
(2013) 03 JH CK 0093
In the Jharkhand High Court
Case No : WP (S) No. 4121 of 2001

Subodh Kumar Verma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2013) 2 JLJR 463

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Dilip Jerath, Abhishek Kumar, Vineet Vashist and Amit Kumar, for the Appellant; Rakesh Kr. Sahi Jharkhand, Mr. Pankaj Kumar, Bihar For State and Mr. S. Ughal No. 10, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner has challenged the order contained in Memo No. 337 dated 24.3.1999 whereby in place of the petitioner, the respondent No. 10 was posted on the post of Chemist on deputation on purely temporary basis, though, the petitioner was working as chemist under the respondent No. 8. He has further challenged the order dated 10.7.1999 issued by the respondent No. 8, the Executive Engineer, Public Health Engineering Department, Giridih whereby he has been lowered down to pay scale of Rs. 975-1540/- from that of Rs. 1400-2600/-. The petitioner is also aggrieved by the order dated 7.1.2000 whereby his promotion granted on 20.11.1996 has been cancelled by the Superintending Engineer, PHED Circle, Dhanbad, respondent No. 7 and consequently, the petitioner seeks to be allowed to continue on the post of Chemist, on which he claims to have been promoted vide Annexure-3 issued by the Officiating Director, Technology Machine, Giridih.

2. Learned counsel for the petitioner submits that initially though petitioner was a Graduate, but has been appointed on the post of Laboratory Assistant after passing competitive examination conducted by Avar Seva Chayan Parshad.

Pursuant to his appointment, he joined in the month of December, 1992 as Laboratory Assistant and made representation for being considered for appointment to the post of Chemist before the respondent authorities keeping into regard his qualification i.e. the Graduate. It is submitted that the petitioner was granted such promotion vide order dated 20.11.1996, Annexure-3 by the Superintending Engineer, PHED Circle, Dhanbad. He further submits that vide letter dated 10.3.1998, the Superintending Engineer-cum-Officiating Director, Technology Machine, Giridih under the PHED Department, Giridih confirmed his promotion. Thereafter, he was granted the higher scale of Chemist. Learned counsel for the petitioner, therefore, submits that by the impugned order, he has been reverted to the post of Laboratory Assistant, which is not permissible in law and respondent No. 10 was posted on deputation on the said post.

3. On the other hand, learned counsel for the State, on the basis of submissions made in their counter affidavit, submits that the petitioner was appointed on the post of Laboratory Assistant vide letter dated 29.2.1992 in the scale of Rs. 975-1540/-. The said Selection Board was dissolved w.e.f. March, 1992 and the job of such recommendation was given to the Bihar Public Service Commission. It is submitted that the promotion, which is said to be granted vide Annexure-3 dated 20.11.1996 was purely provisional and was made by the Superintending Engineer, PHED, Dhanbad Circle on condition that after any adverse order passed of the competent authority is obtained, he shall be automatically reverted and the amount drawn in excess by him will be recovered. Learned counsel for the respondents, therefore, submits that the post of Chemist is to be filled up through direct recruitment and not by way of promotion as the post of Chemist is Class-III post for which only Bihar Public Service Commission or the Divisional Commissioner is the competent authority as per the instruction of Personnel and Administrative Reforms Department Memo No. 1128 dated 7.2.2000. It is, therefore, submitted that promotion of the petitioner was not approved by the Secretary, PHED Department, Government of Bihar and therefore, he has been reverted to its original substantive post of Laboratory Assistant and some experts Chemists working in Bihar State Sugar Corporation has been posted on purely deputation basis on the post of Chemist.

4. I have heard learned counsel for the parties and have gone through the relevant materials on record. From perusal of Annexure-3 itself, it is clear that the promotion granted to the petitioner by Superintending Engineer, PHED, Dhanbad Circle was purely provisional in nature and it was also indicated that in case any adverse order of the competent authority is passed for revoking such grant of provisional promotion, he shall be reverted and also the amount paid to him shall also be recovered. It further appears that Bihar Public Service Commission was the Competent Authority to make recommendation for appointment or promotion to the post of Chemist and the other substantive post in the cadre of Laboratory Assistant in the Department. In that view of the matter, the petitioner cannot, claim to have been substantively promoted on the post of Chemist on the strength of the letter dated 20.2.1996 passed by the

Authority, who was not competent to do so. In these circumstances, the impugned order does not suffer from any infirmity and, therefore, is not required to be interfered in exercise of writ jurisdiction. Accordingly, this writ petition is dismissed.