

## Shyam Sundar Mahato Vs State Of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 15, 2025

**Hon'ble Judges:** Ananda Sen, J

**Bench:** Single Bench

**Advocate:** Sanjit Kumar, Sanjay Kr. Pandey, Ashwini Bhushan

**Final Decision:** Dismissed

### Judgement

Ananda Sen, J

1. By way of filing these writ petitions, the petitioners have sought for following reliefs:-

W.P.(S) No.2763 of 2008

“this is a writ petition for issuance of an appropriate writ/writs direction/direction directing the respondents to promote the petitioner on the post of Headmaster of

Nationalised High School after considering his seniority and eligibility against the vacancy occurred prior to 05.11.2004 in view of the provisions of the service

condition Rules 1983 with all consequential benefits of promotion and further for quashing of an order as contained in memo no.1397 dated 21.05.2008 issued by the

Respondent No.-2, by which a Junior teacher has been promoted and posted against the petitioner without considering the claim of the petitioner by issuing an

appropriate writ or at least stay the posting of the respondent no.-5 till the disposal of this case or one pending case bearing W.P.(S) No.7822 of 2006.

W.P.(S) No.2735 of 2008

“this is an application for quashing of an order as contained in Memo No.-1397/Ranchi dated 21.05.2008 issued under the signature of Director, Secondary

Education (Resp. No.-2), by which the 175 Junior Assistant Teachers have been promoted against the vacancy occurred prior to promulgation of New Rule 2004

violating the Rules & Regulations of the Department and Orders/Judgment of the Hon'ble Court and further prays for staying at least the posting of those Junior

Assistant Teachers mentioned in the impugned order dated 21.05.2005 against the total post of 488 which occurred prior to promulgation of the new Rules till the

disposal of W.P.(S) No.7822 of 2006, which has been reserved for final judgment on 05.02.2008, by issuing an appropriate writ.

W.P.(S) No.2797 of 2008

“by means of this writ application the petitioner humbly prays for issuance of appropriate writ/order/direction, directing the respondents, particularly Respondent

No.2, the Director Secondary Education, Jharkhand, Ranchi, to promote/appoint the petitioner to the post of Head Master as several juniors to the petitioner have

been promoted to the post of Head Master of different Nationalised High Schools vide memo No.1397 dated 21.5.08 ignoring the petitioner’s genuine and

bonafide claim for promotion/appointment to the post of Head Master; And also for any other appropriate Writ(s)/Order(s)/Direction(s) as Your Lordships may deem

fit and proper for doing conscionable justice to the petitioner.

2. It is the claim of the petitioners that they should be promoted to the post of Headmaster. It is their case that since the vacancy arose prior to

05.11.2004, their cases are to be considered as per the Rules of 1983 and not as per the Rules of 2004.

3. The issue has been set at rest by the Division Bench of this Court in L.P.A. No.323 of 2008 (The State of Jharkhand & Ors. Vs. Yudhisthir Mahto

& Ors.), wherein it has been held that so far as promotion is concerned, the Rules of 2004 will be applicable.

4. It is an admitted case that all the petitioners have superannuated. They are the Assistant Teachers and were working as In-Charge Headmaster.

They sought to be promoted on regular basis to the post of Headmaster. The post of Headmaster is a promotional post from the Assistant Teachers in

the ratio of 80:20. Thus, so far as these petitioners are concerned, they were to be promoted to the post of Headmaster, which is a substantive post.

5. The Hon’ble Supreme Court in the case of State of Bihar & Ors. Vs. Akhouri Sachindra Nath & Ors. reported in (1991) Supl. (1) SCC 334,

has held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given

with retrospective effect as that might adversely affect others.

6. The Hon’ble Supreme Court in its very recent judgment in the case of Government of West Bengal & Ors. Vs. Dr. Amal Satpathi & Ors.

reported in (2024) SCC OnLine SC 3512, has held that it is a well settled principle that promotion becomes effective from the date it is granted, rather

than from the date a vacancy arises or the post is created. While the Courts have recognized the right to be considered for promotion as not only a

statutory right but also a fundamental right, there is no fundamental right to the promotion itself.

It has further held at para-21 that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of

occurrence of the vacancy or the date of recommendation.

7. To get the benefit of promotion, a person should assume the charge of the post. If a person superannuates before assuming the charge, he is not

entitled for the aforesaid benefits nor can be promoted, which is the case here, as the petitioners have admittedly superannuated.

8. Considering the aforesaid judgments, I find that no relief can be granted to the petitioners.

9. Accordingly, these writ petitions are dismissed.