
(2005) 08 JH CK 0078

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4886 of 2004

Naresh Rajak

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-08-2005

Acts Referred:

Citation : (2005) 4 JCR 344

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

Bench : Single Bench

Advocate : Sunil Kr. Sinha, for the Appellant; Anil Kr. Sinha, A.G., for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This case was taken up on 23rd September, 2004 when the following order was passed :

This application has been preferred by the petitioner for commanding upon the respondents to grant him promotion to the post of Surveillance Inspector with effect from 2nd August, 1989.

It appears that the petitioner was earlier promoted as Surveillance Inspector and later on reverted vide order dated 18th September, 2000. It was challenged by the petitioner in C.W.J.C. No. 1278 of 2000. The said case was disposed of by this Court vide order dated 14th February , 2001, wherein the following order was passed :

"In view of the fact that the petitioner enjoyed the higher post for about 12 years and on reversion, the said post fall vacant, I direct the respondents to fill up the post of Surveillance Inspector, on regular basis, which is stated to be filled up by promotion from amongst Surveillance Workers. They will consider the case of the petitioner along with other eligible persons, in accordance with law.

The order of regular appointment/ promotion against the post of Surveillance Inspector be issued, on an early date, preferably within six months.

In the meantime, if the respondents want to take work of the post of Surveillance Inspector by stop gap arrangement, till regular appointment/promotion is made, they will allow the petitioner to function.

The writ petition stands disposed of accordingly."

Thereafter, the petitioner preferred contempt petition being Contempt Case (Civil) No. 990 of 2001, which was disposed of with the following observations.

"4/15.6.2002 : Heard the parties and perused the show cause.

Having regard to the statement made in para 9 of the show cause, I do not want to proceed any further in the matter. However, it is expected that the opposite parties shall fill up the post of Surveillance Inspector on regular basis as expeditiously as possible. Till then the petitioner who has been continuing on the post of Surveillance Inspector by stop gap arrangement shall continue till the post is filled up in accordance with direction.

The instant proceeding is accordingly dropped."

In spite of such direction, it is stated that the post of Surveillance Inspector has not been filled up on regular basis. This attitude on the part of the respondents clearly shows that they have no regard and respect to the orders passed by this Court.

The Secretary-cum-Commissioner, Health and Family Welfare Department, Government of Jharkhand, Ranchi and Chief Malaria Officer, Government of Jharkhand are, accordingly, directed to state as to why a suo motu proceeding for contempt be not initiated against them and they be not punished for flouting the Court's order, as quoted above.

The Officers concerned shall remain present in the Court on the next date with their respective show cause.

The State will also file affidavit and state as to why a cost of Rs. 20.000/- be not imposed against it.

Place the case under the heading "For Orders" on 25th November, 2004.

Let a copy of this order be handed over to learned AAG and the counsel for the petitioner who will communicate this order to the officers concerned."

2. In pursuance of Court's order, Mr. Shivendu, Commissioner-cum-Secretary, Health and Family Welfare Department, Government of Jharkhand, Ranchi and Dr. Pradeep Baskey, Incharge State Malaria Officer, Health and Family Welfare Department, Government of Jharkhand, Ranchi have appeared and filed their affidavit.

3. Learned Advocate General submitted that the post of Surveillance Inspector being the ex-cadre post, it can be filled up only by direct recruitment, which has already been brought to the notice of the Court in the earlier writ petition

C.W.J.C. No. 1278 of 2000. On the other hand, according to counsel for the petitioner, the post of Surveillance Inspector is to be filled up by promotion from amongst Surveillance Workers.

4. From the order dated 14th February, 2001 passed in CWJC, No. 1278 of 2000, it appears that the dispute aforesaid was not resolved by this Court. The Court noticed the submission that the post of Surveillance Inspector was stated to be filled up by promotion, but in the end, while interim arrangement was allowed to continue, it was observed that such arrangement may continue till regular appointment/promotion is made.

5. In this case, there is nothing on the record to suggest that the State Government framed any rule for promotion of Surveillance Workers to the post of Surveillance Inspector. The petitioner has given mere statement that it is a promotional post but the case of the State is that the post is ex-cadre post, in support of which the respondents have enclosed certain documents.

6. As there is nothing on the record to suggest that the State Government framed any Rule/guidelines to fill up the post of Surveillance Inspector by promotion, no specific direction can be given to the respondents to fill up the said post by promotion. However, as the Court has already directed to fill up the post on regular basis, the respondents are bound to fill up the said post immediately.

7. So far as number of vacancies are concerned, for the present, if the exact vacancy as may occur after cadre bifurcation, cannot be ascertained, the respondents may fill up the existing vacancies of Surveillance Inspector or the vacancy as may be finally calculated, within one year from the date of preparation of panel and to fill up those posts, subject to the final cadre allocation.

8. Mr. Shivendu, Commissioner-cum-Secretary, Health and Family Welfare Department, Government of Jharkhand, Ranch prays for and is granted three months time to complete the process of selection and to fill up the post, in accordance with law.

9. The appearance of Mr. Shivendu, Commissioner-cum-Secretary, Health and Family Welfare Department, Government of Jharkhand, Ranchi and Dr. Pradeep Bas-key, Incharge State Malaria Officer, Health and Family Welfare Department, Government of Jharkhand, Ranchi is dispensed with.

Place this case "FOR ORDERS" on 1st December, 2005.

Let a copy of this order be handed over to the learned Advocate General.