
(2002) 03 JH CK 0005
In the Jharkhand High Court
Case No : C.W.J.C. No. 1374 of 2000

Umesh Dubey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-03-2002

Acts Referred:

Citation : (2002) 03 JH CK 0005

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rajiv Ranjan and Deepak Kr. Verma, for the Appellant; A.K. Dikshit, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. This writ application is directed against the order dated 15.2.2001, whereby petitioner's representation filed in pursuance of order dated 22.12.1999 in C.W.J.C. No. 1229/98(R) has been rejected and first time bound promotion granted to the petitioner with effect from 19.10.1983 alongwith monetary benefits has been cancelled on the ground that passing of accounts examination is mandatory.

3. Petitioner joined in service of the respondents as Unit Clerk in 1973 in the Director Public Relation Department. In 1987 after completion of 10 years of service, petitioner alongwith 107 other persons were given first time bound promotion with effect from 1983. However, after about 10 years i.e. in 1996 respondents by order dated 28.6.1996 cancelled modified the order of promotion to the extent that promotion was given with effect from 1983 shall be given from 29.10.1994 i.e. after passing of the examination. Petitioner challenged the aforesaid order by filing C.W.J.C. No. 1229/98(R). The writ application was disposed of on 22.12.1999 by passing the following order :

"Heard Mr. Rajiv Ranjan, learned counsel for the petitioner and Mr. R.N. Sahay,

learned senior counsel. In this writ application the petitioner has challenged the order vide Memo No. 259 dated 28th June, 1996 as contained in Annexure-4 by which the time bound promotion allowed to the petitioner has been withdrawn on the ground that the petitioner has not passed the Accounts Examination.

In course of argument, learned counsel relied upon a recent judgment of this Court in the case of Ramjee Prasad Singh Vs. State and Others, and submitted that the law has been set at rest that time bound promotion given to the employees cannot be withdrawn on the ground of non-passing of the Accounts Examination. Learned counsel also relied upon the judgment and order passed by this Court in C.W.J.C. No. 1024/96(R).

Having regard to the facts and circumstances of the case, this writ application in disposed of with a direction to the respondent No. 2 to reconsider the decision for withdrawal of the promotion in the light of the judgments referred to hereinabove. Such decision must be taken within two months from the date of receipt of copy of this order. The petitioner is directed to produce a copy of this order alongwith photocopy of the judgments referred to herein-above to the respondent No. 2 within two weeks from today."

4. In compliance of the said order, the respondents although considered the representation but rejected the same on the basis of the information given by the Accountant General and in the light of the Full Bench decision of the Patna High Court in the case of Maheshwar Prasad Singh v. State of Bihar 2000 (4) PLR 262.

5. It has not been disputed by the learned counsel for the respondents that in the earlier decision the Patna High Court and this Court have consistently held that the time bound promotion given to the employees cannot be withdrawn on the ground of non- passing of accounts examination. Although petitioner did not pass accounts examination but he was given promotion alongwith similarly situated persons in 1987 with effect from 1983. Pursuant to the order of promotion, petitioner was given promotional benefits continuously for about 10 years. In 1996, there was no occasion for the respondents to withdraw/ modify the said promotion by directing that promotion so given shall be effective from 1994 when the petitioner passed accounts examination. At best the respondents could have modified the order of promotion to the extent that the promotion could be given from the date of passing the order of promotion i.e. in 1987. Besides the above, admittedly the petitioner was given promotion by order passed in 1987 and he continued to get promotional benefits for about 10 years. Suddenly the order of promotion could not have been cancelled/ modified without giving reasonable opportunity of hearing to the petitioner. For all these reasons, the impugned order rejecting the representation of the petitioner cannot be sustained in law. The matter needs reconsideration by the concerned respondent namely, respondent No. 2, Director General Public Relations Department, Government of Jharkhand, Ranchi.

6. This writ application is therefore allowed and the impugned order dated 15.2.2001 is set aside. The matter is remitted back to respondent No. 2 for passing fresh order in accordance with law and in the light of the observation made herein above.