
(2002) 10 JH CK 0044
In the Jharkhand High Court
Case No : C.W.J.C. No. 3074 of 1995 (R)

Sadhu Charan Paul and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 JCR 389

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : R. Krishna, for the Appellant; Pradeep Modi, G.P., for the Respondent

Judgement

Tapen Sen, J.

Heard. The facts involved in this case are similar to C.W.J.C. No. 2952 of 1995(R), C.W.J.C. No. 2692 of 1995(R), C.W.J.C. and No. 2820 of 1995(R).

1. The petitioners are aggrieved by the order dated 8.9.1995 (Annexure 10) by which the promotion granted to the petitioner has been cancelled. They have also prayed for quashing of the order dated 11.8.1995 (Annexure-9) by which the promotion granted to the petitioners on the basis of I.A. Trained Scale has been cancelled and they have been directed to join at their original place of posting. The petitioners have also prayed for writ of mandamus commanding upon the respondents to give effect to the promotion order dated 22.7.1995 and confirm the writ petitioners on I.A. Trained Scale with effect from 1.12.1989 with all monetary benefits etc.

2. According to the petitioners, they were appointed on Matric Trained Scale and they also passed I.A. on various dates, the details whereof have been given at paragraph 4 of the writ application. A chart has also been annexed as Annexure 1 showing the dates of joining of the petitioners and the dates on which they were given Matric Trained Scale and the dates on which they passed I.A. Their further case is that all of them passed I.A. Examination prior to 1985 except the

petitioner Nos. 2 and 5 was passed the same in the year 1985 itself. According to the case of the petitioners, they are all eligible for promotion to the I.A. Trained Scale with effect from the dates of passing but they were denied the said privilege and were made to work on the Matric Trained Scale. Their further case is that all of them were eligible to be promoted prior to 1.12.1985 as they had passed the I.A. Examination prior to that date. By Annexure 2, the Secretary-cum-Commissioner, Department of Human Resources, by his order dated 20.12.1989 directed all Deputy Commissioner to take all possible steps for promoting such teachers before 12.2.1990 and even prior to the said order, many orders/letters had been issued by the Department of Education for considering the case of promotion of such teachers who were given a low scale although they were having higher qualification. By way of an example petitioners have annexed Annexure 3 which is a letter issued by the Special Secretary to the Government of Bihar, directing the concerned authority to consider the case of teachers and promote them with effect from the date they passed the I.A. examinations.

3. The petitioners have further stated that the Director, Primary Education, Government of Bihar, Patna as also the Regional Deputy Director of Education, South Chotanagpur Division, Ranchi (respondent Nos. 2 and 3) by their letters dated 22.12.1992 and 15.5.1991, directed that necessary steps be taken for promotion of these teachers to higher scales if they had such higher qualification. According to the petitioners, it was also resolved in the year 1993-94 that necessary steps will be taken to promote the aggrieved teachers to the I.A. Trained Scale. In support of the aforesaid contention, the petitioners have annexed Annexure 3, 4, 4/A, 5 and 5/A to the writ application.

4. According to the petitioners, after taking into consideration all the aforementioned orders as also some judgments passed by the Patna High Court directing the respondents to pass appropriate orders on the claim of the teachers, the District Superintendent of Education, East Singhbhum (Jamshedpur) (respondent No. 5) issued letter dated 22.7.1995 by which the petitioners were given promotion to the I.A. Trained Scale with effect from 10.12.1985 and were also posted to work on the said scale. Thereafter, the petitioners duly joined their new places of postings except petitioner Nos. 8, 9, 17, 26 and 27 who, either could not join or were not allowed to join on their new posts. The letter dated 22.7.1995 issued by Celestine Hansda promoting these teachers is marked as Annexure 6 and one such joining report is Annexure 6/A to the writ application.

5. According to the petitioners the person who passed the order of promotion i.e., Celestine Hansda officiated till 26.7.1995 and thereafter, he was transferred. Thereafter, this office was taken over by a new incumbent who, for some reason or the other was against the order of promotion passed by Celestine Hansda.

6. The petitioners have further stated that by a letter dated 27.7.1995, the Deputy Commissioner, East Singhbhum, Jamshedpur had passed an order

observing that the orders passed by the earlier District Superintendent of Education namely one Celestine Hansda was wrong and therefore, those order were not to be given effect to and payments were to be withheld. Pursuant to the aforementioned order a letter was issued by the District Superintendent of Education informing that effect should be given to the aforementioned direction of the Deputy Commissioner and subsequently by a letter dated 3.8.1995, the District Superintendent of Education issued a letter stating that he had received information that orders of promotion without approval of the gradation list and without reference to the District Establishment Committee were being given effect to, although the same should not be so done. Consequently, he ordered that such teachers who had been given such benefits should not be allowed to join and should be ordered to go back to their initial posts. It was also ordered that individual cases of teachers would be considered and those cases which were found to be proper would be referred to the District Establishment Committee for consideration. Thereafter the impugned order dated 8.9.1995 was passed.

7. In compliance of the order of the District Superintendent of Education, East Singhbhum (Jamshedpur), the Regional Education Officer, Jamshedpur (respondent No. 6) passed the order dated 11.8.1995 directing all the Headmasters to relieve the petitioners immediately so that, they could join on their previous places of posting and accordingly, the petitioners were relieved but were not allowed to join their new places. It was, thereafter that the impugned order dated 8.9.1995 was passed canceling all the promotions.

8. During the pendency of this writ petition, the petitioner No. 1 namely Sadhu Charan Paul filed an application praying that his name be ordered to be deleted since he has been selected for Assistant Teacher in the Secondary School in the B.A. Trained School. In that view of the matter his name should be deemed to have been deleted from this writ application.

9. A counter affidavit in this case has been filed in which it has been stated that all orders of promotion/transfer were cancelled because the said orders were passed without approval and consent of the Establishment Committee which is the only empowered committee to pass orders of promotion and transfer of teachers. Since reference was not made to the establishment committee, the order was wholly without jurisdiction and therefore these orders were cancelled. It is further stated that in the meeting of the District Establishment Committee held on 7.9.1995, it was unanimously decided to cancel all such illegal orders of promotion/transfer and it was further decided that even cases of transfers made after 26.4.1995 would stand cancelled and the transferees would be reverted to their original posts.

10. In reply to the aforesaid counter affidavit, the petitioners have stated that from a perusal of Annexure 6, it is evident that promotion given to the petitioners was after approval of the District Establishment Committee and therefore, the respondents cannot take the plea that their promotion was without

such approval. In a similar case namely C.W.J.C. No. 2952 of 1995 (R) a counter affidavit was filed in which it was stated that all illegal orders of promotion/transfer was cancelled because of the aforementioned reason i.e. non-approval and consent of the Establishment Committee. It was also stated that reference had not been made at all to the Establishment Committee.

11. The learned counsel for the petitioner has stated and submitted that the impugned order is also illegal on account of the fact that it was passed without any notice and without giving an opportunity of hearing to the persons affected including the petitioners. He has submitted that paragraph 6 of the counter affidavit filed in C.W.J.C. No. 2952 of 1995 (R) read with paragraph 5 of the counter affidavit filed in this case proved that the meeting on 7.9.1995 was a unanimous decision of the Committee meaning thereby no opportunity of hearing had been given.

12. The learned counsel for the petitioner has further stated that the petitioners were all promoted on a permanent capacity and therefore, by reason of cancellation of their promotion, the same amounted to reversion and that too without any opportunity of hearing. In support of the aforesaid contention, the learned counsel for the petitioners has relied upon a judgment in the case of Union of India (UOI) Vs. Jagdish Prasad, . He has also relied upon a judgment of this Court in the case of Baleshwar Prasad Singh and Ors. v. Ranchi University, reported in 2001 (2) JCR 182 in support of the contention that if an order has been passed reverting the petitioners without any show cause notice or any opportunity of hearing, the same is liable to be quashed.

13. Learned counsel has further relied upon the judgment delivered in the case of Lagadeo Prasad v. B.S.E.B. and Ors., reported in 2001 (1) BLJR 152 : 2001 (2) JCR 76 (Jhr) in support of the contention that there can be no cancellation of promotion without notice.

14. In view of the stand taken by the respondents in their counter affidavit and also from a perusal of the pleadings made, it is obvious that the impugned orders were all passed without notice and without any opportunity of hearing. It is also to be taken note of that the respondents have also not taken any action in so far as finalization of the gradation list is concerned nor have they come forward with any adequate explanation as to what steps they took in relation to such finalization and/or decision which could have been taken in relation to promotion of the petitioners.

15. This Court also cannot loose sight of the fact that these petitioners have been working since such a long period and they definitely have a legitimate expectation of rising up in their career. Such a legitimate expectation cannot be frustrated by the inaction on the part of the respondents. The impugned orders were passed in the year 1995 and we are in the year 2002 when this case has been taken up finally. In that view of the matter, this Court considers it proper and also expedient in the interest of justice to direct the respondents to consider

the cases of each of the petitioners individually and to pass appropriate orders strictly in accordance with law. The petitioners are therefore, now given liberty to individually file a representation giving details with respect to his/her service career and pray for necessary consequential reliefs in accordance with the prevalent rules. Such a representation must be filed within six weeks from today. Upon receipt of such representation, the concerned authorities shall give opportunity of hearing to the petitioners individually and shall pass orders in accordance with law within a period of six months from the date of receipt of such representations. If such representation is filed within the said period and till disposal of the said representation, status quo as existing today shall be maintained. This order should not be construed to mean that the petitioner has been allowed to continue on a higher post. It will depend on the result of the representation.

16. It goes without saying that if the petitioner has worked during the relevant period and if his salary has been withheld, then that aspect shall also be taken into consideration by the respondents while passing the final order as directed in the manner stated above.

17. With the aforementioned observations and directions this writ petition is disposed off. No order as to costs.