

(2017) 02 JH CK 0065
In the Jharkhand High Court
Case No : W.P. (S) No. 5964 of 2008

Sudhir Kumar

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Jharkhand Pension Rules, 2000 — Rule 58

Citation : (2017) 2 JBCJ 313 : (2017) 2 JLJR 54

Hon'ble Judges : Mr. Shree Chandrashekhar J.

Bench : Single Bench

Advocate : Mr. Sumeet Gadodia and Mr. Prem Pujari Roy, Advocates, for the Petitioner; Mr. Shrijit Choudhary, Sr. S.C. III and Mr. Kaustav Roy, J.C. to Sr. S.C. III, for the Respondent

Final Decision : Allowed

Judgement

Mr. Shree Chandrashekhar J.—Supplementary affidavit dated 27.02.2017 is taken on record. Be tagged at its proper place.

2. The petitioner preferred writ petition being W.P.(S) No. 6085 of 2008 for a direction upon the respondents to grant promotion to him on a Class III post. He claimed that other similarly situated employees namely, Uday Shankar Sinha, Manzar Ali and Ram Gahan Singh were granted promotion on a Class III post. A copy of the said writ petition has been tendered in the Court by Mr. Sumeet Gadodia, the learned counsel for the petitioner. The writ petition stood disposed of on 29.06.2012 and in compliance thereof order dated 29.09.2012 has been passed. This order was impugned by the petitioner by filing I.A. No. 1968 of 2013 which has been allowed on 22.04.2013.

3. During the course of hearing, to the Court's query whether there is a statutory rule under which the petitioner can seek promotion from a Class IV to a Class III post, the learned State counsel submits that for promotion to a Class III post an employee has to pass the limited departmental examination. The learned

counsel for the petitioner, however, is not aware of any such rule. In my opinion, in both the situations the petitioner is not entitled for promotion.

4. The petitioner has not pleaded that he passed the limited departmental examination for promotion on a Class III post. And, if there is no rule merely because few others have been granted promotion on Class III posts, the same cannot be a ground for granting promotion to him also. The fact that the claim of the petitioner for promotion on a Class III post has been declined on the ground that in his appointment extant rules were ignored and proposal for regularisation is pending consideration, may be not a correct reasoning, but it is not a ground for which the said order needs to be interfered with. In view of the facts noticed above, challenge to order dated 29.09.2012 fails.

5. In the main writ petition being W.P.(S) No. 5964 of 2008 prayer of the petitioner is for regularisation of his service.

6. In so far as the question of confirmation in service is concerned, the petitioner has pleaded that after his superannuation from service on 31.01.2011 the department sanctioned and issued necessary order for grant of pension to him. The petitioner has produced a copy of Pension Payment Order dated 02.08.2011 vide Annexure 19 to the supplementary affidavit dated 27.02.2017. Rule 36 of the Jharkhand Service Code, 2001 defines pensionable service to mean the service which qualifies the Government servant performing it to receive a pension from general revenues. Rule 58 of the Jharkhand Pension Rules, 2001 provides that the service of a Government servant does not qualify for pension unless it confirms to the following conditions;

(i) The service is under Government.

(ii) The employment is substantive and permanent.

(iii) The service is paid by Government.

7. By issuing necessary order for grant of pension which is culminated in issuance of Pension Payment Order dated 02.08.2011, where under the petitioner became entitled for pension from 01.02.2011, the competent authority has considered the petitioner's service as substantive and permanent. It, now, must be construed to mean that the petitioner satisfies the condition under Rule 58 of the Jharkhand Pension Rules, 2001 and while so, it must be inferred that the respondents have admitted the petitioner in regular service.

8. The instant writ petition seeking confirmation in service, thus, deserves to be allowed. Ordered accordingly.