
(2006) 04 JH CK 0080

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 3782 and 6324 of 2005

Narayan Ram and Rajiv Kumar Suri and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Citation : (2006) 3 JCR 218

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Nagendra Prasad, Akashdeep, Anuj Kr. and M. Verma, in W.P. S No. 3782/05 and Anil Kumar and R. Pallav, in W.P. S No. 6324/05, for the Appellant; S.K. Verma, S.C. (Mines), Anil Kumar and S.K. Keshri for Respondent Nos. 5, 6, 7, 9 and 10 in W.P. (S) No. 3782/05 and Nagendra Prasad Akashdeep, Anuj Kr. and M. Verma for respondent Nos. 4 to 9 in W.P. (S) No. 6324/05, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—Petitioner, Narayan Ram has preferred the writ petition [W.P.(S) 3782 of 2005] against the joint Notification Nos. 957/M, 958/M, 959/M, 963/M, 964/M & 978/M dated 10th June, 2005 and the office order contained in Memo No. 857/M dated 17th June, 2005, so far it relates to the petitioner and contesting 6th to 10th respondents. By the aforesaid notification dated 10th June, 2005, 6th to 10th respondents, who are Geologists, were transferred and posted as Assistant Mining Officers at different places. The petitioner, who holds the substantive post of Mining Inspector and was functioning as In charge Assistant Mining Officer, has been sent back to his substantive post, because of the aforesaid postings.

Further prayer has been made by the petitioner, Narayan Ram, to direct the respondents to grant him regular promotion to the post of Assistant Mining Officer from due date and till such promotion is granted, to allow him to continue as In charge Assistant Mining Officer.

2. During pendency of the writ petition (W.P.(S) No. 3782 of 2005), the respondents issue Notification No. 2340 dated 19th November, 2005 and cancelled the impugned notification dated 10th June, 2005, so far it relates to 6th to 10th respondents. In this background, 6th to 10th respondents have preferred the second writ petition [W.P.(S) 6324 of 2005] challenging the aforesaid Notification No. 2340 dated 19th November, 2005. By the said Notification, petitioner, Narayan Ram of W.P.(S) No. 3782 of 2005 and five others have been given charge of the posts of Assistant Mining Officer.

3. When the case was taken up, the Court was of the view that the first writ petition i.e. W.P.(S) No. 3782 of 2005 has become infructuous, the Notification dated 10th June, 2005 having been cancelled. But learned Counsel for the petitioner, Narayan Ram addressed the Court in length to suggest that only the Mining Inspectors are entitled for promotion to the posts of Assistant Mining Officer.

On the other hand, according to the petitioner, Rajiv Kumar Suri and others of W.P.(S) No. 6324 of 2005, who are 6th to 10th respondents in the first writ petition i.e. W.P.(S) No. 3782 of 2005, the posts of Assistant Mining Officer can also be filled up from amongst the Geologists, there being no bar and they being the Degree-holder Engineers, should be preferred over the Diploma-holder Mining Inspectors.

4. Counsel for the parties relied on one or other provisions of law and the decisions, rendered by the Patna High Court and this Court. In the year 1995, some of the Geologists having been posted as Assistant Mining Officer, it was challenged by "The Bihar Mining Services Association" before Ranchi Bench of the Patna High Court in C.W.J.C. No. 115 of 1995(R). In the said case, posting of Geologists as Assistant Mining Officer was held contrary to the Statutory Rules and was thereby set aside.

5. In another case, one Geologist, namely, Binkatesh Prasad Singh, who was posted as Assistant Mining Officer, Latehar, was transferred to Geo-Engineering Cell, Ranchi as Geologist. It was challenged by Shri Singh in W.P.(S) No. 98 of 2005, which was dismissed by the learned Single Judge on 13th January, 2005. L.P.A. No. 78 of 2005 was preferred against the said order by the said "Binkatesh Prasad Singh". The Division Bench by its judgment dated 16th March, 2005, having noticed that as a matter of policy decision, those Geologists, who had been posted as Assistant Mining Officers in different districts, have been recalled and they have been posted in their parent Directorate, refused to interfere with the order passed by the learned Single Judge.

6. Learned Counsel for the petitioners, Rajiv Kumar Suri and others in W.P.(S) No. 6324 of 2005, also placed reliance on relevant provisions of law and one of the guidelines, issued recently, to suggest that the Geologists can also be posted as Assistant Mining Officers. But it is not necessary to discuss the rival contentions and the circular etc., referred to by them. Admittedly, petitioner,

Narayan Ram of W.P.(S) No. 3782 of 2005, is a Mining Inspector. The Notification dated 10th June, 2005, which he has challenged in his writ petition i.e. W.P.(S) No. 3782 of 2005 having been cancelled by notification No. 2340 dated 19th November, 2005, his prayer in respect to the said notification and his posting as Assistant Mining Officer has become infructuous. So far question of regular promotion to the post of Assistant Mining Officer is concerned, he may have a right to be considered for such promotion, as and when the respondents fill up the posts on regular basis but he cannot claim for promotion, having no such right in absence of a cause of action. Thus, no further relief can be granted to the petitioner, Narayan Ram of W.P.(S) No. 3782 of 2005.

7. So far as petitioners, Rajiv Kumar Suri and other in W.P.(S) No. 6324 of 2005 are concerned, they are Geologists. As a matter of right, they cannot claim their posting as Assistant Mining Officers, as a matter of policy decision, if the Government decides to post them against some other posts. As no person has right to be deputed against a particular post, which is not a cadre post or a person in the lower grade has no right to claim his posting against higher grade, no specific relief can be granted to the petitioners, Rajiv Kumar Suri and others.

8. In the facts and circumstances, writ petition bearing W.P.(S) No. 3782 of 2005, preferred by petitioner, Narayan Ram, is dismissed, being infructuous whereas the writ petition bearing W.P.(S) No. 6324 of 2005 preferred by petitioners, Rajiv Kumar Suri and others is, hereby, dismissed, there being no merit.

However, in the facts and circumstances, there shall be no order as to costs.