
(2015) 11 JH CK 0062
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3958 Of 2013

Rajnik Gurung

APPELLANT

Vs

State Of Jharkhand and Ors

RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Citation : (2016) 1 JLJR 101

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : S.N. Pathak, Fayyaz Ahmad, Birju Thakur, Suresh Kumar

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J

1. Challenge to the seniority list of police constable as contained in force order No. 96/2008 bearing memo No. 627 dated 29.1.2008, Annexure-3 is being made by the petitioner through the instant writ petition after 5 years of its issuance in 2013. Petitioner is shown at serial No. 7 with date of appointment 22.11.1988 and date of passing 'Praveshika' in 1978 compared to persons at serial Nos. 4 and 5 namely Devi Dayal Singh and Sudesh Gurung, who were appointed in 1988 and 1993 respectively. In order to support the challenge to their seniority, petitioner has relied upon the police order at Annexure-1 dated 15.10.1987 issued by the Director General-cum-Inspector General of Police, Bihar, Patna, Annexure-1 provides that date of preparation of seniority for the literate constable cadre for the purposes of promotion to the post of Assistant Sub-Inspector and for the purposes of preparation of seniority list of Hawaldar would be date of passing of 'Praveshika'. As it appears from the pleadings on record specifically paragraphs-10 and 14 of the counter affidavit, these two persons at serial Nos. 4 and 5 referred to hereinabove were brought into the literate constable cadre on issuance of memo No. 1504 dated 24.9.2002, Annexure-F. Petitioner applied on 30.1.2004 giving his option to be brought into literate

cadre. Pursuant to petitioner's option, he was brought into the literate constable cadre on issuance of force order No. 50/2004, Annexure-E. Respondents have enclosed Annexure-B, which is force order No. 89 of 2002, in effect, delineating the principles relating to literate constable cadre and determination of seniority of incumbents joining the said cadre. This is dated 8.7.2002. Relevant paragraphs of the said force order are being noticed by the counsel for the respondents to submit that literate constable cadre is separate cadre which is to be created from the general sepyo cadre based upon their seniority, service records and passing of 'Praveshika' exam, after seeking option from them. Seniority in such cadre would be determined on the basis of date of appointment, date of birth and date of passing of 'Praveshika' exam. It is explained by the learned counsel for the respondent that determination of seniority in the literate constable cadre with which petitioner is aggrieved has been made on consideration of the aforesaid rules and taking into account the fact that these two persons at serial Nos. 4 and 5 had been brought into the literate constable cadre by virtue of the force order dated 24.9.2002, Annexure-F, taking into account the exercise of their option along with few other persons also. Since, the petitioner gave his option on 30.1.2004 only, petitioner's position in seniority list has been placed below them. This is in consonance with the principles contained therein. He also points out that these two persons with whom petitioner is aggrieved have not been impleaded as respondents in the instant writ petition.

2. Learned counsel for the petitioner in his reply submits that Annexure-2 bearing memo No. 1818 dated 20.11.2002 reiterates the principles relating to determination of seniority in the literate constable cadre based upon passing of the 'Praveshika' or matric exam.

3. I have considered the submissions of the parties and the pleas taken in the background of the relevant material facts noticed hereinabove. In the first place, it is to be observed that challenge to the inter se seniority amongst the literate constable by the petitioner is being made after 5 years of issuance of seniority list dated 29.1.2008, Annexure-3. The persons against whom, the petitioner has grievance have not been impleaded as respondents though they are necessary parties and may have been adversely affected by the outcome of this writ petition. On the merits of the matter, it appears that two persons at serial Nos. 4 and 5 at Annexure-3 exercised their option earlier to the petitioner and were inducted in the literate constable cadre by force order contained in memo No. 1504 dated 24.9.2002, Annexure-F, which itself refers to the circular/force standing order 89/2002 dated 8.7.2002, Annexure-B. From perusal of Annexure-F also, it appears that incumbents, who came in literate constable cadre as per list enclosed thereto were given 15 days time to object to the seniority list. Petitioner was nowhere in picture at the relevant point of time. He had exercised his option on 31.1.2004 to come into literate constable cadre and got inducted by virtue of force order No. 50/2004, Annexure-E. Apparently petitioner did not have grudge against the induction of the said persons in the literate constable cadre in September, 2002. He never raised cause of action any time earlier.

Petitioner came into literate constable cadre only in 2004 pursuant to exercise of his option. He, therefore, cannot make a claim to be borne in the cadre anytime prior to his induction so as to claim of seniority vis-à-vis the persons at serial Nos. 4 and 5. Principles for determination of seniority as relied upon by the petitioner and the respondents also do lead to the same interference drawn hereinabove that petitioner could not claim seniority above those two persons on the strength of the claim that he had passed 'Praveshika' earlier to them. Challenge to seniority at belated stage is also otherwise not to be encouraged as it upsets the inter se rights of the parties, which have crystallized over a period of time. Considering all these aspects, this Court finds no merit in the writ petition, which is, accordingly, dismissed.