

(2009) 08 JH CK 0036
Jharkhand High Court
Case No: None

Mani Bhushan Prasad and
Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Aug. 25, 2009

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Judgement

D.G.R. Patnaik, J.

The petitioner in this writ petition has prayed for quashing of the notification dated 23.5.2007 (annexure 7) issued by the respondent No. 5, Deputy Secretary, Department of Registration, State of Jharkhand, on the ground that the said notification is totally against the Circular/notification dated 11.9.2004 and 25.11.2004.

2. During, the pendency of the writ petition, IA No. 3238 of 2007 has been filed annexing further notification of transfer dated 13.7.2007 (annexure 13) whereby the petitioner has been transferred from Dumka to Deoghar and expressing that the transfer is premature and in violation of the guidelines contained in annexure 2

3. Heard Mr. Anil Kumar Sinha, Senior Counsel for the petitioner and the learned counsels for the respondents.

4. It has been informed at the outset that during the pendency of the writ petition, the services of the petitioner No. 1 has been allotted to the State of Bihar and as such this writ petition is pursued by the petitioner No. 2 namely Ruplal Manjhi.

5. Facts of the case, in brief, is that the petitioner along with private respondents No. 6 to 16 were appointed by the erstwhile State of Bihar and they had joined their posts in the Department of Registration on different dates according to the date of their respective appointments under the State of Bihar.

6. After bifurcation of the State of Bihar from 15.11.2000, members of the petitioner Association became employees of the State of Jharkhand and have been posted in various districts as Sub Registrars.
7. On the basis of the notification dated 11.09.2004 (annexure 2) and on the basis of the recommendations of the fitment committee, the post in the Registration Department in the State of Jharkhand were classified into four grades. The initial grade being of Sub Registrar in the pay scale of Rs. 6500-10,500/-, 2nd grade being District Registrar in the pay scale of Rs. 10,000/- to 15,200/-, third, being Inspector of Registration/ Assistant Inspector General of Registration in the scale of Rs. 12,000/- to 16,500/- and finally the grade of Deputy Inspector General of Registration in the scale of Rs. 14,000/- to 18,300/-
8. Pursuant to the above notification, 7 posts of District Sub Registrars in the scale of Rs. 10,000/-15,200/- were identified
9. By Circular dated 25.11.2004, the State of Jharkhand had also adopted the guidelines in conformity with the notification dated 11.9.2004 (annexure 2), pursuant to which the concerned Department of the State Government identified the posts of Deputy Registrar in seven districts, namely Ranchi, Hazaribagh, Chaibasa, Palamau, Dhanbad, Gumla and Giridih. After identification, the petitioner Ruplal Manjhi was posted at Dumka. However, by the impugned notifications the petitioner has been transferred from Dumka to Deoghar.
10. The grievance of the petitioner is that though the petitioner was posted on the identified post at Dumka, but his transfer from Dumka to Deoghar is against the Rules inasmuch as the petitioner was not allowed to complete the minimum period of three years and has been transferred purportedly on the ground of administrative exigency. The petitioner's further grievance is that while on the one hand, no reason has been assigned for his abrupt transfer, on the other hand, persons who are junior to him in the gradation list, have been granted posting on the identified posts and have been directed to be posted at Dumka in place of the petitioner.
11. Learned Counsel for the petitioner would argue that the posting of the private respondents on the identified post is totally illegal and not in consonance with the directions contained in the notification (annexure 2).
12. Referring to the gradation list (annexure 8), learned Counsel explains that as would appear from the gradation list, the persons named after serial No. 1 and 2 have either retired or died and the petitioner is the senior-most in the gradation list, whereas the names of private respondents obtain much below the name of the petitioner.
13. Assailing the impugned notification (Annexure-7), learned Counsel for the petitioner would argue, that by the notification, ostensibly indicated as transfer

notification, the respondent authorities have perpetrated illegality in as much as, persons who are junior and do not deserve to be granted posting on the identified posts on account of the fact that they were not only junior in the gradation list, but their original grade was Sub Registrar at lower pay scale and not equivalent to the post of grade II, they should not have been considered for their posting on the identified post.

14. A counter affidavit has been filed on behalf of the respondent State.

15. Learned Counsel for the respondent State explains that the gradation list (annexure 8) is provisional and tentative and it has not been finalized as yet. It is further informed that the private respondents have been granted promotion by way of ACP and it cannot be said that their pay scale is lower than the officers of grade II. Justifying the appointment of private respondents on the identified posts, learned Counsel would submit that the private respondents do come within the zone of consideration and as such, they have been considered and granted posting on the identified posts.

16. Defending the order of transfer, learned Counsel explains that such transfer order has been based on the recommendations of the Establishment Committee and on administrative exigency and the petitioner cannot argue that his transfer cannot be made under any circumstances prior to completion of three years at Dumka.

17. Learned Counsel for the private respondents submits by referring to the statements made in the counter affidavit that the private respondents have also earned their seniority in the higher scale by virtue of ACP benefits and, as rightly conceded by the State Government, they also fall within the zone of consideration.

18. From the rival submissions, it appears that in compliance with the direction contained in annexure 2, the State Government had identified 7 posts of Sub Registrar and had appointed officers who, according to the respondent authorities, were found eligible to such posts. The petitioner was also granted benefit of posting on the identified post and was posted at Dumka.

19. It appears from the impugned transfer order that while transferring the petitioner and several others, persons who were much below the petitioner and others in the gradation list and, who, according to the petitioner, were holding the post at a lower scale than the persons who are eligible for appointment on the identified posts, have been given the benefit of posting on the identified post on higher pay scale. It is argued on behalf of the petitioner that while granting benefit of posting on the identified post on higher pay scale, the respondent authorities have not acted in consonance with the guidelines laid down by the State Government in Annexure 2 and neither has the gradation list been taken into consideration by the respondents.

20. The respondent State Government in its counter affidavit has not denied or disputed the validity of the gradation list (annexure 8). The contention of the respondent State that since final gradation list has not been prepared, the tentative gradation list was not acted upon, appears to be a" misconceived notion. If final gradation list was not prepared and completed, then the respondents could not have proceeded to act, in the first instance, upon the notification to identify the posts or to appoint officers on the identified posts without first finalizing the gradation list. The tentative gradation list does have relevance and significance and cannot be ignored as irrelevant.

21. Considering the above facts and circumstances, the respondent State Government is directed to re-consider its decision regarding the posting of officers on the identified posts by referring to the gradation list (annexure 8) and by strictly complying with annexure 2 and thereafter to pass an order of posting of all the eligible officers against the identified posts of Deputy Registrars, where the officers are to be posted on transfer.

22. If the private respondents, according to the gradation list and other criteria as laid down by the Govt. Circular, come within the zone of consideration, the benefit of their posting on the identified posts, may be extended to them.

23. The concerned authorities of the respondent State are directed to re-consider the matter and take an appropriate decision in terms of the guidelines stated above, within a period of six weeks from the date of receipt/production of a copy of the order.

24. Till the final decision is taken by the respondent State, the operation of annexure 7 and 13 shall remain stayed.

25. With the above observations, this application is disposed of.

26. Let a copy of this order be given to the learned counsel for the respondent State.