
(2016) 11 JH CK 0026
In the Jharkhand High Court
Case No : W.P. (S) No. 6340 of 2006

Sajit Kumar Lakra

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 JBCJ 56 : (2017) 1 JCR 471

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Naresh Pd. Singh & Mr. Arbind Kr. Singh, Advocate, for the Petitioners; Mr. Ajit Kumar, J.C. to S.C. (L&C), for the State of Jharkhand; Mr. Binit Chandra, J.C. to G.A.(Bihar), for the State of Bihar

Final Decision : Allowed

Judgement

Mr. Shree Chandrashekhar, J. - The writ petition was admitted for hearing on 19.10.2016, however, it has again appeared on Board today.

2. The learned counsel for the petitioners submits that he would confine the prayer in the writ petition only for a direction to the respondents to consider assigning the pay-scale of the need-based identified posts to the petitioners, with consequential benefits. The learned counsel for the State raises no objection to the aforesaid prayer.

3. Heard.

4. There are three petitioners, however, the petitioner no. 2 died during the pendency of the writ petition and vide order dated 02.09.2015 his wife has been substituted in his place.

5. The petitioners were appointed in Bihar Subordinate Agriculture Service and they were promoted on Class-2 post on regular basis w.e.f. 27.10.1986 in the pay-scale of Rs. 2,200-4,000. Notification dated 12.10.1993 contains name of

the petitioners at Sl. Nos. 265, 268 and 277. On completion of 5 years" service in the basic grade of Bihar Agriculture Services, Class-2 they were promoted to Junior Selection Grade in pay-scale of Rs. 3,000-4,500 vide notification dated 29.05.2002, w.e.f. 27.10.1991. For promotion to Senior Selection Grade essential eligibility is 5 years service in Junior Selection Grade. Accordingly, the petitioners were eligible for promotion to the Senior Selection Grade w.e.f. 27.10.1996, however, they were not promoted and in the meantime, the State Government issued Memo dated 08.02.1999 for revision of pay-scale in tune with the Central Government Employees pay-scale, w.e.f. 01.01.1996. Under the aforesaid decision time-bound promotion and selection grades were abolished, however, it was provided that need-based posts in the promotional scales would be identified in the manner indicated therein and scale of the need-based posts would be assigned to the employees in order of seniority. Under Clause-12(iii) of Resolution dated 08.02.1999 it is provided that the Cadre Controlling Authority will issue an order indicating the names of the persons entitled to the revised scale of the need-based posts.

6. Grievance of the petitioners is that after abolition of selection grades, the Controlling Authority was under a duty to identify and notify need-based posts in the promotion scales, however, in case of the petitioners who were holding a post in higher scale, the said post was not notified as the need-based posts and they were not granted revised pay-scale of the need-based posts.

7. Several affidavits have been filed in the present proceeding, however, the respondents have not taken a specific stand denying the claim of the petitioners. In supplementary counter-affidavit dated 04.08.2016, the respondents have taken a stand that the Agricultural Department, Bihar is the competent authority to identify the need-based primary posts and to assign the scale of the need-based posts to the petitioners. The aforesaid stand, in my opinion does not resolve the dispute. The petitioner no. 1 was posted as District Agricultural officer, Hazaribagh on 30.06.1998. Subsequently, he was posted as Deputy Director of Agriculture (Soil Conservation) at Ranchi in the pay-scale of Rs. 10,000-325-15,200. He superannuated from service on 30.11.2003. The petitioner no. 2 was posted as Deputy Director of Agriculture (Soabin) at Ranchi vide notification dated 31.12.1993. He was given the scale of Rs. 6,500-10,500 w.e.f. 01.01.1996. He superannuated from service on 31.05.2001, however, before that he was posted as Principal, Extension Training Centre, Ranchi in the scale of Rs. 10,000-325-15,200. Similarly, petitioner no. 3 was posted as Deputy Director of Agriculture (Planning) at Ranchi, however, he was given a scale of Rs. 6,500-10,500. Subsequently, he was posted as District Agricultural Officer, Gumla. This post carries pay-scale of Rs. 10000-325-15200. Thereafter, he was posted as Joint Director of Agriculture. The petitioners continued to hold the aforesaid posts in higher pay-scale posts till their superannuation from service. Those posts carry pay-scale of Rs. 10,000-325-15,200. They all remained in the service of State of Jharkhand after the bifurcation of erstwhile State of Bihar. Orders passed in the present proceeding disclose that several directions were

issued by this Court, however, the affidavits filed by the respondents are completely silent on the issues indicated in orders passed by this Court. Order dated 14.02.2011 reads as under :

"This writ petition has been filed by the petitioners for issuance of writ of mandamus commanding upon the respondents for assigning the scale of the need based identified posts to the petitioners in order of seniority with consequential monetary benefits in terms of direction given in para 12(ii) of the Government Order.

The respondents in its para 12 of the counter-affidavit have stated that the cadre of the petitioners was finally allocated on 30.06.2006, thereafter, they have started the process of promotion. It is also indicated in the counter-affidavit that certain basis formalities are to be done i.e. seniority list, identification of posts etc. which are necessary pre-requisites for the same.

The counter-affidavit was filed in the year, 2007 and the learned counsel for the petitioner states that the State has not taken any decision so far.

The State is directed to file its counter-affidavit about the exact status of the petitioners' promotion and also clarify as to why the order has not been passed within three years.

The counter-affidavit on behalf of the Principal Secretary of the concerned Department would be filed before this Court within three weeks. Post this matter thereafter.

The gist of this order has been noted down by the learned counsel appearing on behalf of the State. However, let a copy of this order be also given to the learned counsel appearing on behalf of the State."

8. Similarly, order dated 06.07.2015 notices that the supplementary counter-affidavit filed on 09.07.2013 was silent on the question of granting promotions to the petitioners. Thereafter, several adjournments were granted by the Court, however, no effective order was passed by the respondent-State. As noticed above, in the supplementary counter-affidavit dated 04.08.2016 the respondents-State of Jharkhand has tried to shift the burden on Agricultural Department, Bihar. However, I am of the opinion that the State of Jharkhand, under whom the petitioners served and superannuated from service, is under a duty to take a decision on the claim raised by the petitioners.

9. In the light of the facts noticed here in above, the Principal Secretary, Department of Agriculture and Sugarcane Development, Government of Jharkhand-respondent no. 2 is directed to take a decision;

(i) Whether the posts held by the petitioners between the period 01.01.1996 to 07.08.1999 were need-based posts or not ?

(ii) If yes, declare those posts as need-based posts and issue direction for payment of salary to the petitioners in the pay-scale of Rs. 10,000-325-15,200

and consequent revision in their retiral benefits/family pension.

10. The writ petition stands allowed to the aforesaid extent.