
(2012) 11 JH CK 0012
In the Jharkhand High Court
Case No : LPA No. 157 of 2011

Mokhtar Ahmad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Citation : (2013) 1 JLJR 371

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Dilip Kumar Prasad, Kishore Kr. Mishra and Sunil Kumar Mahto, for the Appellant; S. Akhtar, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties. The appellant is aggrieved against the dismissal of the writ petition by a brief order dated 8.3.2011 passed in W.P.(S) No. 2085 of 2009. Learned single Judge observed that the petitioner could not present the proper fact and law before the learned single Judge and nothing was shown whether it was not necessary to pass examination for getting First Time Bound Promotion and that the petitioner had actually passed that examination prior to getting the First Time Bound Promotion.

2. Learned counsel for the appellant submitted that it was a mistake and there was no proper assistance to the learned single Judge. However, the facts which are not in dispute are that the petitioner was initially appointed on the post of Treasury Guard on 10.3.1972 and he was given the first promotion on 1.2.1978 on the post of Storekeeper. Thereafter, the petitioner was entitled to Time Bound Promotion on completion of 10 years of service on his promotional post which promotion was given to the petitioner vide Annexure F, submitted by the respondents in their counter affidavit filed in this L.P.A. This Time Bound Promotion was granted to the petitioner vide order dated 31.5.1991 but with effect from 19.2.1988, obviously from the time of completion of 10 years of service from which one could get Time Bound Promotion. The petitioner's said

promotion, with effect from 19.2.1988, was withdrawn vide order dated 28.1.2006 (Annexure-3 of L.P.A.). According to learned counsel for the appellant, the said order of withdrawal of Time Bound Promotion was issued without affording any opportunity of hearing to the writ petitioner. It is also submitted that on merits also, the said order cannot be sustained in view of the Circular dated 27.5.1998, issued by the Government itself, a copy of which has been placed by the respondent-State along with their counter-affidavit filed in the writ petition as Annexure-C, wherein it has been specifically provided that the employees, who have been given promotion prior to 1.9.1983 for their second promotion, there is relaxation in passing the requisite examination of Accounts and it has been provided that after the issuance of Circular, if any person will get the training then in that situation, he will be given promotion from the date of obtaining the training. It is clear that petitioner got the first promotion with effect from 1.2.1978 and prior to 1.9.1983. Therefore, he was entitled to Time Bound Promotion without passing such examination. On this ground, the order of the respondent withdrawing the Time Bound Promotion before 28.1.2006 is absolutely illegal.

3. Learned counsel for the State vehemently submitted that the facts are not in dispute that petitioner was initially appointed on the post of Treasury Guard and he was promoted to the post of Storekeeper vide order dated 10.2.1978. It is also not in dispute that the petitioner did not pass the requisite examination within stipulated time which was one of the conditions given in his promotion order itself, a copy of which is placed on record as Annexure-F of the counter affidavit filed by the respondent-State in this L.P.A. In the promotion, it was provided that petitioner would have to pass the requisite examination and the promotion is a provisional one; therefore, the petitioner cannot take benefit of the Circular of the Government dated 27.5.1998.

4. We have considered the submission of the learned counsel for the parties and perused the facts of the case. In view of the admitted fact of the case that Circular dated 27.5.1998 covers the issue and it specifically provide that the employees who have been given first promotion prior to 1.9.1983, they need not to take examination for second promotion, the petitioner admittedly, got his first promotion in the year 1978 and, therefore, in view of the Circular dated 27.5.1998, the petitioner could have been given the promotion to the post with condition of passing of examination but that conditions stand relaxed by the said Circular for those employees who got the promotion prior 1.9.1983. The condition mentioned in the promotion order also will not come in the way of the writ petitioner because of the reason that, that relaxation was blanket to all employees who were given the first promotion prior to 1.9.1983 and for those employees, the condition of passing of the examination for getting the second promotion has been relaxed.

5. Accordingly, this L.P.A. is allowed and the impugned judgment dated 8.3.2011 is set aside. The impugned order dated 28.1.2006 withdrawing the petitioner

Time Bound Promotion is also set aside.

6. Learned counsel for the appellant-petitioner has submitted that petitioner has now retired from service. In view of the above, the respondent-State is directed to calculate the retiral benefit of the petitioner according to this decision treating the petitioner to have been promoted with effect from 19.2.1988 in view of the promotion order dated 31.5.1991 and to pay the petitioner all dues within a period of three months from the date of receipt of a certified copy of this order.