
(2009) 11 JH CK 0051

Jharkhand High Court

Case No: None

Birendra Kumar Pandey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Nov. 6, 2009

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Judgement

D.G.R. Patnaik, J.

Petitioner, in this writ application, has prayed for the following reliefs:

(a) For issuance of a writ of certiorari for quashing the district order No. 1418 dated-17.11.2000, issued pursuant to the order dated-09.11.2000, by the Director General of Police, Bihar.

(b) For issuance of a writ in the nature of mandamus commanding upon the Respondents to promote the petitioner to the post of Steno/Typist A.S.I.

(c) For a direction to the Respondents to pay the petitioner his salary for the post of Steno/Typist A.S.I. on which, he has been officiating since, 1997.

2. Counter affidavit has been filed on behalf of the Respondents.

3. Heard the learned Counsel for the petitioner and learned Counsel for the Respondents.

4. Facts of the petitioner's case are as follows:

The petitioner was appointed as a Constable in the year 1988 in the State Police Service and after his completing the requisite Training, he was posted in the Office of the Superintendent of Police, Palamau, where he was allotted the work of Steno/Typist.

His superiors in Office, including the Deputy Inspector General of Police and the Inspector General of Police, recommended his name vide Annexure-1 series, to post

him as a Typist-cum-Steno A.S.I.

On considering the recommendations, the petitioner was promoted to the post of Steno/Typist A.S.I. on ad hoc basis initially for a period of four months and a recommendation was forwarded to the Headquarters, Bihar for his regular promotion by the Deputy Inspector General of Police.

Instead of regularizing his services on the aforesaid post, by the orders of the Superintendent of Police of the District where the petitioner was employed, the petitioner was reverted to the post of Constable and posted in the District Police in the Department.

However, subsequently, by the orders of the Inspector General of Police, the petitioner was again granted ad hoc promotion on 24.10.2000 to the post of Steno/Typist, A.S.I.

Thereafter, at the time of bifurcation of the State of Bihar, the Deputy Inspector General of Police, Headquarters, Bihar, issued an order on 09.11.2000 for reverting the petitioner to the post of Constable and this order was implemented by the impugned order dated-17.11.2000 (Annexure-4).

The petitioner claims that against the aforesaid order, he had submitted several representations, but the same were not considered.

The petitioner's grievance is that he had admittedly, officiated in the higher post of Steno/Typist A.S.I. for a considerable period continuously and was therefore, entitled to be promoted to the aforesaid post. His further grievance is that though he was made to officiate and work on the higher post of Steno/Typist, A.S.I. but he was never paid the salary applicable to the aforesaid post nor was he given any officiating pay at all, although he has been working on the post since 1997 and he is still working on the aforesaid post.

The petitioner's further grievance is that another co-employee, namely, one Ramnath Pandey, who was also inducted in service initially as a Constable and was granted ad hoc promotion to the post of Steno/Typist A.S.I., his services have since been regularized on the higher post, whereas the petitioner has been arbitrarily reverted to the post of Constable instead of regularizing him on the post.

5. Per contra, learned Counsel for the Respondents would submit that the substantive post to which the petitioner was appointed is that of the Constable, and since he knew Typing, his services for typing work was also taken, as per requirement, from time to time. Learned Counsel argues that merely because his services have been engaged as a Typist, the petitioner cannot claim promotion to the rank of Steno/Typist A.S.I., since the procedure as laid down for promotion, stipulates that such promotions should be considered only in accordance with seniority and that too after the candidate concerned is declared passed in the departmental examination conducted by the Police Headquarters and declared by

the D.G. Board.

Learned Counsel contends further that the Range D.I.G. has no authority to promote or to appoint any officer on the post of A.S.I., and as per the procedure laid down in Appendix 41 of the Police Manual. Such appointments on promotion are to be done only after conducting the examinations by the Board. On the aforesaid basis, learned Counsel would want to justify the order of the revocation of the petitioner's ad hoc promotion.

6. The facts which emerge from the rival submissions are that the petitioner was appointed as a literate Constable and he was called upon to officiate on the post of Steno/Typist A.S.I. Such engagement of the petitioner on the higher post was admittedly taken ever since, 1997 by way of ad hoc promotion for limited periods and such periods were extended from time to time by fresh Notifications.

7. It appears therefore, that the petitioner's claim for his promotion/regularization in service on the post of Steno/Typist, A.S.I, is on the only ground that his efficiency was tested by his concerned superiors in office and they being satisfied, have engaged him, almost continuously, to officiate in the aforesaid post.

8. Admittedly, the Rules referred to by the learned Counsel for the Respondents under Appendix 41 of the Police Manual and under Rules 660 and 660 A of the Police Manual lay down the procedure for appointment/promotion. The petitioner has neither appeared in any such departmental examinations nor has he been declared by the Board as qualified for his promotion.

9. The fact that the petitioner was given ad hoc promotions from time to time would only signify that he was given to officiate in the higher post though retaining his lien on the substantial post of Constable. Since the grant of promotion of the petitioner has to be guided by the specific Rules, the Respondents cannot possibly be directed to ignore the Rules and proceed to promote the petitioner on the higher post, merely on the basis of his claim of efficiency and long officiation.

10. I am conscious of the fact that the petitioner has been made to officiate on the higher post continuously for a long period. This would only entitle the petitioner to claim for consideration of his case for his promotion to the higher post but nevertheless, subject to his qualifying of the requisite Tests. He would be entitled to be called upon to appear at the requisite Tests by the Board to qualify and prove his competence. The petitioner would however, be entitled to the officiating pay for the period, he was made to officiate in the higher post.

11. In the light of the above facts and circumstances, I direct the Respondents as follows:

(i) The Respondents shall conduct the requisite departmental examination to enable the petitioner to appear at the same, preferably within a period of six months from the date of this order and upon the petitioner qualifying at the prescribed Test, shall

take appropriate decision regarding the petitioner's promotion to the higher post.

(ii) The Respondents shall pay the officiating pay to the petitioner for the period his services are engaged in officiating capacity in the higher post of Steno/Typist, A.S.I. Such payment shall be paid on and from the date, such services were obtained in the higher post.

12. With these observations, this writ application stands disposed of.

13. Let a copy of this order be given to the learned Counsel for the Respondents.