

(2006) 11 JH CK 0035
Jharkhand High Court
Case No: None

Bhupati Prasad Pandey

APPELLANT

Vs

The State of Bihar (now
Jharkhand) and Others

RESPONDENT

Date of Decision: Nov. 10, 2006

Citation: (2007) 1 JCR 244

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Amareshwar Sahay, J.

In this writ application the petitioner has prayed for quashing of Annexure-18, i.e. the order passed by the Chief Engineer, Rural Development Special Cell, Jamshedpur, on 04/09/1999 whereby his representation was rejected.

2. According to the petitioner he was initially appointed as Gauze Reader under Chhotanagpur Water Ways Circle, Ranchi on 28/05/1970 and he joined on 01/06/1970 in the pay scale of Rs. 70-80/-. The petitioner was matriculate at that time and he had also done diploma course in Draftsmanship in the year 1969. He was retrenched on 01/12/1970. He was again appointed provisionally as Tracer in the pay Scale of Rs. 100-130/- on 25/02/1971, but he was again retrenched on 22/04/1971. Thereafter, he was appointed as Work Charge Gauze Reader in the pay scale of Rs. 105-155/- on 27/04/1971 and he joined on 05/05/1971. It is said that though he was appointed as Gauze Reader work charge in the Scale of Rs. 105-155/- but he was paid the scale of Rs. 85-110/-, which was the pay scale of non-matriculate Gauze Reader, whereas he was a matriculate. The pay scale of Rs. 85-110/- was revised to Rs. 180-242/- and the petitioner was getting the said scale. However, the claim of the petitioner is that he should be given the pay scale of matriculate Gauze Reader, i.e. the scale of Rs. 105-155/-, which was revised to Rs. 220-315/-. He made representation for the said demand of pay scale. In the meantime, the services of

the work charge employees were being regularised and, accordingly, the petitioner, who was working on the post of Tracer, was regularized w.e.f. 11/08/1977 and his pay scale was fixed in the scale of Rs". 205-284/- though he was entitled to the pay scale of Rs. 220-315/-.

The further case of the petitioner is that he was made permanent on the post of Tracer by the order of the Chief Engineer contained in memo No. 1146 dated 26/11/1981. The petitioner alleges that in another circle of Irrigation Department, other Gauze Readers, who were having the matriculation qualification, were given the pay scale of Rs. 105-155/- subsequently, as revised to Rs. 220-315/- but the petitioner was being denied the said benefit. The petitioner further says that since he was having diploma in Draftsmanship, he was appointed as Draftsman Grade-II in the scale of Rs. 660-965/-provisionally vide order as contained in memo No. 146 dated 03/02/1982. This was the fresh appointment and he was made permanent on the post of Draftsman Grade-II vide order dated 12/01/1994 (Annexure-12). As per the petitioner, vide an executive instruction contained in letter No. 11 Ka. 1-105/85 Ka-432 dated 12/09/1985 (Annexure-13) of the Government of Bihar, it was envisaged that a person, who completed five years of service was entitled to be given Junior Selection Grade and after three years as Junior Selection Grade, he was entitled to the pay scale of Senior Selection Grade. It is said that the name of the petitioner was recommended for giving him Junior Selection Grade of Draftsman Grade-II. The petitioner made representation ventilating his grievance but instead of redressing the same by giving him higher pay scale; the Chief Engineer, Water Resources Department, Government of Bihar, by issue of letter dated 06/11/1995 (Annexure-16) addressed to the Superintending Engineer, observed that the petitioner"s appointment on the post of Tracer work charge, in the pa)" scale of Rs. 205-284/- was not in accordance with Rules and regulation and, therefore, an explanation was sought as to on which grounds the petitioner was appointed and promoted.

The petitioner, thereafter, filed writ petition before the High Court being C.W.J.C. No. 2282/1996, with a prayer to quash the said letter contained in Annexure-16 and also prayed for granting him proper pay scale of matriculate Gauze Reader. The petitioner had also filed another writ application being C.W.J.C. No. 2282/1996, in which he had made prayer for giving him promotion to the Junior Selection Grade Draftsman Grade-II and Senior Selection Grade Draftsman Grade-II. Both the writ petitions were allowed to be withdrawn after some argument since no final order on cancellation of his appointment/promotion was passed by the authority. The High Court directed the authority to dispose of the cancellation matter in accordance with law within a period of four months. The order passed by the High Court has been annexed as Annexure- 17 and 17/A to this writ application.

3. Since no order as per direction of the High Court was being passed and, as such, the petitioner filed a contempt application being M.J.C. No. 994/1999. During the

pendency of the contempt application, the order as contained in Annexure-18 to this writ application, was passed by the Chief Engineer on 04/09/1999 rejecting the claim of the petitioner, which has been challenged in this writ application.

4. On the other hand, the case of the respondents is that the adhoc promotion given to the petitioner to the post of Tracer in work charge establishment in the pay scale of Rs. 205-284/- was illegal and unjustified in view of the letter of the Government, contained in letter No. 1160 dated 16/07/1994, which envisaged that the time bound promotion is given only after regularization of services. As such, the petitioner's appointment to the post of Draftsman Grade-II on 03/02/1982 in the scale of Rs. 680-965/- was found to be illegal and hence, it was cancelled by the competent authority. The petitioner's claim relating to higher pay scale of Gauze Reader (Matriculate) of Rs. 105-155/- since November was considered and as per the advise of the Finance Advisor and the letter of the Finance Department dated 15/01/ 1987, the claim of the petitioner was not found admissible. He was not entitled to get promotion to the lower scale of Tracer as his earlier promotion to the post of Tracer was found to be illegal and unjustified. The said order was already communicated to the petitioner. In the said letter it was mentioned that there was no provision for promotion in the work charge establishment and it is only given to the regular employees and the petitioner was not a regular employee at that time. The petitioner's claim for promotion as Junior Selection Grade and Senior Selection Grade on the basis of matric and non-matric pass Gauze Reader was also not justified in view of the letter of the Government contained in letter No. 7599 dated 21/05/1974.

5. Mr. Jha, learned senior counsel appearing for the petitioner submitted that the petitioner was entitled to the scale of Rs. 105-155/-, which was the scale of matriculate Gauze Reader since the petitioner was matriculate at that time but he was wrongly given the scale of Rs. 85-105/- which was payable to non-matriculates. It is further submitted on behalf of the petitioner that only because the petitioner had moved the High Court by filing two aforesaid writ petitions and, therefore, the concerned respondents have acted out of their vendetta and have victimized the petitioner for the said reason.

6. Having considered the rival contentions of the parties and having gone through the impugned orders as contained in Annexure-18 to this writ application, I find force in the submission made on behalf of the State.

7. From the decision of the Government contained in memo No. 1503 dated 27/03/1987 relied on behalf of the respondents, it appears that the State Government have made it clear by the said circular that in view of the memo of the finance department contained in memo No. 3/PRC-45-83-1560 dated 27/02/1984 it was decided that for giving time bound promotion the service rendered by the Government Servant under work charge establishment shall not be counted.

8. From the impugned order as contained in Annexure-18 to the writ application as well as from the Government circular dated 27/03/1987 as contained in memo No. 1503 which has been discussed above, I hold that the concerned authority rightly held that the petitioner was not entitled to the relief as claimed by him. The impugned order is based on Government orders and circular applicable to the petitioner and, therefore, in my view, no interference is required by this Court in this writ application. Accordingly, having found no merit, this writ application is dismissed.

In the facts and circumstances of the case there shall be no order as to costs