

(2024) 11 JH CK 0040

Jharkhand High Court

Case No: Writ Petition (S) No 1530 Of 2021

Anurag Ravi Kujur

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Nov. 18, 2024

Hon'ble Judges: Deepak Roshan, J

Bench: Single Bench

Advocate: Saurabh Shekhar, Suresh Kumar, Ashish Kr. Shekhar

Final Decision: Allowed

Judgement

Deepak Roshan, J

1. The present writ application was filed by the petitioners, initially, with a prayer to promote them from the post of Assistant (Grade- Pay of Rs.

4600/-) to the post of Section Officer (Grade-Pay of Rs. 4800/-). Prayer was further amended to the effect that this promotion may be granted with

effect from the year 2015, on completion of 2 years of Kalawadhi on the post of Assistant, bearing Grade-Pay of Rs. 4600/-.

2. The promotion on completion of 2 years in the Grade-Pay of Rs. 4800/- was prayed in pursuance to the Government Resolution dated 04.04.2014

(Annexure-6 to the writ application) and provision contained therein at paragraph no. (ii) in the table at serial no.12 which prescribes a Kalawadhi of 2

years for promotion from the Grade-Pay of Rs. 4600/- to Grade-Pay of Rs.4800/-.

3. During pendency of the instant writ application, the respondents granted promotion to the petitioners vide notification dated 29.07.2022 (Annexure-4

to amended writ application). This order was challenged in an interlocutory application being I.A. No. 3757 of 2024 praying for amendment in prayer

portion and pleadings of the writ petition, seeking permission to challenge limited portion of Notification of promotion dated 29.07.2022 so as to make

the promotion effective from the year 2015, more specifically two years from the date on which the petitioners were appointed as Assistant in the

Grade-Pay of Rs. 4600/-. The aforesaid interlocutory application was disposed of vide order dated 25.04.2024, pursuant to which the amended writ

was filed and thereafter two counter-affidavits have been filed by the respondent-Department of Personnel, Administrative Reforms and Rajbhasha.

In pursuance to the above prayers, it is clear that the petitioners now are contesting for shift in the date of promotion from 29.07.2022 to the year

2015, i.e. 2 years after the date of appointment in the Grade-Pay of Rs. 4600/- on the post of Assistant.

4. The brief facts of the case as per the pleadings are that the petitioner nos. 1 to 3 were appointed on the post of Assistant in the Grade-Pay of Rs.

4600/- on 03.07.2013, 01.06.2013 and 31.05.2013 respectively. The appointment of the petitioners was done in pursuance to the Secretariat Service

Rules, 2010 by direct recruitment process on the post of Assistant. The selection process was conducted by Staff Selection Commission and

appointment notification was issued on the approval of the Department of Personnel, Administrative Reforms and Rajbhasha. The Department is the

Appointing Authority and Cadre Controlling Authority of the Secretariat Services.

Before the order of promotion, the respondents had taken a ground that the Kalawadhi provided in the Secretariat Services Rules, 2010 is applicable in

the case of the petitioners for promotion from the post of Assistant to the post of Section Officer. The prescribed Kalawadhi is 8 years under the

Rules. Therefore, on completion of 8 years only, their matter of promotion can be considered. It was in this light that the case of the petitioners was

considered in the year 2022.

5. Learned counsel for the petitioners draws attention of this Court to Jharkhand Secretariat Service Rules, 2010 and submits that this Rule is

applicable to the Assistant Grade employees of the Secretariat and its attached offices. Clause 2(a) of the Jharkhand Secretariat Service Rules, 2010

the English version of which has been produced in the counter-affidavit dated 16.07.2024 filed by the respondents at Annexure-C (page no.64) reads

as under:

“2(a)” “Appointing Authority” means the Principal Secretary/ Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand in respect of Assistant Grade and Section Officer and State Government for other posts as mentioned in Rule 3.”

6. Learned counsel for the petitioners submits that the aforesaid Rules therefore makes it clear that the competent authority in the case of Secretariat

services is the Department of Personnel, Administrative Reforms and Rajbhasha. Further, at clause 2(e) of the Jharkhand Secretariat Service Rules,

2010 it has further been said that the Department of Personnel, Administrative Reforms and Rajbhasha is the Cadre Controlling Authority. The said

clause 2(e) is being re-produced herein below:

“2(e)- “Cadre Controlling Authority” in relation to any grade means the Department of Personnel, Administrative Reforms and Rajbhasha.”

7. He further submits that for the purpose of promotion from the post of Assistant to the post of Section Officer, it has been provided in clause 7(2) of

the Jharkhand Secretariat Service Rules, 2010 that 50% of regular posts shall be filled by way of promotion from the post of Assistant, who have

rendered not less than 8 years of approved service in the Assistant Grade. The provision as contained in clause 7(2) is being re-produced herein

below:

“50% of regular posts in the Section Officers’™ Grade shall be filled by promotion on the basis of seniority-cum-fitness of Assistants who have rendered not less than eight years of approved service in the Assistant Grade. Remaining 50% shall be filled up through Limited Departmental Competitive Examination

(LDCE) for Assistants who have completed three years of service in the Assistant Grade and having graduate qualification. ”

8. He further submits that the petitioners were appointed in the year 2013. Thus, in pursuance to the above Rules, the petitioners were considered for

promotion in the year 2022 on 29.07.2022. The promotion was granted making it applicable with effect from the date of Notification. The petitioners

are aggrieved with this part of the order.

Their case is that they should be considered for promotion to be granted with effect from the year, 2015. He contended that the case of the petitioners

is based upon the applicability of another Government Resolution, issued from the same Department of Personnel, Administrative Reforms and

Rajbhasha, as contained in memo no. 398 dated 16.01.2012 (Annexure-2 to the writ petition), which was modified on 04.04.2014 (Annexure-6 to the

writ petition) and 24.10.2014 (Annexure-8 to the writ petition), in continuation of the earlier Resolution. The Resolution establishes the norms of

common Kalawadhi for all the Departments functional in the Government of Jharkhand, on the basis of common Grade-Pay structure that was

introduced in the 6th PRC, which is in lines of Central Government Service Condition.

9. He further submits that the case of the petitioners is that the Resolutions dated 16.01.2012, 04.04.2014 and 24.10.2014 have superseded the

Secretariat Service Rules, 2010 as far as the calculation of requisite Kalawadhi is concerned. Therefore, in the matter of calculation of the required

time period of eligibility on one Grade-Pay against a post for promotion to another Grade-Pay against corresponding post in hierarchy, the Resolutions

of the year 2012 and 2014 have superseded the Secretariat Service Rules, 2010.

10. He further submits that the recruitment and promotion and other service conditions though have to be governed by the Secretariat Service Rules,

2010, the matter of requisite Kalawadhi will be governed by the Resolutions of the year 2012 and 2014.

11. The fact that the Resolution of the year 2014 has been made applicable in the case of other employees of the Secretariat services (same

Department) is also clear from perusal of Annexure-9 and Annexure-9/1 to the writ application. In Annexure-9, inasmuch as, a set of employees of

the Secretariat Services were promoted from the post of Assistant (Grade-Pay of Rs. 4600/-) to the post of Section Officer (GP -Rs. 4800/-).

12. Learned counsel for the petitioners next contented that the Resolution dated 04.04.2014 at Annexure-6, (i) clearly provides that the candidates and

employees who possess the requisite qualification and Kalawadhi, will have to be promoted immediately, in case vacancies are available. The

provisions further clarifies that the process of promotion will have to take place twice a year. The Resolution dated 04.04.2014 is published by the

Department of Personnel, Administrative Reforms and Rajbhasha which as stated earlier is the Cadre Controlling Authority of Secretariat Services.

The Rules of 2010 provides that the Department is the Appointing Authority of the employees of the Assistant Grade and other posts in the Secretariat Services.

Further, the Resolution dated 04.04.2014 bears direct reference to all the Departmental Head to undertake the process of promotion against the vacant post, forthwith and to perform the same at least twice a year.

13. Learned Counsel further submits that the Resolution dated 04.04.2014 mandates promotion to happen at least twice a year, on availability of

vacancies. It is thus clear that it is the Department of Personnel, Administrative Reforms and Rajbhasha that is issuing such directives to be made

applicable to all the Departments, then this Department itself cannot remain aloof from the applicability of the provisions mandated by itself for all

Departments. In view of the above, considering that there was vacancy and there was a mandate vide Resolution dated 04.04.2014 of the Department

to consider the promotions against the available vacancies at least twice a year, it would be apposite to say that the case of the petitioners should have

been considered in the year 2015-16, for promotion as per the Kalawadhi provided in the same Resolution, from the Grade-Pay of Rs. 4600/- to

Grade-Pay of Rs. 4800/-, i.e. on completion of 2 years. The case of the petitioners should be considered in light of the Resolution dated 04.04.2014

which has been promulgated by the Cadre Controlling Authority.

14. Learned counsel for the petitioners prays that the date of promotion of the petitioners should be affected from 2015-16, from the post of Assistant

(Grade-Pay of Rs. 4600/-) to the post of Section Officer (Grade -Pay of Rs. 4800/-), instead of the present date of promotion notification dated

29.07.2022. Further all consequential benefits, including seniority, though excluding arrears of salary may also be directed to be granted.

15. Learned counsel for the respondents referring to paragraph nos. 11 and 12 of the counter-affidavit dated 18.07.2024 submits that so far as the

petitioners' claim in respect of applicability of Departmental Memo No. 3286 dated 04.04.2014 in course of granting promotion is concerned; the

said grievance of the petitioners' cadre was considered by the respondents at earlier point of time also.

It was found that in terms of provisions contained under (amended) Rule 7(2) of the Jharkhand Secretariat Service Rules 2010, 50% of regular

vacancies in the Section Officers Grade is filled by promotion on the basis of seniority-cum-fitness of Assistant Grade who have rendered not less

than 8 years of approved service in the Assistant Grade. Remaining 50% vacancies are required to be filled up through Limited Departmental

Competitive Examination, for Assistants who have completed 3 years of service in the Assistant Grade and having graduate qualification; provided

that Upper Division Clerks having graduate qualification and at least 7 years of approved service in the respective Grades, may also be allowed

to appear in such limited examination, as a one-time measure to be availed of in the first Limited Departmental Competitive Examination only.

Learned counsel for the respondents further submits that the relaxation claimed by the petitioners in the light of the departmental Memo No. 3286

dated 04.04.2014 is not acceptable in their case. Moreover, in the present set of facts, since the petitioners have already received promotion as

Section Officer, their primary grievance is fulfilled and thus the present writ petition has become infructuous.

16. Having heard learned counsel of the parties and after going through the respective affidavits it appears that the petitioners were appointed on the

post of Assistant, in the Secretariat Services on the basis of the Competitive Examination conducted by the Staff Selection Commission (SSC), and

they were appointed on 03 July 2013, 01 June 2013, 31 May 2013 for the Petitioners No. 1, 2 and 3, respectively. The Petitioners are working in the

Grade pay of Rs. 4600/-, as Assistant, and therefore they had to complete requisite Kalawadhi for the purpose of attaining eligibility for promotion to

the post of Section Officer which bears Grade Pay of Rs. 4800/-.

It is also evident that the petitioners are employees of Secretariat Services, and therefore their Nodal department is Department of Personnel

Administrative Rules and Rajbhasa Department, and their service conditions, including the promotional ventures, are governed and regularized by the

Rules and Resolutions framed by the Department of Personnel. The Department of Personnel has framed Secretariat Services Rules in the year 2010,

whereby the process of promotion from the post of Assistant to the post of Section Officer has been dealt with at Rule 7(2). In this the minimum period of Service to be rendered on the post of Assistant to become eligible for consideration of promotion to the post of Section Officer has been provided and published as period of 8 years. Thereafter the Department of Personnel, through the Government of Jharkhand has come up with resolution dated 16.01.2012, and modified resolution dated 12.05.2014, whereby the tenure/Kalawadhi for the purpose of eligibility for promotion, has been prescribed.

17. It further appears from record that the case of the petitioners is based upon the applicability of another Government Resolution, issued from the same Department of Personnel, Administrative Reforms and Rajbhasha, as contained in memo no. 398 dated 16.01.2012 (Annexure-2 to the writ petition). This was further clarified with certain modifications and the subsequent Resolution in the same line was passed on 04.04.2014 (Annexure-6 to the writ petition) and 24.10.2014 (Annexure-8 to the writ petition), in continuation of the earlier Resolution.

The Resolution establishes the norms of common Kalawadhi for all the Departments functional in the Government of Jharkhand, on the basis of common Grade-Pay structure that was introduced in the 6th PRC, which is in lines of Central Government Service Condition. It is recorded in the Resolution dated 16.01.2012 that the Central Service Conditions have been adopted by the State Government and therefore in the lines of the Central Government, the prescribed Kalawadhi for promotion from one Grade-Pay to another was mandated. This Kalawadhi has to be counted in respect of an employee, who bears the Grade-Pay against the occupancy of a post.

In the present case, the petitioners enjoy Grade-Pay of Rs. 4600/- against the occupancy of the post of Assistant.

Thus, the moot question which has to be decided in this case is, whether the Resolution dated 16.01.2012 and its successive modification vide Resolution dated 04.04.2014 as also 24.10.2014 is applicable in the Secretariat Services Rules?

18. It is evident from perusal of records annexed with the respective affidavits that a resolution came in the year 2012 i.e. on 16.01.2012, wherein it

was stipulated that for promotion from the post of Assistant (Grade Pay Rs.4,600/-) to the post of Section Officer (Grade Pay Rs.4,800/-), will apply

to those candidates who will have two years of experience and prior to January, 2012 (aforesaid resolution), the respondents were acting as per their

Cadre Rules where there was a rule of eight years requisite Kalawadhi. However, in the resolution of 2012 itself, it has been categorically stated that

all earlier rules will not be effective from coming of this resolution, thereafter on 04.04.2014, a fresh resolution came giving further details.

It further appears that that the Resolution of the year 2014 has been made applicable in the case of other employees of the Secretariat Services (same

Department) which is clear from perusal of Annexure-9 and Annexure-9/1 to the writ application. In Annexure-9, a set of employees of the

Secretariat Services were promoted from the post of Assistant (Grade-Pay of Rs. 4600/-) to the post of Section Officer (GP -Rs. 4800/-).

Though the stand of the respondents in this regard is that these are appointees of 1995 batch and they were promoted for the first time after

completion 17 years as such the petitioners cannot claim parity; however, this Court is not in agreement with the contention of respondents as the

question which arises here is that, whether in the same Department, another set of employees governed by the same Secretariat Service Rules, 2010

are getting the benefit of applicability of Resolution, dated 04.04.2014 or not? If answer to this question is yes, then potentially, the respondents cannot

deny that the Department has made the provisions of Resolution dated 04.04.2014 applicable in the case of employees governed by the same

Recruitment Rules, working under the same controlling Authority.

19. Taking an example of such application of the new Resolutions it appears that one Ranjeet Ranjan Prasad at serial no 4 from Annexure-9 to the

writ application was promoted to Grade-Pay of Rs. 4800/- on 01.11.2012. Further at Annexure-9/1 at page no. 175 to the writ application, the same

person gets promotion to Grade-Pay of Rs. 6600/-, on 31.12.2015. Thus, within 3 years he has been promoted from Grade-Pay of Rs. 4800/- to

Grade-Pay of Rs. 6600/-, which is possible on application of the relaxation clause available in Resolution dated 24.10.2024 (Annexure-8 to the writ

application).

As such, from the above discussion it cannot be denied that the resolution dated 04.04.2014 is very well applicable in the Secretariat Services Rules, though for another set of employees and not for the petitioners. Since Resolution dated 16.01.2012 and its successive modification vide Resolution dated 04.04.2014 as also 24.10.2014 has been found to have been made applicable by the Department, it would be considered as an admissible circular to the Department and the petitioners cannot be alienated from enjoying its effect, particularly in due time.

20. It further appears that Resolution dated 04.04.2014 at Annexure-6, (i) clearly provides that the candidates and employees who possess the requisite qualification and Kalawadhi, will have to be promoted immediately, in case vacancies are available. The provisions further stipulates that the process of promotion will have to take place twice a year. The Resolution dated 04.04.2014 bears direct reference to all the Departmental Head to undertake the process of promotion against the vacant post, forthwith and to perform the same at least twice a year. For ready reference the provision is being produced herein below:-

â€œ(i) /

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English Translation:

â€œ(i)The vacant posts of the State Services / Cadres, under the Administrative control of different Departments shall be filled forthwith, with promotion of the eligible candidates/employees. For this the Departmental Promotion Committee meeting shall at least be held twice a year.â€

21. There is no dispute to the fact that the vacancies have remained on the post of Section Officer since 2015-16, as per the statement made at paragraph no.18 of the writ petition and Annexure-7, annexed to substantiate such statement of availability of vacancies. This has not been controverted by the respondents. The Resolution dated 04.04.2014 mandates promotion to happen at least twice a year, on availability of vacancies. It is further clear that it is the Department of Personnel, Administrative Reforms and Rajbhasha that is issuing such directives to be made applicable to

all the Departments, then this Department itself cannot remain aloof from the applicability of the provisions mandated by itself for all Departments.

Further, the fact that the Resolution mandates that promotion should be carried out at least twice a year, has not been followed. The respondents have

attributed the cause of delay to the non-applicability of Resolution dated 04.04.2014 in their Department. This is a strange situation when a

Department passes a Resolution to be made applicable in all other Departments, then how it can itself remain aloof from its applicability. On the

contrary, in case of another set of employees of the same Department, provisions from the same Resolution were found applicable.

As such, petitioners should not suffer for this dual standard adopted by the respondents.

Further, the Department of Personnel, Administrative Reforms and Rajbhasha is the author of Resolution dated 04.04.2014, which is also the Cadre

Controlling Authority of the Secretariat Services (Petitioners's Department), then surely the provision has to be made applicable for the petitioners.

22. Hence, this Court is having no hesitation in holding the applicability of the provisions of the Resolution dated 04.04.2014 on petitioners. Now

reading into the Resolution, once it is mandated that DPC should have been held on vacancies being available, and the petitioners were eligible coupled

with the fact of availability of vacancies, the right of consideration for promotion gets created against that relevant year, on occasion of vacancy, and

the respondents are responsible for not holding DPC in the relevant year, despite of availability of vacancy.

23. Having regard to the aforesaid discussion, it is held that the date of promotion of the petitioners should be affected from 2015-16, from the post of

Assistant (Grade-Pay of Rs. 4600/-) to the post of Section Officer (Grade-Pay of Rs. 4800/-), instead of the present date of promotion notification

dated 29.07.2022. To that extent, corrigendum is directed to be published, shifting the date of promotion from 29.07.2022 to the year 2015-16, subject

to availability of the vacancies on the prescribed date, in the year 2015-16 and on completion of 2 years of service, in the Grade-Pay of Rs. 4600/-.

Further, all consequential benefits, including seniority, though excluding arrears of salary, also be directed to be granted.

24. As a result, this writ application is allowed in the manner indicated hereinabove.