

(2009) 07 JH CK 0118
In the Jharkhand High Court
Case No : Cont (Civil) Case No. 923 of 2007

Niranjan Prasad Deo

APPELLANT

Vs

P.P. Sharma, Chief Secretary, State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0118

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Sidhartha Ranjan, Amit Sinha, P. Pallav and S.K. Gautam, Prabhash Kumar, V. Shivrath, Vandana Bharti, JC to G.A., for the Appellant; Sumir Prasad, for the Respondent

Judgement

D.G.R. Patnaik, J.—This application is for initiation of a contempt proceeding against the opposite parties/respondents for their purported disobedience and non-compliance of the order dated 14.07.2006 passed in W.P.(S) No. 6629 of 2005 by a Single Bench of this Court.

2. The petitioner along with several others had filed the writ petition vide W.P.(S) No. 6629 of 2005, praying for appropriate directions against the respondents on their claim for seniority over the respondents 21 to 41 and also for quashing the promotion and appointment of the respondents.

3. After hearing the parties, while refusing to interfere with the orders of promotion and/or appointment of the private respondents, and rejecting the prayer of the petitioners in this context, this Court on considering the petitioners' prayer for their seniority, had recorded its observations and issued certain direction to the respondent State Government in the following terms:

So far as seniority is concerned, the matter having been settled by a decision of the Supreme Court, rendered in the case of Sanjay K. Sinha-II and Others Vs. State of Bihar and Others, , no further finding is required to be given. The State Government is supposed to act in terms with the aforesaid decision of the

Supreme Court, rendered in the case of Sanjay Kumar Sinha-II (Supra) and if provisional gradation list dated 30th November, 2004 has been issued, in violation of the Supreme Court's order and that has been brought to the notice of the authorities by the petitioners, the State Government is required to decide such objection expeditiously. It is expected that the State authorities will finalize the seniority list preferably within four months from the date of receipt / production of a copy of this order.

This writ petition stands disposed of accordingly.

4. Show-cause replies have been filed on behalf of the respondents / opposite party Nos. 3, 4, 5, 6, 7, 29 and 39, whereby they would inform that the order / direction as contained in the order dated 14.07.2006 passed by this Court in W.P. (S) No. 6629 of 2005 has been duly complied with in letter and spirit by the respondents.

It is explained that the objections filed by the respondents against the provisional gradation list, were considered in the light of the judgment of the Supreme Court in the case of Sanjay K. Sinha-II and Others Vs. State of Bihar and Others, and the same was accordingly disposed of by recording a reasoned and speaking order. There-after, a final gradation list was prepared.

5. Offering a detailed explanation of the grounds on which the objection filed by the writ petitioners including the present petitioner, was rejected, the respondents/opposite parties would submit that the dispute in the case of Sanjay K. Sinha-II (Supra) relates to inter-se seniority between the direct recruits of the year 1987 and the promotees who were appointed on promotion in between June 1987 to November 1987 to the post of ACF. The Supreme Court had held that the promotees of 1987 cannot claim the benefit of seniority over and above the direct recruits. Upon such observations and by refusing to disturb the seniority of the direct recruits, the Apex Court had observed that the State Government should regularize appointment of promotees against the vacant substantive posts.

In the light of the above directions of the Supreme Court, the direct recruits of the year 1987 have been placed above the promotees who were appointed in between June 1987 to November 1987, in the final gradation list.

As regards the grievance of the writ petitioners including the present petitioner, it was found that though, they are direct recruits of the year 1990, but as per the counter-affidavit filed by the State of Bihar, in the writ application, there was no vacancy in the quota for direct recruits in the year 1987, 1988, 1989 and 1999. Considering this aspect, the claim of the writ petitioners for their seniority over the promotees, could not be accepted in view of the fact that appointment of the writ petitioners was not made against any existing vacancy in the substantive post. As such, the services of the writ petitioner have first to be regularized and the process in this regard has already been initiated by the State Government.

It is further explained that pursuant to the direction of the Supreme Court in the

case of Sanjay K. Sinha-II (Supra), services of some of the promotees appointed in between June 1987 to November 1987, have been regularized vide Government Notification dated 25.10.2005. The names of such promotees were thereafter included in the final gradation list in which the petitioner's name has also been included and placed at serial No. 71.

6. The petitioner on the other hand, would controvert the stand taken by the respondents / opposite parties by counter asserting that the explanation offered by the opposite parties, in particular opposite party No. 3, is totally misleading and the main issues have not been directly answered by them.

7. Shri Anil Kumar Sinha, learned Senior Counsel for the petitioner, would explain that the Supreme Court in the case of Sanjay K. Sinha-II (Supra) has decided the two main issues.

I. That, persons promoted in between June 1987 to November 1987 i.e. respondent Nos. 21 to 41 in the cadre of Assistant Conservator of Forest, cannot be conferred seniority in the cadre since their appointment to the post was beyond the quota of promotees.

II. That, the promotees appointed in between June 1987 to November 1987 cannot be conferred seniority with retrospective effect i.e. with effect from the date of appointment in the year 1987.

8. Learned Counsel explains that the decision of the Supreme Court implies therefore that the promotees appointed in between June 1987 to November 1987, shall first have to be regularized in the cadre of ACF and then only, they can be given seniority, but with prospective effect and they cannot be placed above the writ petitioners, who are the direct recruits of the year 1990, in seniority.

Learned Counsel explains further that the opposite party Nos. 21 to 41 are the same set of promotees who were the respondents in the writ petition before the Supreme Court in the case of Sanjay K. Sinha-II (Supra) and even though, the petitioners may not have been parties in the aforesaid writ petition, the law laid down by the Supreme Court in the aforesaid case, shall be fully binding upon the respondents.

It is further explained that as per the directions contained in the order of this Court passed in W.P.(S) No. 6629 of 2005, the respondent State Government was supposed to apply the law laid down in the case of Sanjay K. Sinha-II (Supra), and should have placed the petitioners above, in seniority, over the promotees of 1987.

9. Learned Counsel submits further that the opposite parties in their show-cause replies, have made a misconceived and misleading statement, claiming that the services of the writ petitioners have to be regularized. Learned Counsel explains that the respondents appear to be confused with "confirmation of the services" and "regularization". For confirmation, the only criteria required is that the

appointees should complete three years of continuous service and should have passed the departmental examination, whereas "regularization" involves existence of vacancies against which a person can be regularized. The stand taken by the opposite parties that the appointment of the petitioners, who are the direct recruits of 1990, is not a substantive appointment, cannot be accepted in absence of any order / notification of the State Government and unless such declaration is made by the competent authority or by the competent court, the same cannot invite acceptance.

Learned Counsel adds that the respondent State Government, instead of implementing the order, has apparently made an attempt to circumvent the same and has denied the benefit of promotion to the petitioner and therefore, the show-cause replies of the respondents / opposite parties, in itself, amounts to contempt. Learned Counsel would invite reference in this context to the judgment of the Supreme Court in the case of T.R. Dhananjaya Vs. J. Vasudevan,

10. Referring to the directions as contained in the order of this Court passed in W.P.(S) No. 6629 of 2005, learned Counsel submits that the direction to the State Government was to consider the objections of the writ petitioners against the provisional gradation list dated 30th November 2004. However, by such objection, it is brought to the notice of the respondents that the gradation list, as prepared, is in violation of the order of the Supreme Court passed in the case of Sanjay K. Sinha-II (Supra) and upon receipt of the objection, the State Government was required to decide such objection expeditiously and thereafter, finalize the gradation list within a period of four months from the date of order.

11. From the statements of the respondents / opposite parties, as declared in their show-cause replies and as explained by the learned Counsel for the opposite parties, it appears that in compliance of the order of this Court, the respondents have considered the objections raised by the writ petitioners including the present petitioner against the provisional gradation list and have recorded the decision on such objections by assigning reasons.

12. As it appears, the controversy as raised by the writ petitioners, is in respect of the propriety of the reasons assigned by the respondents in rejecting the objections of the writ petitioners. On the claim of the petitioner that he should have placed above the promotees of 1987 in seniority, the stand taken by the respondents is that the petitioner's claim for seniority over 1987 batch candidates, can be decided only after regularization of the services of the petitioner and other officers of his batch since their original appointment was not made against any substantive vacancy in the quota of direct recruits. The controversy does raises a fresh issue relating to question of facts as to whether the appointment of the petitioner / direct recruits of 1990 batch, was made against any substantive vacancy and if not, whether their services need first to be regularized and also, what would be the position of some of the promotees of 1987 batch in the gradation list, whose services were subsequently regularized, vis-?-vis the petitioner. In my opinion, this controversy cannot possibly be

resolved in this contempt proceeding.

13. Judgment in the case of T.R. Dhananjay v. Vasudevan (Supra) does not apply to the facts of the present case in as much as, the plea relating to appointment of the petitioners who are the direct recruits of 1990 batch, was not made against any substantive vacancy and they have first to be regularized in their services, is not a new plea taken by the respondents / opposite parties in the present contempt proceeding. Rather, such plea was advanced in the writ application through the counter-affidavit filed by the State of Bihar. In the T.R. Dhananjay (Supra) case, an altogether new plea was taken by the respondents for the first time in the contempt proceeding and it is in this context that the Supreme Court has deprecated such practice.

14. To the extent that the respondents / opposite parties have considered the objections of the writ petitioners against the provisional gradation list and have recorded their decision on their objection by passing a reasoned and speaking order, I am satisfied that the order of this Court has been complied with by the respondents and therefore, this contempt proceeding need not be continued any further. Accordingly, this contempt proceeding is dropped.