
(2011) 07 JH CK 0244

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1436 of 2010

Nagendra Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Citation : (2011) 4 JCR 32

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mrs. Poonam Srivastav, J.—By the Court.--Heard Mr. Jai Prakash. senior advocate assisted by Mrs. Chaitali C. Sinha, on behalf of the petitioner, and Mr. Niranjana Singh, on behalf of the Zila Parishad. The State counsel is also present. Pleadings are complete and, as agreed between the respective learned counsel, the writ petition is decided finally.

2. Prayer in the instant writ petition is for quashing the order dated 19th December, 2009 (Annexure 13) issued by respondent No. 4, served upon the petitioner on 25th January, 2010. whereby the order of promotion of the petitioner from the post of Junior Engineer to Assistant Engineer dated 11th February, 2009 (Annexure 12) stands cancelled.

3. The grievance of the petitioner is that the cancellation of order of promotion is illegal and it has been passed without issuing a show cause notice or any opportunity of hearing. The grounds mentioned in the impugned order are also non-existent and, therefore, the order is patently wrong and is liable to be quashed. Annexure 1 is a list of Junior Engineers working in Zila Parishad. Dhanbad, prepared on 15th June, 1984. The name of the petitioner figures at serial No. 9 in the said list.

4. The submission is that the Junior Engineers shown from serial Nos. 1 to 8 have no claim for promotion to the post of Assistant Engineers as they have

either retired or promoted. The person placed immediately above the petitioner ie. Bhagwan Singh was promoted in the clear of one of the Assistant Engineers out of three posts of Assistant Engineer existing in the Zila Parishad, Dhanbad. He has further been promoted to the post of District Engineer and thus the clear vacancy came in existence. The petitioner was granted promotion as Assistant Engineer in the Zila Parishad by virtue of an order dated 11th February, 2009 (Annexure 12). The submission is that he was continuing on the said post without any complaint, but suddenly he was served with an order dated 19th December, 2009, Annexure 13 to the writ petition, quashing the order of promotion on the post of Assistant Engineer. The reason given is that promotion of the petitioner as Assistant Engineer was held to be illegal, and consequentially, it was quashed. The petitioner was reverted on the post of Junior Engineer.

5. Submission of the learned counsel is that there is no dispute so far the question of seniority list is concerned and also the claim of the petitioner. It is also brought to my notice that prior to the promotion of the petitioner, he had preferred W.P. (S) No. 3604 of 2003, which was disposed of by order dated 11th September, 2003 (Annexure 5). The claim of the petitioner was accepted and this order was challenged by another Junior Engineer in appeal vide L.P.A. No. 637 of 2003, which is still pending.

6. Counter-affidavit has been filed on behalf of the Zila Parishad and on the assertions made in the counter affidavit filed on behalf of respondent No. 4 in L.P.A. No. 637 of 2003 of paragraph 27 of the writ petition. It is asserted with a view to substantiate that promotion of the petitioner was in a clear vacancy and that there was no illegality in grant of initial promotion order and, therefore, the reasons given in the cancellation order is illegal and is fit to be quashed. The impugned order is devoid of substance and on the face of unequivocal assertions made on behalf of Zila Parishad in L.P.A. No. 637 of 2003 is self contradictory. Since all the documents have been relied by the petitioner and the assertions made in the counter affidavit are on record and cannot be disputed. The argument raised by Mr. Jai Prakash, learned senior counsel appearing on behalf of the petitioner stands fully justified. The petitioner's claim for promotion on the post of Assistant Engineer is also worth consideration and the impugned order quashing the original promotion order is rendered illegal and does not stand reason, in my view, the order liable to be quashed.

7. In the facts and circumstances and the reasons given hereinabove, this writ petition is allowed, the order impugned dated 19th December, 2009 (Annexure 13) is quashed and the previous order of promotion dated 11th February, 2009 shall be given effect to with immediate effect. The petitioner is also entitled to all consequential benefits to the post of Assistant Engineer.