

(2013) 09 JH CK 0038
In the Jharkhand High Court
Case No : WP (S) No. 7065 of 2012

Pandu Tuti and Another

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2014) 1 AJR 607 : (2013) 4 JLJR 312

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Mahesh Kr. Verma, for the Appellant;

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. These petitioners have approached this Court for directing the respondents to grant them regular promotion to the post of Assistant Engineer in the Drinking Water and Sanitation Department, Government of Jharkhand from at least 15.11.2000 i.e. from creation of new State of Jharkhand.

2. It is the case of the petitioner that after being appointed as Junior Engineer in the erstwhile State of Bihar in the year 1982 these petitioners have been made to work as In-charge Assistant Engineer vide notification No. 1779 dated 18.8.1989 (Annexure-2). Thereafter, the Bihar Public Service Commission in the year 1995 made recommendation vide letter No. 1162 dated 6.9.1995 for regular promotion to the post of Assistant Engineer from due date to be determined by the Department where the names of these petitioners were there in serial Nos. 22 and 23 (Annexure-3). It is the contention of the petitioners that they were not promoted to the post of Assistant Engineer, thereafter and they continued to discharge the duties as such on the said post as In-charge Assistant Engineer when their services were placed with the State of Jharkhand after its creation on 15.11.2000. They have continued to discharge the said responsibility to the post of Assistant Engineer on In-charge basis without any break till

31.12.2007. Thereafter, by notification Nos. 5941 and 5942 dated 31.12.2007 they were made In-charge Executive Engineer while remaining as In-charge Assistant Engineer since 1989. It is further contention of the petitioners that finally by notification dated 10.1.2012 (Annexure-5) petitioners have been granted regular promotion on the post of Assistant Engineer with financial benefit to accrue from the date they joined the promoted post. Respondents have ignored the continuous discharge of duty as In-charge Assistant Engineer by the petitioners and have not conferred promotion with retrospective effect i.e. at least the date from the creation of State of Jharkhand. Petitioners have referred the cases of two Assistant Engineers who were promoted to the post of Executive Engineer in the Department with retrospective effect from 15.11.2000 and 10.6.2005 vide Annexures-7A and 7B respectively. In such circumstances, petitioners have preferred this writ application. Learned counsel for the petitioners has relied upon judgment rendered by the Hon'ble Supreme Court in the case of Secy.-Cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, in-support of his contention.

3. Learned counsel for the respondents-State on the other hand submitted that the exercise for regular promotion of these petitioners and other eligible persons have been undertaken after obtaining roster clearance, Vigilance clearance, Lokayukt clearance and recommendation of Jharkhand Public Service Commission as well under the notification dated 10.1.2012. It is the contention of the respondents that since the petitioners have remained on the In-charge basis prior to that, the claim of the petitioners would be in violation of Rule 58 of the Service Code and Rule 74 of the Financial Rules under which the incumbent is entitled to financial benefits of the promoted post from the date on which he is regularly promoted to the higher post. Therefore, the respondents contested the claim of these petitioners.

4. I have heard counsel for the parties and gone through the relevant materials on record. From the averments made in the writ application as also from the annexures enclosed thereto it appears that these petitioners were working in In-charge capacity on the post of Assistant Engineer since 1989 and thereafter by another ad hoc arrangement were given the post of In-charge Executive Engineer vide notification dated 31.12.2007. In these circumstance and background, the promotion to the post of Assistant Engineer on regular basis has been given vide notification dated 10.1.2012. Petitioners have approached this Court for grant of retrospective promotion to the said post.

5. The law in relation to the grant of even ad hoc charge on higher post is well settled. In an exigency of work in the Department concerned if such ad hoc arrangement is to be made by giving additional charge of higher post to the incumbent of lower post the same is required to be done in accordance with the seniority of the person in the original cadre and after giving due consideration to inter se seniority of all such person concerned. In the present writ application, it is however not clear whether these petitioners were given the In-charge post of

Assistant Engineer and Executive Engineer in the Department in the years 1989 and 2007 after taking into account the aforesaid legal position which is also reinforced by the circular dated 22.2.1988 which is enclosed to the writ application as Annexure-1B. However, it appears that the petitioners as a matter of fact have continued to discharge their responsibility as In-charge Assistant Engineer since 1989 and In-charge Executive Engineer since December, 2007. Petitioners may have right to claim the additional salary for the higher post on which they were asked to officiate apart from the substantive post of Junior Engineer in terms of Rule 103 of the Jharkhand Service Code. Petitioners, in such circumstance are allowed liberty to make a proper representation before the respondent No. 2, the Additional Chief Secretary, Drinking Water and Sanitation Department, Ranchi for claim of such retrospective promotion from the anterior date together with all supporting facts and documents as also in the alternative for claim of additional salary for the higher post for which they have officiated on In-charge basis since 1989 and 2007 respectively in terms of the relevant rules. On receipt of such representation(s) the respondent No. 2, the Additional Chief Secretary, Drinking Water and Sanitation Department, Ranchi shall consider the same in accordance with law after giving due regard to the inter se seniority of the incumbents of the petitioners' cadre and take a decision within a period of 16 weeks from the date of receipt of such representation(s) which shall also be communicated to the petitioners.

6. Needless to say that if the respondent No. 2, the Additional Chief Secretary, Drinking Water and Sanitation Department, Ranchi arrives at a decision in favour of the petitioners' the consequential benefits arising there from shall flow, thereafter. The writ petition is disposed of in the aforesaid terms. However, the observation made herein above shall not be treated as comment upon the merit of the case of the petitioners.