

(2009) 01 JH CK 0039
In the Jharkhand High Court

Shiva Sahay Prasad and Others

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : (2009) 1 JCR 605

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Prayer in this writ application is for quashing the Resolution Nos. 2261 and 2520 dated 20.05.2008 and 02.06.2008 (Annexures-13 and 14 respectively), whereby the respondent JSEB had accorded seniority to the respondent Nos. 3 and 4 over the petitioners by placing them at Serial No. 5 and 106 respectively.

2. The dispute raised in this writ application is in respect of the inter-se seniority of the petitioner vis-as-vis the respondent Nos. 3 and 4. The petitioner and the respondent Nos. 3 and 4, who were initially engaged to work as Assistant Executive Engineers in the Ex-cadre post, were subsequently absorbed in the service against the sanctioned posts. Upon such absorption, the BSEB under whom the petitioners and the respondent Nos. 3 and 4 were originally employed, had published a seniority list on 14.9.1994. Aggrieved with the manner in which the seniority list was prepared, adversely affecting their interest, some of the Assistant Executive Engineers preferred a writ petition vide CWJC No. 3020 of 1995 (Ram Jivan Prasad and Ors. v. Bihar State Electricity Board and Ors.). A Division Bench of the Patna High Court vide its order dated 22.7.1998 set aside the final gradation list, with the observation that the gradation list should be prepared by following the prescribed Rules.

The respondent Nos. 3 and 4 had also preferred a separate writ application vide CWJC No. 6613 of 1996 challenging the same gradation list issued vide letter No.

854 dated 14.9.1994, with a prayer for issuing a direction to the respondent authorities to fix their seniority in the light of the Board's notification No. 1449 dated 14.8.1986. The writ petition was disposed of with the observation that the Board is bound to take into consideration all the relevant Rules while finalizing the gradation list afresh in the light of the Division Bench Judgment with a liberty to the petitioners therein to raise their claim before the Board's authority which shall be considered keeping in view of the relevant Rules and the Board's notification.

3. Pursuant to the direction given by the Division Bench of the Patna High Court, The BSEB prepared another gradation list which was again challenged by the adversely affected Assistant Executive Engineers before the Patna High Court vide CWJC No. 3020 of 1995. The writ petition was disposed of by this Court by remanding the matter to the Board for fresh consideration and for preparation of a fresh gradation list after considering the objections received from all the applicants, a fresh gradation list was again prepared in which the respondent Nos. 3 and 4 were placed at serial No. 173 and 174 respectively.

The private respondents No. 3 and 4 choose to challenge this gradation list also by filing a writ application vide CWJC No. 3983 of 1999 (R). The Single Bench of the Court while deciding the issue, by its judgment dated 22.3.2006, dismissed the writ application of the respondent Nos. 3 and 4.

Against the judgment of dismissal, the respondents 3 and 4 preferred a review application vide Civil Review No. 40 of 2006 in which Jharkhand State Electricity Board was also impleaded as a party respondent. The review application was dismissed by this Court vide its order dated 27.11.2006. The respondents 3 and 4 thereafter preferred Latest Patent Appeal vide LPA No. 646 of 2006 against the judgment dated 22.3.2006 passed in CWJC No. 3983 of 1999 (R) and against the order dated 27.11.2006 passed in Civil Review No. 40 of 2006. The Latest Patent Appeal was dismissed by the Court vide its order dated 13.3.2007.

Against the judgment passed by the Division Bench of this Court in LPA No. 646 of 2006, the respondents 3 and 4 moved before the Supreme Court in SLP No. 7586 of 2007 which is presently pending before the Apex Court. While this was the position, the respondents 3 and 4 filed fresh representations before the Jharkhand State Electricity Board, claiming seniority over the petitioners. The representations were not only entertained, but were also allowed, by way of revising the earlier impugned seniority list and upgrading their positions in the seniority list placing them above the petitioners. It is this impugned resolution of revising the seniority list which is under challenge in the present writ application.

4. Counsel for the petitioners would submit that the judgment passed by the Division Bench of this Court as also by the learned Single Judge, are binding upon the respondent Jharkhand State Electricity Board in view of the fact that JSEB was also impleaded as a party respondent in the aforesaid writ petition and the LPA and neither the judgment passed by the Division Bench, nor of the

learned Single Judge, has been modified as yet by the superior court, nor has any order of stay been granted by the Supreme Court. The decision of the Board by granting seniority to the private respondents 3 and 4 and making them senior to the petitioners, is, according to the learned Counsel, directly against the judgment of this Court. The respondent JSEB, in terms of the learned Counsel, has over read the order of this Court which is an act contemptuous in nature.

5. In the counter-affidavit filed by the respondent JSEB, the stand taken by them is that the direction given in the earlier judgments of the Division Bench as well as by the learned Single Judge, is not binding upon the JSEB since the JSEB was not made a party either in the LPA or in the writ application. The further stand is that even otherwise, the impugned resolution is not contrary to any of the judgments of this Court since, while quashing the earlier gradation list, a direction was given to the respondent Board to prepare a fresh gradation list after receiving the objection, if any, from the Assistant Executive Engineers and by applying the Rules framed by the Board from time to time. The objection filed by the respondents 3 and 4 were considered in accordance with letter and spirit of the judgment of this Court passed in the earlier writ application and by application of the relevant Rules, the position of the private respondents 3 and 4 were altered in the gradation list. It is also pointed out that in the SLP which is pending before the Supreme Court, the respondent JSEB has also been made a party and has been noticed. The present petitioners have intervened in the SLP before the Supreme Court and the petitioners have agitated the same issue as raised in this writ application, before the Supreme Court in the pending SLP. These facts are not being denied by the petitioners. Learned Counsel for the petitioners submits however, that since the main grievance of the private respondents 3 and 4 against the judgment passed in the LPA as well as by the learned Single Judge against which they had filed the SLP before the Supreme Court, has been now redressed by the impugned Resolution of the Respondent J.S.E.B., the private respondents 3 and 4 may as well withdraw the case before the Supreme Court leaving the grievance of the petitioners undecided and therefore, the issues which have been raised in this case, which are totally different from the issues raised and pending before the Supreme Court in the SLP, this Court should decide the dispute.

6. From the aforesaid facts and circumstances of the case, it appears that the final gradation list which was prepared pursuant to the orders of this Court in the earlier writ application, was challenged by the respondents 3 and 4. Both the Learned Single Judge as well as the Division Bench of this Court did not find any merit in the grounds advanced by the private respondents and therefore, dismissed their writ application. The judgment of the Division Bench as well as of the learned Single Judge has been assailed by the private respondents 3 and 4 before the Supreme Court. Thus, it appears that the impugned gradation list which is favourable to the petitioners, though unfavourable to the private respondents 3 and 4, continues to remain under challenge before the Supreme Court and despite such challenge, its operation has neither been stayed, nor

modified by any interim order of the Apex Court in the Special Leave Petition. It also appears that the petitioners were not impleaded as party respondent in the SLP before the Supreme Court by the private respondents and therefore, the petitioners by filing an intervener application, have joined as party respondent in the SLP before the Supreme Court. The subsequent developments namely, the passing of the impugned resolution and revising the seniority of the private respondents, have also been agitated by the petitioners before the Supreme Court. Even otherwise, as pointed out by the learned Counsel for the J.S.E.B., the decision taken by the respondent JSEB vide the impugned resolution, is, subject to the final decision of the Supreme Court in the pending SLP. Under such circumstances, in my opinion, it would not be proper to adjudicate on the issue raised in the present writ application when the attention of the Supreme Court has already been invited to these issues also in the pending SLP. The final verdict of the Apex Court regarding the propriety of the impugned final gradation list, if in favour of the petitioners and against the private respondents, then it would have its effect on the impugned resolution also.

7. Considering the above facts and circumstances, this writ application is dismissed with a liberty to the petitioners to seek redressal of their grievances, if any, after the final verdict of the Apex Court in the pending Special Leave Petition.