
(2008) 04 JH CK 0107
In the Jharkhand High Court

Parmanand Kumar Sahu

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Citation : (2008) 117 FLR 786 : (2008) 3 JCR 93

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

R.K. Merathia, J.—Heard parties finally.

2. Petitioner has prayed for quashing the office order No. 36 (Annexure 2) issued by respondent No. 2 by which his appointment letter was cancelled on the ground that the appointment was irregular.

3. Mr. Verma, appearing for petitioner, submitted that the petitioner applied pursuant to an advertisement against the post of "Typist (Headquarter)" and he was selected; and accordingly appointment letter was issued on 23.12.1997 appointing him, though temporarily. As he was working as daily wager in Jawan Bhawan, Ranchi, he requested for relieving him which was allowed and he gave his joining on 9.2.1998 before the respondent No. 2. When the salary was not paid, petitioner filed writ petition being C.W.J.C. No. 2519 of 1998 which was disposed of on 11.2.1999. The respondents in the counter affidavit raised plea in the said writ petition that appointment of petitioner was not made in accordance with law and he never performed his duty at the place where he was posted and therefore, salary was not paid. This Court passed the following order:

After hearing the parties, as I find that the respondents have not yet come out with any order of termination in respect of petitioner on the ground of illegal appointment, according to this Court, the authorities cannot withhold the salary of the petitioner on the ground of illegal appointment till he remains in service.

The dispute with regard to the performance of duty being disputed question of fact, petitioner was given liberty to approach the respondent No. 2 bringing to

his notice the relevant evidences to show that he was posted against one or other post and performed duties during one or other period and the respondent No. 2 was to enquire and if it was found that petitioner was posted against one or other post and performed duty, he was to be paid the admitted salary for the period he actually worked. It was observed that however the said order will not stand in the way of respondents to pass any order in accordance with law. It is submitted by Mr. Verma that on the basis of the said observations, the appointment letter of the petitioner has been cancelled, on irrelevant grounds.

4. The counsel for the respondents supported the impugned order.

5. The posts of "Typist" with pay scale of 1200-30-1800; and "Typist (Headquarter)" with pay scale of 1320-30-1560-40-2040 were separately advertised. The candidates could apply against one post only. Petitioner applied against the post of "Typist (Headquarter)", whereas 5-6 persons applied against the post of "Typist". The Result Sheet/Merit List was also prepared separately. Petitioner was the only candidate who applied against the post of "Typist (Headquarter)". Regarding the appointments letter dated 23.12.1997 issued to the petitioner (Annexure 5) it is not said that it is forged or fabricated. What is said is that it was not dispatched by the regular routine clerk of respondent No. 2, but the petitioner has denied this by referring to the copy of the issue register (Annexure 15). The ground that the post of "Typist (Headquarter)" was reserved for Scheduled Tribe whereas the petitioner was O.B.C. candidate, also cannot be accepted, as there was no such indication in the advertisement. In reply to the other ground, that out of the three members of the Selection Committee, only two had signed the proceeding, the assertion of the petitioner that on the basis of such selection proceedings signed by two members, other candidates were appointed and started working has not been denied by the respondents. Then if a combined test was taken for both the posts of "Typist" and "Typist (Headquarter)" but separate merit lists were prepared, petitioner was not responsible. It is true that one Rameshwar Prasad Singh, who applied against the post of "Typist" secured higher marks than the petitioner. Thus, even if it is accepted that there was irregularity in appointing the petitioner, it was on the part of the respondents themselves, and petitioner cannot be made to suffer.

6. Accordingly, the impugned order is set aside and the petitioner should be given appointment on the post of "Typist (Headquarter)", but without back wages/salary, within four weeks from the date of receipt/production of this order. However, the wages/salary, prior to termination is to be paid for the period petitioner was posted and actually worked, at one or other place, if not already paid, in terms of the said order dated 11.2.1999, passed in C.W.J.C. 2591 of 1998 (R). With these observations and directions, this writ petition is disposed of. No costs.