

(2013) 06 JH CK 0020

In the Jharkhand High Court

Case No : Writ Petition (S) No 4116 of 2004

Ravindra Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Citation : (2013) 4 AJR 53 : (2013) 3 JLJR 490

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : J. Dubey, for the Appellant; Sumir Prasad and Mr. Baleshwar Yadav J.C. to S.C. I for the State, Mr. Delip Jerath, Mr. Rajesh Kumar, Mr. Vineet Vashistha and Mr. Amit Kumar, for the Respondent No. 6, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—This writ petition has been filed seeking quashing of order dated 19.7.2004 and with a further prayer for grant of promotion to the petitioner on the post of Head-Clerk. The brief facts of the case are that, the petitioner was appointed on a Class-IV post on 6.6.1973 and respondent No. 6 was appointed on 3.11.1973. It appears that when one Tarini Shankar Kabi was promoted on the post of Head-Clerk and consequently, the respondent No. 6 was reverted from the post of Head-Clerk, he approached this Court by filing writ petition being W.P.(S) No. 5696 of 2002. The said writ petition was disposed of on 15.9.2003 with a direction to the Secretary, P.H.E.D. Government of Jharkhand to give reasonable opportunity to the respondent No. 6 and the said Tarini Shankar Kabi and to decide the issue afresh. Pursuant to the direction of this Court, by impugned order dated 19.7.2004. it has been ordered that though the promotion granted to the said Tarini Shankar Kabi was legal or illegal could not be decided as the record was not produced however, as the respondent No. 6 who is senior to the petitioner, was illegally reverted from his promoted post, it has been thus decided that the respondent No. 6 should be given promotion on the post of Head-Clerk and if necessary, petitioner can be reverted to the lower

post. Challenging the said order dated 19.07.2004, the petitioner has approached this Court by filing the present writ petition.

2. A counter-affidavit has been filed on behalf of the respondent-State whereunder a plea has been taken that by order dated 23/24.12.1980, the petitioner as well as the respondent No. 6 were promoted/appointed on Grade III post. In the said order it has been mentioned that the respondent No. 6 would be appointed with effect from 6.6.1973 whereas, the petitioner would be appointed w.e.f. 3.11.1973 and in that view of the matter, the respondent No. 6 is senior to the petitioner and therefore, he was granted promotion.

3. A counter-affidavit has also been filed on behalf of respondent No. 6 whereunder a similar stand has been taken by the respondent No. 6 stating that since by the same order dated 23/24.12.1980 both, the petitioner as well as the respondent No. 6 were promoted however, the date of promotion of the respondent No. 6 has been shown as 20.06.1980, therefore, respondent No. 6 was senior to the petitioner. It has been contended that since several persons junior to the respondent No. 6 were promoted, the respondent No. 6 had gone to the Hon'ble High Court by filing writ petition in which a direction was given by the Hon'ble High Court to consider his case. In the impugned order dated 19.7.2004 it has been recorded that the respondent No. 6 was wrongly reverted to the lower post inspite of being senior to the petitioner. A Chart indicating the seniority as well as order of the High Court and other documents have been brought on record.

4. Heard learned counsel for the parties and perused the documents on record.

5. Learned counsel appearing for the petitioner has contended that admittedly the petitioner was appointed on a Grade-IV post on 6.6.1973 whereas, the respondent No. 6 was appointed on the said post on 3.11.1973 and thus, at the initial stage itself the petitioner was senior to the respondent No. 6. The petitioner cleared the departmental examination in the year 1991 whereas, the respondent No. 6 cleared the departmental examination in the year 1997. Rule 157 of the Bihar Board's Miscellaneous Rule, 1958 has been relied upon by the petitioner. Both the petitioner as well as respondent No. 6 were required to pass the departmental examination before promotion to the post of Head-Clerk and admittedly, the petitioner has cleared the departmental examination much prior to the respondent No. 6 however, he was wrongly reverted and denied the benefit of the promotion on the post of Head-Clerk. Learned counsel for the petitioner has further submitted that the order of the promotion which was issued on 23/24.12.1980 would disclose that the petitioner was placed at serial No. 1 whereas, the name of the respondent No. 6 has appeared at serial No. 12. Though, it has been mentioned in the order dated 23/24.12.1980 that the respondent No. 6 has been appointed w.e.f. 20th June, 1980, however, no reason whatsoever has been disclosed by the respondent-State for such retrospective appointment/confirmation of the respondent No. 6 on the post of correspondence clerk. Moreover, in the impugned order itself it has been mentioned that though

the respondent No. 6 belongs to a reserved category, he has been promoted on the post which was available for general category candidate which cannot be legally done.

6. Learned counsel appearing for the respondent No. 6 has also placed reliance on the office order dated 23/24.12.1980 and contended that the respondent No. 6 was admittedly senior to the petitioner. In view of the said order and in pursuance of direction passed by the Hon"ble High Court, the claim of respondent No. 6 has been rightly adjudicated by the respondent-State and therefore, no interference is required in this matter by this Court.

7. Learned counsel appearing for the respondent-State has also supported the impugned order and placed reliance on the office order passed on 23/24.12.1980.

8. It appears that the said Tarini Shankar Kabi was made In-charge Head Clerk however, subsequently, the petitioner was given the charge of the said post by order dated 12.04.2001 and therefore, the said Tarini Shankar Kabi moved the High Court in C.W.J.C. No. 2234 of 2001. The writ petition was disposed of with a direction to the respondents to fill up the post of Head Clerk on regular basis however, the Court declined to interfere with order dated 12.04.2001. From the impugned order dated 19.07.2004, it appears that for being promoted on the post of Head Clerk one is required to clear the Accounts examination and such promotion is granted on the basis of seniority-cum-eligibility. It is also stated in the impugned order that an employee is required to clear the Accounts examination within two years and if an employee fails to clear the departmental examination/Accounts examination within the prescribed period of two years, a person junior to him can be promoted, if he has cleared the departmental examination/Accounts examination within the prescribed period of two years and therefore, in such a situation, seniority would be overlooked. From the order passed by the High Court in W.P.(S) No. 5696 of 2002, which was preferred by the respondent No. 6 in the present proceeding, it appears that an issue with respect to the legality of the appointment of the said Tarini Shankar Kabi was raised and a specific direction was issued by the High Court to the Secretary, PHED, Government of Jharkhand, to decide the issue within a period of four months. However, from the impugned order dated 19.07.2004, it appears that without deciding the issue of appointment of the said Tarini Shankar Kabi, impugned order has been passed reverting the petitioner from the post of Head Clerk. In my opinion, the respondents could not have done so particularly in view of orders passed in earlier writ proceedings in which this Court had expressed its displeasure on the adhoc arrangements made by the department and that was the reason a direction was given for making regular appointment. The specific direction issued by this Court in W.P.(S) No. 5696 of 2002 has not been complied with by the respondents and again, an order has been passed which is noting but an adhoc arrangement only. Without deciding the legality of the appointment of the said Tarini Shankar Kabi and thus, without deciding whether he was entitled for grant of promotion on the post of the Head-Clerk, the impugned order dated

19.07.2004 could not have been passed by the respondents whereby the respondent No. 6 has been promoted on the post of Head-Clerk.

9. A perusal of the impugned order dated 19.07.2004 would clearly disclose that the respondent No. 6 has been promoted to the post which was available for the general category candidate and at that time no post was available for the reserved category candidate. The respondent No. 6 belongs to a reserved category. Admittedly, the petitioner joined the service on 6.6.1973, that is. prior to the respondent No. 6, who joined the service on 3.11.1973. Further, the petitioner has cleared the departmental examination in the year 1991 itself whereas, the respondent No. 6 has cleared the departmental examination in the year 1997. It is thus clear that the respondent No. 6 failed to clear the departmental examination within the prescribed period of two years. No reason whatsoever except that, the respondent No. 6 has been shown senior to the petitioner in order dated 23/24.12.1980, has been disclosed by the respondent-State in the impugned order dated 19.07.2004. No reason has been disclosed, except the above, why the respondent No. 6 was granted promotion on the post available for the general category candidate on which the petitioner was promoted. In view of the aforesaid, I am of the opinion that petitioner was illegally reverted and denied the benefit of promotion and respondent No. 6 was wrongly given promotion on a vacancy for the general category candidate, for which the petitioner is eligible. The writ petition is allowed and the impugned order dated 19.07.2004 is quashed. It is further ordered that the direction as contained in order dated 15.09.2003 passed by this Court in W.P.(S) No. 5696 of 2002 should be carried out by the Respondent-State in its true letter and spirit.