

(2003) 01 JH CK 0016

Jharkhand High Court

Case No: C.W.J.C. No. 2262 of 2001 (R)

Mahendra Kumar Sinha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Jan. 20, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2003) 2 JCR 8

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Apresh Kumar Singh, for the Appellant; Arvind Kumar Mehta, J.C. to S.C.-II, for the Respondent

Final Decision: Partly Allowed

Judgement

@JUDGMENTTAG-ORDER

Tapen Sen, J.

Heard Mr. Apresh Kumar Singh, learned counsel for the petitioner and Mr. A.K. Mehta, J.C. to S.C.-II and with their consent this writ application is being disposed off at this stage.

2. The writ petitioner claims that he was appointed along with one Janardan Singh vide Annexure-1, i.e., the order dated 3.3.1981 being order No. 17/81 on the post of Panchayat Sewak on the scale of Rs. 220-315 on a provisional status in anticipation of approval. The petitioner has further stated that this appointment continued and it was neither withdrawn nor cancelled. Having been so appointed, the petitioner claims that he was sent for training in the Training Session which began from September, 1981 and he also passed the training examination which was held by the Panchayat Training Institute and a certificate to that effect was also issued on 31.12.1981 vide memo No. 1037, dated 31.12.1981, by which he was relieved for purposes of joining in the office of the District Panchayat Raj Office, Dumka but he

continued to wait for posting. The petitioner has complained that the other person who had been appointed along with him namely, Janardan Singh, and was also sent for training in the month of January, 1982, was however posted on the post of Panchayat Sewak at Nala Block within Jamtara Sub-division within Santhal Pargana, Dumka, but the petitioner's fate was not decided and he was not given any posting nor was he paid any salary for the period 1981 to 1987. According to the petitioner, he filed several representations one of which being a representation dated 12.8.1981 which has been brought on record by Annexure-2. Subsequently, on 14.12.1987 the Deputy Commissioner, Deoghar issued memo No. 165 dated 14.12.1987 by which seven persons were appointed on the basis of compassionate considerations and the name of the petitioner was included at serial number 6 therein. According to the petitioner, this order itself proves the entitlement of relief prayed by the petitioner because in this order, the petitioner has been placed at serial number 6 and it has been stated that he is already a trained Panchayat Sewak. Subsequently, it has been stated in the same order that only persons mentioned at serial numbers 1 to 5 shall obtain training and so far as the petitioner is concerned, he would go and give necessary documents to the concerned officer.

3. According to the petitioner, after the aforesaid order dated 14.12.1987 had been passed, he was posted by an order dated 6.1.1988 in the Sarva Block where he joined. Thereafter, he was transferred to Madhupur and since then he has been working. Thus, the main grievance of the petitioner as appearing from paragraph 16 of the writ petition was that he was kept in a state of suspended animation till January, 1988 and was allowed to join pursuant only to the order dated 14.12.1987 but even then, he was also not paid salary from 1981 to 1987. He has further stated that till date the seniority list of Panchayat Sewaks has not been published although he had made several requests.

4. The petitioner has relied upon the ease of one Dinesh Kumar Mal and others (Annexure-5, page 25) which was filed before the Patna High Court vide C.W.J.C. No. 14 of 1990 and by judgment and order dated 8.4.1990, the said Court directed the authorities inter alia to pay salary. The Patna High Court observed that the State is not justified in not giving salary to the petitioner on the post of Panchayat Sewak merely because the order of posting had not been passed although they had been duly appointed and accordingly directed the State to make the payment of salary from the date of appointment.

5. Consequently, the petitioner has submitted that he is also entitled to get seniority taking into account the entire length of service and also to get salary from the date of appointment and his salary is not dependent on his posting because his not having been posted was not for any fault or laches on his part. The authorities chose not to post him and for such lapse on their part, the petitioner cannot be made to suffer.

6. In the counter affidavit filed by the respondent Nos. 3. 5 and 7, it has been stated that the petitioner was appointed on compassionate ground vide Annexure-3, i.e., by letter dated 14.12.1987 and it was only thereafter that he was given posting at the Sarva Block. At paragraphs 8 and 9 of the counter affidavit it has been stated the petitioner's regular appointment was made vide Annexure-3 (14.3.1987). In the same paragraph, it has been stated that prior to that the petitioner appears to have been issued a letter, Annexure-1 to the writ application under memo No. 236 dated 3.3.1981 by the District Development Officer, Dumka and it also appears from Annexure-1 that in the appointment letter itself it had been stated and petitioner was directed to immediately go for training. In the meantime, Dumka district was bifurcated and Deoghar district was created. The matter with regard to the petitioner's appointment on compassionate ground was brought to the notice of the Deputy Commissioner, Deoghar and thereafter the Deputy Commissioner, Deoghar referred the matter of the petitioner's appointment to Director, Panchayati Raj, Patna and on receipt of approval by the Director, Panchayati Raj, Patna, the petitioner's regular appointment was made in the year 1987 vide Annexure-3 of the writ application. In other words, the service of the petitioner would be counted for purposes of seniority as also payment of salary from the date of his actual appointment i.e. 1987.

7. This Court rejects the aforesaid contention of these respondents. Whether the District of Dumka came into existence immediately after 1981 or whether the District of Deoghar came into existence or whether the Deputy Commissioner, Deoghar entered into correspondence with Director, Panchayati Raj, Patna is of no concern to the rights of the petitioner. Paragraph 8 of the counter affidavit admits the issuance of Annexure-1 by which the petitioner was given appointment and that appointment letter was never cancelled nor withdrawn. On the contrary, the next letter dated 14.12.1987 clearly mentions the fact that the petitioner was an already "Panchayati trained person" and that only persons mentioned in serial Nos. 1 to 5 would go for training. In other words, they also admit that the petitioner was given Panchayati Raj Training after Annexure-1. The other submission of these respondents to the effect that the seniority should be determined from the year 1987 and not from the year 1981 is also hereby rejected on the aforesaid reasoning. In this context, reference may be made to the case of The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, . The Supreme Court has held at paragraph 44(B) as follows :

"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted."

8. Consequently therefore, this Court holds that the period of 3.3.1981 to 14.3.1987 cannot be allowed to go wasted and that this period must therefore enure to the

benefit of the petitioner.

9. The counter affidavit of the respondent Nos. 4 and 6 also refers to the letter of appointment as contained at Annexure-1. The reference of this, appointment letter is made at paragraph 8 of counter affidavit pf these respondents and in the same paragraph, it has been stated that this memo No. 236, dated 3.3.1981 shows that it was issued under the signature of the then District Development Officer, Dumka. At least these respondents have admitted that this document dated 3.3.1981 is available by which the petitioner had been appointed on the post of Panchayat Sewak on ad hoc basis. The aforesaid statements become very relevant in as much as this statement clearly points out the fact that the petitioner was in fact appointed though on ad hoc on 5.3.1981.

10. For the reasons stated above, this writ application is partly allowed and the respondents are directed to re-fix the seniority of the petitioner on the basis of the observations made above. This Court having held that the petitioner is entitled to have his entire length of service counted will naturally and consequently be entitled to the benefits enuring to such status during that period. Consequently, the writ petitioner is given liberty to approach the respondent No. 2 with his prayer for consequential benefits and if he does so, the respondent No. 2 shall look into the matter and shall pass orders in accordance with law within a period of four months from the date of receipt/production of a copy of this order accompanied by a representation.

11. With the aforesaid observations and directions, this writ petition is partly allowed and disposed off. No order as to costs.