

(2018) 12 JH CK 0022

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2532 Of 2010

Ram Swaroop Paswan And Ors

APPELLANT

Vs

Jharkhand State Electricity Board And Ors

RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Citation : (2018) 12 JH CK 0022

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Satish Prasad, Suchitra Pandey

Final Decision : Disposed Off

Judgement

1. In the captioned writ application, the petitioners have inter alia prayed for direction upon the respondents, in particular respondent no. 5 to provide them the removal of stagnation in the appropriate pay-scale by upgrading the scale likewise other general employees of the post of Assistant Operator to the employees of Scheduled Caste and Scheduled Tribe categories of same post.

2. The facts, in brief, is that the petitioners, who are I.T.I Apprentice, were selected by the Selection Board of Patratu Thermal Power Station, vide office order dated 10.04.1984 on the post of Assistant Operator. By passage of time, the respondents-PTPS published tentative seniority list vide letter dated 20.09.1995 of Assistant Operators. It has further been averred that the Bihar State Electricity Board, Patna vide resolution dated 28.02.1986 has fixed the minimum qualifying period for providing promotion in different categories of posts, which covers the case of the petitioners. It has further been averred that the PTPS time to time issued order to up-graded the scale for removal of stagnation, as evident from Annexure 4 series. But the respondent-PTPS vide order dated 16.09.1995 cancelled the order at Annexure 4 series, against which, the aggrieved Assistant Operators moved this Court by filing C.W.J.C No. 2391 of 1995 (R) , which was disposed of vide order dated 13.07.2006, by

which, Secretary, Jharkhand State Electricity Board was directed to consider the grievance of the petitioner and till then matter was ordered to be kept in abeyance. Pursuant thereto, the writ petitioners, collectively and in individual capacity, submitted representation, whereupon, the Director (Personnel), B.S.E.B also directed respondent-PTPS to provide removal of stagnation and further Bihar State S.C/S.T Union has also requested to provide such benefit.

3. Heard Mr. Satish Prasad, learned counsel for the petitioners and Ms Suchitra Pandey, learned counsel for the respondents.

4. Learned counsel for the petitioners submitted that all the petitioners has now retired after attaining the age of superannuation and now they are confining their prayer for monetary benefit, as per the resolution no. 264 dated 28.02.1986 of BSEB. It has further been submitted that petitioners later on in the service career have got promotion but their initial pay is already affected and further for denial of removal of stagnation as per Resolution No. 264 dated 28.02.1986 they are suffering from huge monetary loss.

5. As against this, learned counsel for the respondents-JSEB submitted that the petitioners were promoted to the post of operator w.e.f. 11.04.1992 after completing the qualifying period of seven years, which is minimum period of service for candidates belonging to Scheduled Caste/Scheduled Tribes, after relaxing one year i.e. less than 8 years as has been prescribed for the general candidate. Thereafter, the petitioners were extended all time bound promotions. It has further been submitted that the instant writ application has been filed in gross suppression and mis- representation of material facts by demanding removal of stagnation on the post of Assistant Operator on the basis of only relaxation of one year Kalawadhi. Further, the Board vide letter dated 21.08.1999 on the basis of issues raised by the employees belonging to SC/ST regarding removal of stagnation in the light of Board's decision taken vide order dated 05.08.1976, has made a decision that since the removal of stagnation is not promotion so the benefit of reservation could not be provided. Furthermore, since the petitioners did not come within the zone of seniority of 20 % upgraded post for removal of stagnation, as per sanctioned post of Assistant Operator/ existing post of Assistant Operator, they were not given removal of stagnation. It is true that BSEB vide letter dated 07.12.1994 informed that there will be relaxation of one year in removal of stagnation for SC/ST candidates but has also been intimated that there is no provision of reservation for SC/ST candidate.

6. From the pleadings available on record, it is quite apparent that the petitioners, who are members of Scheduled Caste/Scheduled Tribe, have joined their services in the year 1984. It further appears that the applicability of Resolution No. 264 dated 28.02.1986 has not been appropriately denied by the respondents rather they in their counter affidavit have mentioned that the petitioners have been given all time bound promotions etc. but the main issue is whether the petitioners have been given up-gradation of scale in terms of Resolution No. 264 dated 28.02.1986 or not. For better appreciation, the

relevant portion of said resolution is reproduced herein below:

"The Board in its Resolution No. 89 dt. 8.6.1983 and Resolution No. 249 dt 23.11.1986 has fixed the minimum qualifying period of provide for promotion in different categories of post at the time of promotion. These orders did not cover all category of posts. As such with a view to rationalised the eligibility period to cover all the categories of posts, it has been decided to fix the Kalabdhhi (qualifing period) on the basis of categories/scale in the manner indicated below:

xxx xxxx xxxx

2.The minimum period of service for candidates belongs to SC/ST for promotion/removal of stagnation will be one year less than what has been prescribed above for the general candidates.

xxx xxxx xxxx"

7. From perusal of record, it further appears that vide order dated 23.06.1989 at Annexure 4, taking into consideration the Board's standing order dated 1.09.1988 and 28.02.1986, scales of 38 Assistant Operators were up-graded so as vide Annexure 4/A, 4/B and 4/C to the writ application, which was though cancelled by respondent no. 5-General Manager, PTPS vide order dated 16.09.1995, upon which the aggrieved moved this Court, wherein the Hon'ble Court vide order dated 13.07.2006 directed Secretary, Jharkhand State Electricity Board was directed to consider the grievance of the petitioner and till then matter was kept in abeyance. Pursuant thereto direction was given by Director (P), BSEB to respondents-PTPS, the Deputy Director (P), PTPS vide order dated 22.08.1990 though made it clear that Assistant Operator falling under the category of SC/ST is entitled for removal of stagnation but it is alleged that till date the petitioners have not been given proper up-graded scale.

8. In that view of the matter, it would be appropriate to direct the respondents, in particular respondent no. 5 to consider the case of the petitioner for providing removal of stagnation in the appropriate pay-scale by upgrading the scale likewise other general employees of the post of Assistant Operator to the employees of Scheduled Caste and Scheduled Tribe categories of same post and pass appropriate order, taking into consideration the relevant rules/circular/guidelines, within a period 12 (twelve) weeks from the date of receipt/production of copy of this order. It is needless to mention here that if the petitioners are found to be paid any monetary benefits, as it is stated that they have now retired, the same be extended to them within a period of 12 (twelve) weeks thereafter.

9. With the aforesaid observations and directions, the writ application stands disposed of.