of 2001

Manoj Kumar Srivastava and another

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 4 JLJR 495

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant;

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—By Court: Heard counsel for the parties. The grievance of the petitioners in this writ application is that their seniority has wrongly been determined by corrigendum dated 23rd of June 2001 (Annexure-13) contained in Memo No. 1383 by which, they have been placed at serial no. 108 (Ka) and 108 (Kha) respectively. The original seniority list is annexed as annexure-8/1 dated 8th of January 2001, wherein according to the petitioners, persons starting from serial no. 36 onwards have been placed senior to these petitioners and their names have lately been included by correction carried out through the corrigendum dated 23rd of June 2001.

At the outset, it is to be recorded that none of the persons who have been alleged to be made senior to the petitioners" in the gradation list contained in annexure-8/1, have been impleaded as a party respondent in this writ application or even in the representative capacity, any one of them has been impleaded.

2. However, the petitioners claim to be accorded seniority ahead of these persons rests on the grounds that at the time of entry in service on 7th of May 1993, petitioner no. 1 himself had acquired the AMIE qualification on 05th of April 1993 and the petitioner no. 2 had acquired it on 04th of October 1989 itself. Reliance

of the petitioners is upon the circular contained at annexure-7 dated 22nd July 1998 whereunder, the Government of Bihar, Department of Road Construction had resolved to increase the quota of promotional avenues of the incumbents in the cadre of Junior Engineer to the post of Assistant Engineer. By the said resolution, 62% of the posts in the cadre of Assistant Engineers were to be filled up by direct recruitment, 10% from the quota of AMIE and 28% from promotion from diploma holders Junior Engineers. Earlier, the quota for promotion from those holding AMIE Degree was 3%.

3. Learned counsel for the petitioners has relied upon clause-(Ga) and (Gha) read together of the said resolution to submit that those persons who had obtained the qualification of AMIE during their service career, should not have been placed senior to the petitioners who already had the said qualification prior to entry in service. Counsel for the petitioners has relied upon a judgment contained at annexure-4 passed in CWJC No. 8744/1992 and analogous cases dated 19th of May 1994 and submits that such persons should not have been discriminated against those who acquired the higher qualification during their service period, as there is no apparent rational or justification for the same. According to the petitioners, under the resolution of 1998, when the respondents had themselves acted for issuing the corrigendum contained at annexure-13, they ought to have reckoned the seniority of these petitioners on the basis of acquisition of their qualification even at the time of entry in service and not distinguishing them from those who had acquired such qualification after entry in service.

4. Learned counsel for the respondent State, relying upon the statements made in the counter affidavit, submits that these petitioners have in the first place, failed to join the affected parties who have been shown senior to these petitioners in the gradation list which is sought to be challenged by the petitioners by challenging the order / corrigendum contained at annexure-13 which has itself placed them at their respective position in the seniority list at serial no. 108 (Ka) and 108 (Kha). Counsel for the respondent State submits further that by the resolution dated 17th of January 1979 contained at Memo No. 947, a policy was resolved by the State Government to give incentive to those persons in the cadre of Junior Engineer who obtain the higher qualification of AMIE or equivalent qualification during their service career and to give them the benefit of promotion in the cadre of Assistant Engineer after completion of five years of acquisition of the said qualification. Learned counsel for the State respondent submits that admittedly, these petitioners do not fall in the said category, neither the resolution of 1979 stood superceded by the resolution of 22nd July 1998. It only explained the said resolution and increased the quota of promotion to those holding AMIE qualification to the post of Assistant Engineer. Learned counsel for the respondent State has also relied upon a judgment of the Division Bench of the Patna High Court contained at annexure-B being Letters Patent Appeal No. 100/1994 and analogous cases in support of his contention that the eligibility prescribed in the resolution dated 17th of January 1979 was

not in conflict with any successive resolution published by the Government of erstwhile Bihar. It is therefore submitted on behalf of the respondent State that even otherwise, these petitioners have been granted promotion to the post of Assistant Engineer and they have been placed at serial no. 108(Kha) and 108 (Kha) in the gradation list by the corrigendum in the original seniority list.

5. I have heard learned counsel for the parties at length. These petitioners have entered in service on 7th of May 1993. As indicated herein above, they acquired the higher qualification on 05th of April 1993 and 04th of October 1989 respectively i.e. prior to their entry in service. The resolution of 17th January 1979 was specific to such cases where the incumbents on the post of Junior Engineer have acquired the higher qualification of AMIE or equivalent degree during their service career in order to grant incentive to them. The said circular does not appear to be superceded by the resolution of 22nd of July 1998 wherein the quota of promotion from those Junior Engineer having AMIE or equivalent was increased from 3% to 10% keeping into regard the demand of the Association of the AMIE Engineers as also the judgments passed in the writ petition by the Patna High Court. From perusal of the seniority list contained at annexure-8/1, specially keeping into account the contention of the petitioners in relation to the placement of the persons starting from serial no. 36 onwards ahead of the petitioners, it creates an impression that all these persons had acquired the qualification of AMIE much after their entry in service which has been reckoned while giving them seniority at their respective places. Petitioners have been placed between serial no. 108 and 109 of the gradation list at par with the persons at serial no. 109 who had entered in service like that of the petitioners on 7th of May 1993 and moreover, who had acquired the qualification thereafter during the tenure of their service unlike the present petitioners. Therefore, on that account, the grievance of the petitioners seems to be misplaced and most importantly, the writ petitioners though aggrieved by the seniority of the persons shown in the gradation list ahead of them, have failed to implead any of them in the present writ application. On that account also, the writ petition has to fail. Therefore, in the totality of facts and circumstances, the writ petition is liable to be dismissed and is accordingly dismissed.