
(2002) 03 JH CK 0052

In the Jharkhand High Court

Case No : C.W.J.C. No's. 4823 and 5754 of 2000 (Patna)

Upendra Prasad Pathak, Etc. and Jay Prakash Narayan Rai	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Citation : (2002) 03 JH CK 0052

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Aparesh Kr. Singh and Subodh Kr. Jha, for the Appellant; Subodh Kr. Jha, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—As both the cases related to appointment/promotion to the post of O.T. Assistant, Deoghar, they were heard together and are being disposed of by this common order.

2. C.W.J.C. No. 4823/2000 was preferred by petitioner, Upendra Prasad Pathak before the Patna High Court against the order dated 27.12.1999 issued by the Regional Deputy Director, Health Services, Santhal Pargana Dumka and received by the office of the Civil Surgeon, Deoghar on 13.5.2000 whereby respondent No. 6. Jay Prakash Narayan Rai was promoted to the post of O.T. Assistant, Deoghar. Further prayer was made by the petitioner, Upendra Prasad Pathak to consider his case for promotion to the post of O.T. Assistant, he being qualified.

3. During the pendency of the writ petition, the Director, Health Services, Bihar, Patna vide Memo No. 621 (22) dated 31.5.2000 cancelled the impugned order dated 27.12.1999 and reverted the respondent No. 6. Jay Prakash Narayan Rai. In view of subsequent order, the first part of relief as sought for by the petitioner, Upendra Prasad Pathak in C.W.J.C. No. 4823/2000 has become infructuous.

4. Being aggrieved, Jay Prakash Narayan Rai (respondent-of the other case; preferred separate writ petition C.W.J.C. No. 5754/2000 and challenged the order of reversion made vide Memo No. 621(22) dated 31.5.2000. The said case was

also preferred before the Patna High Court and listed on 7.7.2000 when the Court made the following observation :

"This is not a case of reversion as it is made out to be, rather the impugned order of the promotion has been cancelled on the ground that the promotion was granted by the District authority though the post of O.T. Assistant is State level post and only Director-in-Chief was competent to give promotion, and secondly the petitioner did not presses the requisite training qualification. No case is made out for passing interim order.

The petition may be listed in the usual course."

5. Counsel for the petitioner, Jay Prakash Narayan Rai could not lay hand on any rule/guideline to suggest that the Regional Deputy Director of Health Services had jurisdiction to fill up the post of O.T. Assistant, nor could lay hand on any guideline to suggest that the post of O.T. Assistant is a district level post.

6. The Counsel for the petitioner, Upendra Prasad Pathak while claimed that he is eligible being trained as O.T. Assistant, further asserted that the respondent. Jay Prakash Narayan Rai is not trained. Similarly, counsel for Jay Prakash Narayan Rai submits that his petitioner is trained O.T. Assistant and relies on a certificate (Annexure-4) and states that Upendra Prasad Pathak is not trained O.T. Assistant.

7. The petitioner, Upendra Prasad Pathak has enclosed an order contained in Memo No. 266(25) dated 3.8.1985 issued from the Directorate of Health Services, Patna to show that he alongwith others were selected for training of O.T. Assistant and completed training as evident from Memo No. 1390 dated 18.2.1986.

8. From the fact pleaded above, as it appears that the order of promotion of Jay Prakash Narayan Rai dated 27.12.1999 was issued by an authority, who had no jurisdiction and was so issued without consideration of case of eligible candidates, there appears to be no illegality in the Memo No. 621 (22) dated 31.5.2000 whereby Jay Prakash Narayan Rai was reverted.

9. So far as promotion to the post of O.T. Assistant is concerned, both the cases an remitted to the present Director concerned. Health Services, Jharkhand with direction to consider the case of eligible persons for such promotion. If petitioner, Upendra Prasad Pathak or Jay Prakash Narayan Rai or both are found eligible, their cases be also considered alongwith others within two months from the date of receipt/production of a copy of this order.

10. Both the writ petitions stand disposed of with the aforesaid observations.