

(2024) 11 JH CK 0039

Jharkhand High Court

Case No: Writ Petition (S) No. 3321 Of 2022

Ajay Shankar Ram

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Nov. 18, 2024

Hon'ble Judges: Deepak Roshan, J

Bench: Single Bench

Advocate: Saurabh Shekhar, Mihir Kunal Ekka

Final Decision: Allowed

Judgement

Deepak Roshan, J

1. Heard learned counsels for the parties.

2. The instant writ application has been initially preferred by the writ petitioner, praying, inter-alia, for a direction upon the respondent authorities to consider the petitioner for promotion from the post of Junior Engineer to the post of Assistant Engineer. During the pendency of the writ petition, the petitioner was granted promotion to the post of Assistant Engineer, vide departmental notification dated 30.12.2023, the effect of which was given from the date of joining. Being aggrieved, the petitioner preferred one Interlocutory Application, being I.A. No.2818 of 2024, praying for an amendment in the prayer and pleading of the writ petition and prayer No.1(a) was sought to be added. The interlocutory application was allowed, vide order dated 29.04.2024. Thereafter, the petitioner has filed amended writ petition. The prayer allowed to be added, vide amendment application (interlocutory application), was to quash the decision of the DPC and further, to give retrospective effect to the promotion, notified by the department

on 30.12.2023, from the post of Junior Engineer to the post of Assistant Engineer.

3. The brief facts of the case as per the pleadings are that there was vacancy in the cadre of Assistant Engineer in the department of Water

Resources and the petitioner was eligible to be promoted. The petitioner was appointed to the post of Junior Engineer on 20.11.2007. He completed

five years of regular service on 20.11.2012. On this date, he became eligible for consideration for promotion to the higher post of Assistant Engineer.

At that point of time though there was vacancy in the cadre of Assistant Engineer in the department of Water Resources, and the petitioner was

eligible to be promoted; but the petitioner was thereafter put to discharge his services in In-charge capacity.

Further fact of the case is that in the category of Schedule Caste, no promotion had taken place since the creation of State of Jharkhand and the first

time, when such promotion had taken, was only on 30.12.2023. To substantiate this fact, the petitioner has brought on record Annexure-6, which is

copy of the details relating to the petitioner which was placed before the DPC. The document clearly discloses that there has been no promotion in the

SC category quota of the post of Assistant Engineer, after the creation of State of Jharkhand and these SC category posts, total 8 in number have

remained vacant since then.

During the pendency of this writ application the respondents have granted promotion to the petitioner in pursuance of notification dated 31.12.2023

with benefits from the date of joining and not from the time when petitioner ought to have been promoted. Hence the petitioner is before this Court.

4. Learned counsel for the petitioner submits that the respondents have given promotion to the juniors, in the common gradation list, therefore, the

petitioner is also entitled for promotion, at least from the date when they have been granted promotion. From perusal of para-29 and Annexure-8

annexed with it, a gradation list would come to force, in which it can be seen that the petitioner, who appears at seniority position No.2090, was not

granted promotion; whereas, the juniors, who are in schedule tribe category, starting from seniority position No.2102 onwards, have been granted

promotion.

He further submits that these promotions have been granted in pursuance to Annexure-9, i.e. departmental notification dated 20.11.2018. Therefore, it is clear that some of the candidates from the common gradation list, have been granted promotion to the higher post of Assistant Engineer.

5. Learned counsel contends that the employees, who have been granted promotion, are the candidates of ST category and the petitioner is a candidate of SC category, when the availability of vacancy in ST category pursued by the respondents to grant promotion to the above candidates

(ST), then the petitioner who is in SC category and vacancy was available in that category also, why would his case be not considered, despite the fact that the petitioner falls in a better position in the common gradation list, than those employees who have been granted promotion.

6. Learned counsel further contended that the case of the petitioner for grant of promotion to the post of Assistant Engineer, specifically from 2018, stands qualified on four grounds, which are as follows:-

i. There was availability of vacancy in the SC category, the petitioner is a SC category candidate and was eligible in the year 2018.

ii. There was availability of vacancy in the ST category, and the Junior Engineers, in that category were considered for promotion on 20.11.2018.

iii. The difference between the petitioner and the ST category Junior Engineer is in respect of the fact that they belong to two different categories,

other than that, there is no difference and even this difference has no value on the face of the claim made by the petitioner, since both are reserved

categories and vacancies in both the categories were available in the year 2018; then, there can be no reason why only to consider ST categories for promotion and not the SC category candidates.

iv. The ST category Junior Engineers fall below in the common seniority list. In the wake of availability of vacancies for both of

them; it seems unfair that only ST category employees were considered for promotion, while SC category candidates were ignored, especially in view

of the fact that the petitioner was placed above in the seniority list.

7. Learned counsel lastly submits that under the above mentioned circumstances, it would be most appropriate to grant promotion to the petitioner to

the post of Assistant Engineer w.e.f. 20. 11.2018, i.e. the date when the others were granted such promotion and the employees who had been granted promotion as Assistant Engineer on 20.11.2018, have further been promoted to the post of Executive Engineer on 30.01.2024, thereby stealing the march over the petitioner, therefore, there is a reason to pray for a direction for consideration of promotion of the petitioner to the Executive Engineer w.e.f. 30.01.2024, if all other eligibilities are met.

8. Learned Counsel for the respondent submits that while implementing the Jharkhand Engineering Service Appointment Rules in the year 2016, the Nodal Department, i.e. Road Construction Department, abolished the provision of promotion under AMIE quota and earmarked 24% posts for promotion of diploma holding Junior Engineers and 16% posts under Limited Departmental Examination. He further submits that it was decided vide resolution dated 07.03.2022 that till the passing of final judgment in W.P.(S) No. 3027/2016 and similar cases, Jharkhand Engineering Service Appointment 2016 has been suspended and was further decided to preserve the Bihar Engineering Service appointment Rules 1939 for issuing orders/resolutions in cases of all service conditions including promotion.

9. Learned Counsel finally submits that in the light of the recommendation made by the Departmental Promotion Committee, petitioner has been promoted to the post of Assistant Engineer by departmental Notification No. 7155 dated 30.12.2023. as there is no provision for giving promotion with retrospective effect. Hence this writ application deserves to be dismissed.

10. Having heard learned counsel for the parties and after going through the respective affidavits it appears that the petitioner was appointed on the post of Junior Engineer in the Department of Water Resources, vide notification as contained in Memo No. 2984, dated 13.11.2007. Thereafter, the petitioner rendered his services, and had completed five (5) years on November, 2012. Further fact reveals that the petitioner was appointed as B.Sc. Engineering (Civil) Degree Holder candidate, in the cadre of Junior Engineer, and therefore, the petitioner should have been considered for promotion in the category of AMIE of equivalent degree holder 10% quota, as has been provided under the provisions of Rule notified on 01.09.2009 (hereinafter to be referred as 2009 Rules).

The provisions of the Rule-2009 at clause- "kha" clearly specifies that there will be calendar year-wise creation of vacancies which will not be carry

forwarded to the next year. The promotions are to be made against the vacancy year system, as has been provided in the Rules. This promotion will

be provided on the basis of the seniority list, that has to be prepared as per the clause-kha i.e. on the basis of the eligible candidates in a particular

vacancy year, who may have AMIE degree to be considered AMIE of equivalent engineering degree, against the respective calendar year vacancy.

11. It further appears that according to the 2009 Rules the petitioner was eligible for promotion in the year 2012 i.e. after completion of 5 years of

service and the seats were also vacant in that year, as can be gathered from the recommendation of petitioner before the DPC wherein it has been

clearly mentioned that since the creation of State of Jharkhand, 8 seats earmarked under SC quota in cadre of Assistant Engineer has remained

unfilled. In view of the above facts this Court fails to understand that when the vacancy was available and the candidate was eligible for promotion

then why the respondent authorities did not prepare the seniority list as per the 2009 Rules for promotion of the eligible candidates in that year itself.

12. It further appears that after coming into force of the recruitment rules of the year 2016, the respondents have conducted promotional exercise, for

the candidates who fall in the category of Schedule Tribe, but the same exercise was not applied for the candidates of Schedule Caste. The petitioner

is Schedule Caste candidate, and thereafter, his case for promotion should have been considered, even under the provisions of recruitment rules of

2016, by conducting of limited departmental competitive examination, here also for reasons best known to the respondent authorities they have

committed delay and the case of petitioner was ignored.

The difference between the petitioner and the ST category Junior Engineer is in respect of the fact that they belong to two different categories; other

than that, there is no difference and even this difference has no value on the face of the claim made by the petitioner, since both are reserved

categories and vacancies were available in the year 2018; this Court fails to understand why the respondent authorities considered only the ST

categories for promotion and not the SC category candidates.

13. It further appears that during the pendency of the present writ application the respondent authorities have granted promotion to the petitioner in pursuance to notification dated 31.12.2023 with effect from the date of joining.

14. Having regard to the above discussion this Court is having no hesitation in holding that the petitioner was eligible for promotion after successful completion of 5 years of service in the year 2012 as per the 2009 Rules. However, due to arbitrary/ illegal omission of the respondent authorities to prepare seniority list even when the vacancies were available in that year; he was not promoted.

Even, in 2018 when the candidates of ST category were promoted then also the candidates of SC category were not considered, inasmuch as, to grant promotion to the ST category candidates, while under similar circumstances, not considering the SC category candidates for promotion to Assistant Engineer in the year 2018, cannot have any reasonable nexus to a bona fide purpose as both are reserved category seats, and vacancies were available. At the cost of repetition, the petitioner was placed better in the seniority position, then, non-consideration of the petitioner for promotion would only render the entire exercise as arbitrary and the petitioner cannot be made to suffer the brunt of the arbitrary exercise of the respondent-State.

15. As stated hereinabove, the petitioner was finally promoted in the year 2023 with benefits from the date of joining which is outrightly illegal and arbitrary; as such, the limited portion of DPC recommendation (Annexure-7) and promotion notification dated 30.12.2023 (Annexure-10) to the extent whereby the promotion of petitioner from the post of Junior Engineer to the post of Assistant Engineer has been made effective from the date of joining, is hereby, quashed and set aside. The respondent authorities are hereby directed to grant promotion to the petitioner to the post of Assistant Engineer w.e.f. 20.11.2018; the day when the S.T. Category candidates were granted promotion and to consider the petitioner for further promotion to the post of Executive Engineer w.e.f. 30.01.2024, if all other eligibilities are met.

It goes without saying that the respondent authority shall undertake this exercise within a period of two months from the date of receipt/production of a copy of this order.

16. Consequently, the instant writ application is allowed in the manner indicated hereinabove.