
(2015) 04 JH CK 0109

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4204 of 2013

Philip Marianus Toppo

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) 3 AJR 354

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Chaitali C. Sinha, J.C. to Jai Prakash, A.A.G., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Aparesh Kumar Singh, J—Heard learned counsel for the parties. The grievance of the petitioner as incorporated in the order dated 7.7.2014 is quoted herein below:--

"Learned counsel for the petitioner submits that the petitioner's case for promotion to the single Post of Engineer-in-Chief was not being considered in accordance with law. According to him, after his promotion to the post of Chief Engineer w.e.f. 24th February, 2007, he became, entitled to such consideration on completion of 2 years thereafter as per the policy decision of the State Government itself as also stated in the counter-affidavit of the respondents. However, no decision was taken to hold the meeting of D.P.C. even though the proposal for promotion was sent to J.P.S.C. It is submitted that vague statements have been made in para 11 of the counter-affidavit about the date of proposal for promotion of the petitioner. It is submitted that the petitioner has been implicated in the criminal case being RC04(A)/2010AHD (R) only on filing of the charge-sheet on 24th November, 2013. The petitioner however has retired on 31st January, 2014 without being substantively promoted to the said post which he had been holding since 14th August, 2006 on officiating basis.

Learned counsel for the Respondent-State is allowed time to clarify the averments made in the counter-affidavit.

The I.A. for early hearing is being disposed of.

Accordingly, let the case appear after 4 weeks under the appropriate heading for the aforesaid purpose".

2. No affidavit has been filed thereafter by the State, though the counter-affidavit was on record when the said order was passed. As would appear from the undisputed facts, petitioner has retired on 31.1.2014 from the substantive post of Chief Engineer, though he was holding the post of Engineer-in-Chief in In-charge capacity. It is also true that petitioner though claims himself to be entitled for consideration of promotion on the post of Engineer-in-Chief after two years of his promotion to the post Chief Engineer in February, 2007, but he did not approach this Court earlier instead preferred the present writ petition in 2013. It is stated that he was representing before the respondent-Department. However it is also true that petitioner has been implicated in a criminal case on filing of a charge-sheet on 24.11.2013 before Special Judge, CBI, Ranchi.

3. Learned counsel for the petitioner has sought to draw the attention of the Court to the resolution dated 16.1.2012 (Annexure-7) which lays down the "Kalavadhi", the period relevant for reckoning the person to come within the zone of consideration for promotion to the next higher post. The said resolution however is not in the nature of a statute which imposes a statutory obligation upon the respondent-department to hold promotional exercise at a regular interval. Annexure-8 is another circular of the department of Personnel, Administrative Reforms and Rajbhasha where also a direction is issued upon the respective Secretaries of the different department/Head of the department to undertake an exercise for promotion to the next higher post on existence of vacancies. This again is in a nature of directory circular and cannot be construed to impose statutory obligation upon the respondents to hold Departmental Promotion Committee (D.P.C.) meeting within particular stipulated period. Petitioner says that it is not in dispute that there are 4 posts for Engineer-in-Chief vacant and he was the only eligible candidate for such consideration for promotion.

4. However, it is the case of the respondents that his name was sent to Jharkhand Public Service Commission (J.P.S.C.) for consideration for promotion but finding that he was implicated in a criminal case and prosecution has been sanctioned against him, no decision was taken to even hold the meeting of D.P.C.

5. It therefore appears that the petitioner at the fag end of his service has approached this Court for a direction upon the respondents to consider his case for promotion to the post of Engineer-in-Chief.

6. In the aforesaid state of facts when the petitioner has failed to show any statutory rules under which there was a legal obligation upon the respondents to

hold the D.P.C meeting in a regular interval and may be when the petitioner became eligible for such consideration after remaining in the post of Chief Engineer for two years, no writ of mandamus or direction can be issued.

7. However, at this stage, observation can be made to the extent that if the department chooses to hold D.P.C meeting for consideration of cases of such persons who fell in the zone of consideration like the petitioner for particular years may be, 2009, 2010 or thereafter, then petitioner's case should also be considered. It is also observed that if in such exercise any person junior to the petitioner is found fit for promotion on the date before petitioner's retirement, when there was no proceeding against him, petitioner's case should also be considered. However, as observed herein above no direction or mandamus can be issued upon the respondents to grant him promotion on the post of Engineer-in-Chief in the aforesaid circumstances. The writ petition is disposed of with the aforesaid observations.