
(2008) 11 JH CK 0034
In the Jharkhand High Court

Nagendra Ojha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:

Citation : (2009) 1 JCR 208

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—Heard learned Counsel appearing for the petitioner and learned Counsel appearing for the respondents.

The petitioner (since retired), a matriculate, having completed the course of institutional training in the Trade of Draftsman (Civil) (G), conducted by the Department of Labour and Employment (Technical Education), Government of Bihar, was employed in the year 1969 on the post of "Supervisor Field Worker" on work charge establishment, under the Executive Engineer, Investigation Research and Design Division, Tenughat Dam. Subsequently, on completion of the course of Civil Draftsman, the petitioner was appointed as "Draftsman Grade-II" on officiating basis vide Memo No. 4008 dated 08.11.1974. Later on, his services were regularized w.e.f. the date of his joining and was posted as non-SIS Overseer on officiating basis vide Memo No. 905 dated 06.05.1977. Subsequently, his services, on the post of Overseer (non-SIS), were regularized w.e.f. 06.05.1977.

2. Further case of the petitioner is that the petitioner having completed continuous 10 years of service on the post of Sub-Overseer, made an application in the year 1987, for promotion to the post of Overseer (Junior Engineer) in terms of Government decision, as contained in Letter No. 24612 dated 13.12.1976, laying down a policy for consideration for appointment to the post of Junior Engineer from among Sub-Overseers and Others, who have successfully

completed 10 years of satisfactory service. Thereupon, the then Chief Engineer, forwarded the application of the petitioner for promotion to the post of Overseer (Junior Engineer) along with the recommendation of the Superintending Engineer to the Joint Secretary of the Department. Upon which, annual confidential report was called for, but to utter surprise of the petitioner, the petitioner was not given promotion rather he was given time bound promotion w.e.f. 06.01.1987.

3. Again it is the case of the petitioner that the government vide Its Resolution dated 08.01.1992 again reiterated its earlier policy decision that the matter of promotion to the post of Junior Engineer shall be considered only of those Sub-Overseers, whose seniority have not been fixed in the cadre of Overseer.

4. Acting on that decision of the Government, the Water Resources Department, asked the concerned Officials to send the list of those Sub-Overseers, who were not promoted to the post of Junior Engineer (Overseer). Pursuant to that, the Superintending Engineer, Tenughat Dam Circle, by his Letter dated 07.09.1994, sent the name of the petitioner along with the Bio-Data to the Water Resources Department, Government of Bihar, Patna, but when no decision was taken in this respect, the petitioner made a representation for promotion to the post of Overseer/Junior Engineer on 17.07.2001, which application was forwarded by the Superintending Engineer to the Chief Engineer, Water Resources Department, Government of Jharkhand, Ranchi, but no decision, regarding promotion, was taken, though the petitioner retired on superannuation on January. 2004 and under these circumstances, this writ petition has been filed, wherein prayer has been made to direct the Officer concerned to consider the case of the petitioner for promotion to the post of Overseer/Junior Engineer (Civil) in terms of the Government Circular dated 08.01.1992 and also to grant other consequential benefits.

5. Stand of the Government of Bihar as well as Government of Jharkhand is that it is true that the Government of Bihar in the year 1976 had taken a decision, which gets reflected from the Letter No. 24612 dated 13.12.1976, that those Sub-Overseers, who have completed 10 years of satisfactory service, can be considered for the appointment to the post Junior Engineer, but that Circular was cancelled vide Resolution as contained in Memo No. 4493 dated 14.03.1977, when the post of Junior Engineer was declared as "Gazetted Post" in the year 1977, whereby recommendation of the Bihar Public Service Commission (hereinafter referred to be as "B.P.S.C") for the appointment on the post of Junior Engineer was mandatory. However, in spite that, when it came to the notice of the Government that the promotion is being given on the post of Junior Engineer by the Department itself, the then Chief Secretary, Government of Bihar, Patna vide its Memo No. 11585 dated 02.11.1987, reminded that the appointment to the post of Junior Engineer is to be made only on the recommendation of B.P.S.C. The said stand of the Government was again reiterated under Letter dated 28.05.1990.

6. Further case of the State is that on being aggrieved with that decision taken

by the Government, some of the persons filed a writ petition before the Patna High Court vide C.W.J.C. No. 2385 of 1994(R), challenging the said decision on the ground that the petitioners {(in C.W.J.C. No. 2385 of 1994(R)} are entitled for promotion to the post of Junior Engineer In terms of the decision taken by the Government in the year 1976 as the subsequent decision is quite arbitrary but the same was dismissed by holding that under the policy decision of the Govt. there is only one mode of direct appointment to the post of Junior Engineer.

7. It is also the stand of the State Government that when it came to the notice of the Government that certain persons have been given promotions to the post of Junior Engineer from among the Draftsman and others in violation of the policy decision taken by the Government in the year 1977, which was reminded time to time in the year 1987 and 1990, cancelled those promotions and as such the petitioner is not entitled to any relief(s).

8. Having heard learned Counsel appearing for the parties, It does appear that the petitioner, by virtue of a decision taken by the State Government in the year 1976, as contained in Letter No. 24612 dated 13.12.1976 and also the decision as contained in Notification dated 08.01.1992 (Annexure-6), laying down a policy for promotion to the post of Overseer/Junior Engineer for those Sub-Overseers, who have completed 10 years of satisfactory service, have been laying their claim to the post of Junior Engineer, but the Policy as contained in letter issued in the year 1976 had been revoked by the then State of Bihar vide its Resolution as contained in Memo No. 4493 dated 14.03.1977 on account of the fact that the post of Junior Engineer had been declared as "Gazetted" and in that event, appointment on the post of Junior Engineer is to be made only on the recommendation of the B.P.S.C.

9. When a similar matter fell for consideration in a case of Ranjan Kumar Sinha and Anr. v. The State of Bihar and Ors. C.W.J.C. No. 2385 of 1994 (R), the Court, having taken notice of the policy, taken in the year 1987 and again in the year 1990, held that now there remains only one mode for appointment to the post of Junior Engineer on the recommendation of the B.P.S.C. and thereby any other mode or procedure laid down for promotion to the post of Junior Engineer got abolished. Further, it appears that when it was communicated to the Court that in spite of policy decision taken by the Government for promotion to the post of Junior Engineer promotion to said post are being made contrary to the policy decision, the Court asked the Chief Secretary, Government of Bihar, to issue a direction to the Head of the concerned Department, to undo the appointments of Junior Engineer made against the aforesaid policy decision and also to take action against erring Officers. Pursuant to that, several persons, who were given promotions contrary to the Government policy, has been cancelled.

10. Under this situation, the petitioner is not entitled to get any relief(s) as claimed for, as the relief sought, for a direction to the authority to give promotion to the petitioner on the post of Junior Engineer is contrary to the policy decision of the government.

11. Accordingly, I do not find any merit in this writ petition and hence, this writ petition is dismissed.