

(2018) 06 JH CK 0025
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5074 of 2009

Murari Lal Sah

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2018) 06 JH CK 0025

Hon'ble Judges : PRAMATH PATNAIK, J

Bench : Single Bench

Advocate : Saurav Arun, Suraj Prakash

Final Decision : Allowed

Judgement

1. The petitioners, by way of this writ application, have prayed for direction upon the respondents to grant and pay forthwith the annual increment to

the petitioners and for further direction commanding upon the respondents to grant arrears in respect to the annual increments.Â

2.Â The facts of the case, in a nutshell, are that the petitioners were appointed as Warden on ad-hoc basis on various dates in the year 1984 and

appointment was made subject to the final approval by the Selection Committee. The petitioners were transferred and posted at different places and

petitioner no. 1 was posted at District Jail, Giridih, petitioner no. 2 was posted at Sub Jail, Rajmahal (Sahebganj), petitioner no. 3 was posted at District

Jail, Deoghar and petitioner no. 4 was posted at Central Jail, Dumka. The Jail Superintendent, Bhagalpur passed an order dated 16.01.1994 for

regularizing the services of the Wardens, wherein, the name of the petitioners were also figured. The Inspector-General of Police constituted a

selection committee comprising of 03 members, which examined the matter in

detail and found certain irregularities in the order dated 16.01.1994 for confirming the service of 38 Wardens and the said Committee in its speaking order directed the petitioners to appear before the Selection Committee again, which was challenged by the petitioners in C.W.J.C. No. 998 of 1997, wherein, the Honâ??ble Patna High Court, passed an order dated 07.08.1998, saying that the petitioners have to appear before the selection committee and the same cannot be refused on the ground that the petitioners were in the service for the past 15 years and as such, some certain relaxation shall be given to the petitioners and in pursuance thereof, the selection Committee for the appointment of the Warden was fixed on 15.12.2001 and vide letter dated 11.12.2001, the petitioners were asked to appear before the said Selection Committee on 16.12.2001 so that the Selection Committee could take up the matter of their appointment. The petitioners appeared before the Selection Committee, which is evident from the order dated 17.12.2001, passed by the Superintendent, Central Jail, Bhagalpur and also the order dated 23.12.2001. It has been further stated that the petitioners have time and again in year 2007-08 written several representations to the concerned authorities stating therein that till date they have not been provided any annual increment in the income for the past 25 years of their service and the petitioners have not been given any increment in their salary but no heed was paid upon their grievances. Vide office order dated 18.01.1994 issued by the Superintendent of Central Jail, Bhagalpur, the service of the petitioners were regularized with a further direction to provide annual increment in their income, but unfortunately the increased income benefits was withdrawn by the respondents authorities arbitrarily without giving any notice to the petitioners which is gross violation of principle of natural justice, as the petitioners have been devoid of the benefit of which they are legally entitled for. It has been further stated that on 14.10.2008, the Superintendent of Jail, Sahebganj issued a letter in favour of one of the petitioners, stating therein, that the petitioner is not getting annual incrementÂ and requested to consider the case, as he is working since long and recommended the same to the Superintendent, Central Jail, Dumka. Time and again, the petitioners have been sent for training at various places and they have excelled in all such training and the petitioners for the past 25 years have been serving on the post of Warden and obeying all rules and

regulations, but despite their sincere and devoted work, they have not been given any increment. The petitioners, left with no alternative and efficacious remedy, have been constrained to knock the door of this Court under Article 226 of the Constitution of India for redressal of their grievances.

3.Â Learned counsel for the petitioners has assiduously submitted that the respondents authorities are bound to consider that the petitioners, who are working for approximately 25 years on the same income/salary, are entitled for annual increment and the respondents authorities can not deny for not providing the annual increment to the petitioners. Learned counsel further submits that the action of the respondents authorities is violative of Article 21 of the Constitution of India. In support of his contentions, learned counsel for the petitioners has referred to and relied upon the judgment rendered in the case of Sheo Narain Nagar and others-vs.-State of Uttar Pradesh and others reported in AIR 2018 SC 233.

4.Â Controverting the averments made in the writ application, a counter affidavit has been filed by the respondents, contending, therein, that the petitioner (1) Sri Murari Lal Sah, (2) Sri Umesh Paswan are presently posted in Central Jail, Dumka Circle, (3) Sri Binay Kumar Sharma in District Jail, Dhanbad which comes under Lok Nayak Jai Prakash Narayan Central Jail, Hazaribagh and (4) Sri Janardan Prasad is retired from District Jail, Jamtara on 31.01.2016, which comes under Central Jail, Dumka Circle. It has been further stated that the order was passed on 16.01.1994 by the Superintendent, Central Jail, Bhagalpur to regularize the service of all 38 wardens which was not approved by the IG prisons Bihar, but the petitionersâ?? appointment and their services have not been regularized till date, therefore, they are getting only basic pay without giving any increment in State of Bihar as well as in Jharkhand. It has been further stated that on 14.10.2008, the Superintendent, District Jail, Sahibganj forwarded a letter to the Superintendent, Central Jail, Dumka Circle, for granting the petitioner Sri Umesh Paswan his annual increment, but, since the petitionersâ?? services has not been regularized, the matter of granting increment was not considered. It has been further stated that since the appointment of all the four petitioners have not been regularized by the appointing authority, the then Superintendent, Central Jail, Bhagalpur,

therefore, they have not been granted their annual increment, although the petitioners are working for approximately 25 years. It has further been averred that the petitioners were appointed on various dates in the year 1984 at Central Jail, Bhagalpur on ad-hoc basis with 38 wardens including the petitioners and it was made clear in their letter of appointment that such appointment is given subject to the final approval by the selection board, but, since the matter of final approval was not yet done in the State of Bihar, therefore, they are not granted annual increment and in view of the aforementioned facts and circumstances, the writ petition may be dismissed in limine.

5.Â Learned counsel for the Respondent-State has vociferously submitted that on 14.10.2008, the Superintendent, District Jail, Sahibganj forwarded a letter to the Superintendent, Central Jail, Dumka Circle, for granting the petitioner Sri Umesh Paswan his annual increment, but, since the petitioner's services has not been regularized, the matter of granting increment was not considered. Learned counsel further submits that since the appointment of all the four petitioners have not been regularized by the appointing authority, the then Superintendent, Central Jail, Bhagalpur, therefore, they have not been granted their annual increment. Learned counsel for the Respondent-State has vehemently submitted that in view of the aforesaid facts, there is absolutely no illegality or impropriety on the part of the respondents.

6.Â Having bestowed my anxious consideration to the rivalized submissions of the respective parties and on perusal of the records, this Court is inclined to accede to the reliefs sought for by the petitioners, due to the following facts and reasons : -Â Â Â

Â Â Â Â Â Â Â Â Admittedly, the petitioners have rendered three decades of services on the post of Warden and as disclosed from the counter affidavit, petitioner no. 4, namely, Janardan Prasad has retired from his services from the district of Jamtara on 31.01.2016. So far as other three petitioners are concerned, since they have rendered continuous uninterrupted services for the last more than three decades and their appointments were against the sanctioned and vacant posts, unless their cases for regularization is considered by the competent authorities, their legitimate expectation would be defeated and fond hope of being regularized would be belied. It would be apt to refer to the judgment of the Honâ??ble Apex

Court rendered in the case of Sheo Narain Nagar and others (Supra), wherein, the Honâ??ble Apex Court has been, inter alia, pleased to direct for

regularization of their services on the basis of the judgment rendered in the case of Uma Devi reported in AIR 2006 SC 1806.Â

7.Â In that view of the matter, the Respondents are directed to consider the case of the petitioners and pass appropriate order for their regularization

on the aforesaid post and for grant of consequential benefits including annual increments expeditiously preferably within a period of 3 months from the

date of receipt/communication of the order.Â

8.Â With the aforesaid direction, the writ petition stands allowed.Â Â Â