
(2006) 07 JH CK 0049
In the Jharkhand High Court
Case No : CWJC No. 9322 of 1996 (P)

Ratan Kumar Adhikary and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Citation : (2006) 4 JCR 417

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

Bench : Single Bench

Advocate : Rajeeva Sharma, Manoj Kumar and Darshan Singh, for the Appellant; Shamim Akhtar, Standing Counsel No. II and Arvind Kumar Mehta, J.C. to Standing Counsel No. II, for the Respondent

Judgement

R.K. Merathia, J.—The petitioners have prayed for a direction to the respondents to give them seniority and, accordingly, amend the gradation list and also to pay their salary with all increments and other ancillary payments with effect from 8.7.1980 in view of the resolution of the State Government contained in Memo No. 1381 dated 8.7.1980 (Annexure-1).

2. Petitioners" contention is that by the said resolution (Annexure-1), all the Typists and Copyists working in the Collectorates on remuneration basis were declared as Government Servant and their service conditions and rules and regulations were made same and similar to that of Class III posts of the State Government employees and the scale of Lower Division Clerk was approved for them.

3. The petitioners" further case is that they started getting the scale and other benefits as per Annexure-1 but their services were reckoned with effect from 12.11.1986 on the ground that by Appointment Order No. 3 of 1986 issued by the Establishment Section of Sahibganj Collectorate under the signature of Deputy Commissioner, Sahibganj (Annexure-2) the petitioners, who were extra Copyists were absorbed/adjusted as Clerks. The petitioners made representation claiming their absorption with effect from 8.7.1980 before the Deputy

Commissioner but the same was rejected. Thereafter they filed appeal before the Commissioner, Santhal Pargana Division, Dumka and that too was rejected by order dated 5/8.6.1996 vide Memo No. 362 dated 8.6.1996 (Annexure-4).

4. Mr. M.S. Akhtar, learned standing counsel No. II, appearing for the respondents, with reference to paragraph 5 of the counter-affidavit filed on behalf of the Deputy Commissioner, Sahibganj (respondent No. 2) submitted that the petitioners were working on remuneration basis in the Collectorate before the said order dated 8.7.1980 was passed by the State Government and they started getting regular pay with effect from the said date i.e. 8.7.1980, but they could be actually absorbed or adjusted against the existing vacancies only on 12.11.1986 (Annexure-2) which was in consonance with the said order of the State Government dated 8.7.1980, (Annexure-1). He further submitted that before 1983, Sahibganj was the Sub-Division of Dumka District but orders were not issued by Dumka District. However, the existing vacancies could be found in Sahibganj district in 1984. As per the said order dated 8.7.1980, 15% of the then vacancies were to be reserved for Typists/Copyists working on remuneration basis and against those 15% existing vacancies, the petitioners were absorbed vide order dated 12.11.1986 in terms of Clause 7 of the said resolution dated 8.7.1980 and, therefore, the petitioners cannot be given seniority from 8.7.1980 as on that date, the then existing vacancies were not known to the newly created Sahibganj District in 1983. It took time to ascertain vacancies in different sections of the Collectorate. Thereafter the petitioners were absorbed in 1986 only after leaving 15% posts of Grade III, 85% posts were advertised and petitioners and general candidates were appointed in Class III posts. It has been clearly stated in Clause 7 of the Government resolution dated 8.7.1980 that 15% posts in the regular cadre of Grade III employees would be reserved for Typists and Copyists and unless and until 15% posts could be ascertained, the petitioners could not be absorbed.

5. I find force in the submission of the State counsel. In view of Clause 7 of the Government resolution dated 8.7.1980, the petitioners could be absorbed on 12.11.1986. Thus, I do not find any error in the impugned orders of the Deputy Commissioner and the Commissioner.

6. Mr. Rajeeva Sharma, learned senior counsel appearing for the petitioners then referred to the minutes of the meeting of the Establishment Committee of Dumka District held on 18.9.1992 (Annexure-5) and submitted that five persons were given time bound promotion counting their services with effect from 8.7.1980 and order was passed to correct the gradation list and that petitioners case is similar to those persons and, therefore, the petitioners should also be given time bound promotion. Mr. M.S. Akhtar, counsel for the State-respondents submitted that there is no reply on the affidavit on this aspect by the State Government.

In absence of any reply on behalf of the State on the aforesaid aspect, the matter is remitted to the Deputy Commissioner, Sahibganj. If a representation is

filed by the petitioners in this regard and if he finds that the petitioners are similarly situated with the said persons and thus are entitled to time bound promotion from 8.7.1980, he will pass necessary orders after hearing the concerned persons, if any, who may be affected by such order. If he finds that petitioners are not entitled to the same, he will communicate them the reasons thereof. This exercise should be completed within three months from the date of receipt of their representations.

7. With these observations and directions this writ petition is disposed of. However, there will be no order as to costs.