
(2015) 11 JH CK 0054
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3559 Of 2013

Shaikh Manour Ali

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Clerical Services Cadre (Recruitment, Promotion And Other Service Conditions) Rules, 2010 — Rule 8, 8(2)

Citation : 2016 (1) JLJR 97

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Saibal Mitra, Deepak Kr. Prasad

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J

1. Heard learned counsel for the parties.
2. The simple controversy in the instant writ petition is in relation to inter-se seniority of the petitioner and the private respondent on the post of Clerk in the district of Garhwa in the Health Department. The cause of action arose for the petitioner to approach this Court on issuance of memo no. 808(1) dated 16.04.2013, Annexure-3 by the respondent no. 3, Director in Chief, Health Services, Government of Jharkhand, Ranchi whereunder respondent no. 5 has replaced the petitioner as Head Clerk in the office of Chief Medical Officer-cum-Civil Surgeon, Garhwa. The placement of the respective persons under impugned memo is on the basis of seniority. Petitioner had earlier been placed on same post by the order at Annexure-2 issued by respondent no. 3, Director in Chief, Health Services, Government of Jharkhand, Ranchi bearing memo no. 671(23) dated 22.03.2013 which again indicates that on working arrangement under noted clerks have been posted as Head Clerk at various offices on the basis of their seniority, but in their own pay scale.

3. Undisputed facts, which are required to be taken note of to decide the controversy, are being referred to hereinafter. Petitioner's date of appointment as a Clerk is 26.10.1992 at Sadar Hospital in the district of Garhwa. Respondent no. 5, Kishori Prasad has been appointed on 07.07.1979 as a Clerk in the district of Hazaribagh in the same department and was transferred on his request to Garhwa vide order at Annexure-1 dated 24.06.1998 issued by the Deputy Director, Health Services, Bihar. Order at Annexure-1 clearly indicates that transfer was on his request and on his transfer to Garhwa in the office of Civil Surgeon, Garhwa, he would be placed at the bottom of the seniority list of clerks in the said districts. He was also not held entitled to any travelling allowance as the transfer was on his request. The relevant provisions under which the order at Annexure-1 placed the respondent no. 5 at bottom of seniority list of clerks in the district of Garhwa are contained in the resolution of Personnel Department, Government of Bihar dated 26.08.1972 specifically Clause-3(Ga)(III), which is quoted hereinunder:-

4. It is also beyond doubt that this transfer of the respondent no. 5 was not on the basis of general policy decision which could have maintained his seniority at original place of his appointment at Hazaribagh even on his transfer to Garhwa.

5. The respondent State and the private respondent in their counter affidavit have supported the impugned decision relying upon the Clerical Services Cadre (Recruitment, Promotion and Other Service Conditions) Rules, 2010 notified on 27.03.2010, Annexure-C to the counter affidavit of the respondent-State. Rule 8 thereof contains the principle on which inter-se seniority of clerks are to be determined. Clause 8(ii) is being specifically relied which lays down general principles relating to fixation of seniority of Lower Divisional Clerk/Upper Divisional Clerk/Head Clerk based upon their seniority on the date of their appointment. In case more than one person have been appointed on the same date, seniority would be reckoned on the basis of date of birth and in case of tie in the date of birth, on the basis of initial letter of name of the concerned person. This Rule-8 is also quoted hereunder:-

6. The opening line of Rule 8 itself provides that inter-se seniority of Lower Divisional Clerks appointed in any office would be determined in terms of circulars/instructions issued by the Department of Personnel, Administrative Reforms and Rajbhasa from time to time. Seniority would be determined by appointing authority. Thereafter Clause-ii provides for the general principle for determination of seniority as referred to above.

7. It is therefore apparent that on the transfer of the respondent no. 5 to Garhwa on his own request, he was placed last in the seniority list of clerk in the district of Garhwa. Petitioner was appointed in the year 1992 while respondent no. 5 though appointed in 1979 was posted in Garhwa vide Annexure-1 order dated 24.06.1998. Therefore, he became junior to the petitioner. By virtue of placing of the respondent no. 5 at the bottom of the seniority list, petitioner became senior and a right vested in him. This position is also supported by principles contained

in the Departmental circular dated 26.08.1972 and also on the reading of the opening line of the Rules 8 of 2010 Rules. As a matter of fact, by the repeal and saving clause 14(Ka) & (Kha), which is also quoted hereunder, any action taken before the enforcement of 2010 Rules in terms of any circular or order were saved:-

8. From perusal of information furnished under RTI by the petitioner enclosed as Annexure-5 dated 21.12.2013 by the office of Chief Medical Officer-cum-Civil Surgeon, Garhwa also, it appears that placing of the petitioner was above the private respondent in the seniority list of clerks working in the office of Chief Medical Officer-cum-Civil Surgeon, Garhwa though the petitioner had been appointed in 1992 compared to the private respondent in 1979, obviously for the reason that respondent no. 5 became junior most in the seniority list of clerks in the year 1998 on his transfer at Garhwa.

9. In view of the aforesaid discussions and the reasons recorded, therefore, the private respondent cannot be held to be senior to the petitioner on the constructions of the 2010 Rules specifically Rule 8(2) as relied upon by the respondent. Consequently, in the matters of any of such consideration for post or promotion, petitioner would obviously rank senior to the respondent no. 5. In that way order impugned at Annexure-3 dated 16.04.2013, which has replaced the petitioner from the post of In-charge Head Clerk in the office of Chief Medical Officer-cum-Civil Surgeon, Garhwa treating the respondent no. 5 as senior is not justified in law and on facts. Accordingly, impugned order so far as it relates to the private respondent is quashed. Consequently the respondent no. 3, Director in Chief, Health Services, Government of Jharkhand, Ranchi is required to issue fresh order relating to posting of the petitioner/private respondent at the appropriate place.

10. The writ petition is allowed in the manner and to the extent indicated hereinabove.