
(2007) 09 JH CK 0060
In the Jharkhand High Court

Sachidanand Thakur

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Citation : (2008) 1 JCR 250

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Narendra Nath Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—In the writ petition the petitioner-appellant had sought for a direction of this Court commanding upon the respondents concerned to restore the position of the petitioner in the seniority list as was existing on 15.7.2000 and thereby suitably modify the Notification No. 2629 (S) dated 29.6.06 issued by the Road Construction Department, Government of Jharkhsnd, Ranchi.

2. The petitioner has claimed that similarly situated persons of general category (unreserved category), namely, M/s Ripusudan Dubey, Raghubansh Prasad Singh, Tripurari Shankar Prasad and Krishnanand Choubey and several others have been given their due place, but the petitioner was not considered only on the ground that he had not approached this Court.

3. The appellant presently holds the post of Executive Engineer w.e.f 6.2.97 after his promotion to the said post on 31.1.97. The State of Bihar had published a seniority list in respect of the Engineering Services Class-I which was published by Notification No. 4666(S) WE dated 15.7.2000. The petitioner stood at SI. No. 328 in the said seniority list.

4. After bifurcation of the State of Bihar under the provision:; of Bihar Re-organization Act, 2000 on 15.11.2000, the cadre of Engineering Services Class-I was divided between the two successor States i.e. State of Bihar and State of Jharkhand and the services of the petitioner were allocated to the State of

Jharkhand. After bifurcation a provisional seniority list of Class-I Engineering Services was published on 15.3.2003. The said seniority list was challenged in several writ petitions. One writ petition being W.P(S) No. 5882/03 was filed by the petitioners Raghubansh Prasad Singh, Tripurari Shankar Prasad, Krishnanand Choubey. A Division Bench of this Court by interim order dated 16.12.03 directed the respondents not to revert the said petitioners nor affect their standing in the seniority, promotion and pay etc.

5. The provisional seniority list was also challenged before this Court by one Shri Dudhnath Singh in W.P(S) No. 5295/04 and in the said case an interim order was passed by the Court directing not to give effect to the said seniority list till further order.

6. Again by Notification No. 1047(S) dated 19.4.05, the Road Construction Department, Government of Jharkhand issued another provisional seniority list of Engineering Services Class-I. By the said notification objection was again invited from the concerned persons. One Shri Ripusudan Dubey moved this Court in W.P(S) No. 3970/05 challenging the said notification. This Court passed an interim order not to revert the said petitioner nor to affect his seniority.

7. The final gradation list of Engineering Services Class-I was issued by the Government of Jharkhand by Notification No. 4163(S) WE dated 28.11.05. A contempt petition was thereafter filed being Contempt Case No. 921/05 as some of the interim orders were violated in publishing the said gradation list dated 28.11.05. Thereafter, the said seniority list dated 28.11.05 was modified and a fresh seniority list was issued by Notification No. 2629(s) dated 29.6.06 by correcting the said gradation list keeping in view the interim orders passed by this Court in some of the writ petitions.

8. In the said modified seniority list dated 29.6.06 the persons who had filed the writ petitions and in whose favour the interim orders were issued, were given proper place and their names appeared at Sl Nos. 1,2,3,4 respectively in the gradation list dated 29.6.06. The petitioner being a similarly situated person claims that he is entitled to similar treatment by the respondents as has been done in the case of Shri Ripusudan Dubey and others and his seniority should not have been disturbed and his position as existed in the seniority list dated 15.7.2000 is fit to be restored.

9. The State-respondents contested the writ petition by filing a counter affidavit. It was, inter alia, stated that the seniority of Shri Ripusudan Dubey and others was restored as per the seniority list dated 15.7.07 on the basis of the basic grade seniority as per the Court's order and the gradation list was accordingly published. It was stated that since the said amendment was made in view of the interim orders passed in the respective writ petitions, the petitioner not being a party to the said writ petitions, has not been given the said consideration and in the seniority list dated 15.7.07 his seniority has not been restored for the said reason. It has been stated that the said gradation list dated 29.6.06 has been

stayed till further order by this Court by an interim order dated 25.7.06 passed in W.P(S) No. 2748/06. In the meanwhile, after final cadre division of Assistant Engineers, several Executive Engineers have been allotted Jharkhand State and their names have been included in the gradation list of the Executive Engineers dated 20.4.07 based on the gradation list dated 28.11.05 and the objections have been invited and after disposal of the objections, the final gradation list shall be published by the department.

10. Learned single Judge after hearing the parties disposed of the writ petition by the impugned order dated 23.7.07 giving liberty to the petitioner to submit objection against the said provisional seniority list dated 20.4.07 before the Secretary, Road Construction Department, Government of Jharkhand, Ranchi who was directed to consider the same along with the other objection(s), if any, as early as possible and preferably within two months from the date of receipt of such representation. It has been further directed that the petitioner will not be disturbed except in accordance with law.

11. Mr. Manoj Tandon, learned Counsel appearing on behalf of the appellant, submitted that the learned Single Judge has committed an error in disposing of the writ petition and sending the matter to the Secretary of the Road Construction Department, Government of Jharkhand for consideration whereas the issue raised in the writ petition should have been decided by this Court. The Writ Court should not have remitted the matter to the Secretary of the Department, as remitting the matter back amounts to abdicating its functions and in view of the issues involved in the writ petition, a judicial decision was required. Learned Counsel relied on a decision of the Supreme Court in *Vijay Singh Charak v. Union of India and Ors.* reported in 2007(2) PUR 43 (SC).

12. We are not convinced by the submissions made by learned Counsel for the petitioner for the reasons following.

13. According to the State-respondents, the seniority list dated 20.4.07 is a provisional seniority list and the same is to be finalized after considering the objections filed by the concerned persons. The petitioner has been given liberty to file objection against the said seniority list dated 20.4.07. It is well within the power of the department to consider the objections invited against the seniority list dated 20.4.07 and to decide the same. The learned Single Judge has considered the said aspect and has disposed of the writ petition by giving liberty to the petitioner to submit his fresh objection against the provisional seniority list dated 20.4.07 before the Secretary, Road Construction Department, Government of Jharkhand, Ranchi. A direction has also been given for early disposal of any objection filed by the petitioner. An interim relief has been also given to the petitioner. We, therefore, find no infirmity or illegality in the impugned order of the learned Single Judge.

14. The decision of the Supreme Court in the case of *Vijay Singh Charak*, supra, relied on by learned Counsel for the appellant in support of his contention, in our

view, is not applicable to the facts of the instant case as the said decision has been rendered in respect of select list and not in a matter with regard to the seniority list.

15. We, therefore, find no merit in this letters patent appeal which is, accordingly, dismissed. However, it is made clear that the dismissal of this appeal shall not prejudice the concerned authority in considering and deciding the objection, if any filed by the petitioner inasmuch as, the appellant's seniority, according to the seniority list dated 15.7.2000, shall be maintained till final disposal of his objection, if any, filed against the provisional seniority list dated 20.4.07.

16. There shall be no order as to costs.