
(2011) 08 JH CK 0055

Jharkhand High Court

Case No: Writ Petition (S) No. 982 of 2011

Sambhu Prasad Jamadar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Aug. 2, 2011

Citation: (2011) 4 JCR 301

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.N. Patel, J.

The present writ petition has been preferred mainly for getting writ of mandamus upon the respondents to allow the petitioner to resume the promotional post i.e. Sub inspector of Police. Petitioner was promoted vide order dated 1st October, 2010 by the Central Selection Committee, which is at Annexure-1 to the memo of the present petition and for no justifiable reason, respondent No. 5 is not allowing the petitioner to resume the promotional post on the ground that some departmental inquiry has been initiated after the promotion given to the petitioner and that too for absenteeism for 27 days.

2. Counsel for the petitioner further submitted that the petitioner has already been promoted by the Central Selection Committee. Thereafter, the posting order has also been passed, which is at Annexure-2 to the memo of the present petition and therefore, the petitioner ought to be relieved by respondents allowing the petitioner to join his promotional post at Jamshedpur.

3. Counsel for the respondents submitted that it is true that the petitioner has been promoted and posted at Jamshedpur by order at Annexure-1 and Annexure-2, respectively, but, looking to the order of promotion, it has been stated that if there any departmental inquiry is pending on or before 27th August 2010, for the

allegation/incident, which has been taken place within three years from the date of promotion then the promotee will not be allowed to resume the duties at the promotional post and therefore, the petitioner is not allowed to join the post of Sub Inspector of Police at Jamshedpur because charge-sheet has already been issued on 11th October, 2010 for 27 days absenteeism and departmental inquiry is still going on and therefore, the petition deserves to be dismissed, at this stage.

4. Having heard counsel for both the sides and looking to the facts and circumstances of the case, it appears that:--

(i) the petitioner was working as Assistant Sub Inspector (ASI) with effect from 8th December, 1994;

(ii) the petitioner was promoted on the post of Sub Inspector by the Central Selection Committee vide order dated 1st October, 2010, which is at Annexure-1 to the memo of this petition.

(iii) after getting promotion, the petitioner was also posted at Jamshedpur vide order at Annexure-2 to the memo of the petition.

(iv) the petitioner was promoted initially, vide order at Annexure-1 and thereafter, he is also posted at Jamshedpur vide order at Annexure-2. Now, the only question left out is that respondent No. 5 is not relieving the petitioner to resume the promotional post. It appears from the counter-affidavit that some departmental inquiry is pending against the present petitioner and the charge-sheet was issued on 11th October, 2010 for 27 days absenteeism. It further appears from Annexure-A to the counter affidavit that promotion is made subject to the condition that if there is any departmental inquiry pending prior to 27th August, 2010, for misconducts or misconduct committed within a period of three years then such candidate will not be allowed to resume the duties at promotional post. This condition is attached with the promotion of as many as 328 candidates and the petitioner is one of such candidates.

(v) the charge-sheet was issued to the petitioner on 11th October, 2010 and the departmental inquiry is, therefore, pending after 27th August, 2010 and hence, the condition attached with the promotional order is not applicable to the present petitioner. Moreover, it is admitted by the counsel for the respondents that if the incident has taken within three years from the date of the promotion then also, such promotion cannot be given. This contention is not accepted by this Court mainly for the reason that the condition attached with the promotional order is that if any departmental inquiry is pending on or before 27th August, 2010 for an alleged misconduct committed within three years then only such a candidate will not be allowed to be promoted. Thus, these are two conditions for not to allow a promotee to join the promotional post, viz.-

(a) Misconduct must have been committed within three years of promotion; and

(b) Inquiry must have commenced, for aforesaid misconduct, on or before, 27th August. 2010.

Both these conditions must have been fulfilled. In the facts of the present case, condition No. 2 has not been fulfilled. Never such departmental inquiry was pending on or before 27th August, 2010. This is an admitted fact of the present case. Therefore, the petitioner ought to be relieved by respondent No. 5, allowing him to join the promotion post.

5. As a cumulative effect of the aforesaid facts and reasons, the condition attached with the promotion order is not applicable to the petitioner. I therefore, direct the respondents authorities to allow the petitioner to resume his duties as Sub inspector of Police at Jamshedpur as per the order at Annexure-2 to the memo of the petition, within a period of one week from the date of receipt of a copy of an order of this Court. The petitioner will be presumed to have resumed the promotional post or shall presumed to have joined the post of Sub Inspector of Police within the time limit given at Annexure-2. The delay has been caused only because of the respondents and therefore, in case of further promotional avenue, the promotional date for the petitioner and joining the date of the petitioner on the post of Sub Inspector of Police will be considered, exactly, as per Annexure-2 to the memo of the petition.

6. This writ petition is allowed with a cost of Rs. 2,500/- (Rs. two thousand and five hundred only), which the State of Jharkhand will pay to the petitioner, within a period of four weeks from the date of receipt of a copy of an order of this Court.