

(2008) 08 JH CK 0072

Jharkhand High Court

Case No: Writ Petition (S) No. 2956 of 2006

Giriwar Mahto

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Aug. 25, 2008

Acts Referred:

- Bihar Reorganisation Act, 2000 - Section 85, 86

Citation: (2009) 57 BLJR 360 : (2009) 1 JCR 116

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Advocate: Akhil Kr. Sinha, for the Appellant; J.C. to G.A., for the Respondent

Judgement

D.G.R. Patnaik, J.

Prayer in this writ application has been made by the petitioner to issue an appropriate writ commanding upon the concerned respondents to consider the petitioner's case for promotion from his present post of Gram Panchayat Sewak to the post of Gram Panchayat Paryavekshak and also to grant him second time bound promotion which, according to him, is due since 1992.

2. The petitioner's contention is that he was appointed under the erstwhile State of Bihar as Gram Panchayat Sewak on 08.01.1982 and he was posted as such in the Lapung Block within the district of Ranchi. He is a graduate belonging to the Backward Class and according to the rules, he is entitled to such promotion to the post of Gram Panchayat Paryavekshak. It is also contended that the first time bound promotion was given to the petitioner after completing 12 years of continuous service from the date of his initial appointment but his second time bound promotion, which is due to him according to rules after completing 24 years of service, has been denied to him.

3. A counter affidavit has been filed on behalf of the respondent wherein the claim of the petitioner has been disputed. It is sought to be explained that prior to the creation of the new State of Jharkhand, 50% of the total vacant posts of Gram Panchayat Paryavekshak were filled up from the acting graduate/non-graduate Gram Panchayat Sewaks by circular/resolution No. 1574 dated 07.03.1983 issued by the Rural Development and Panchayat Raj Department, Government of Bihar. However, after the bifurcation of the State of Bihar, the aforesaid resolution has no force in the State of Jharkhand. Infact State of Jharkhand has also initiated the process of formulating its rules under the Jharkhand Panchayat Samittee Establishment (Appointment, Service Condition and duty) Rules and until the rules are finalized and officially accepted, the petitioner's claim for his promotion to the post of Gram Panchayat Paryavekshak cannot be considered at this stage.

4. As regards the petitioner's prayer for the second time bound promotion that he is entitled to second time bound promotion after completing 24 years of continuous service, it is sought to be corrected that the total length of service is not 24 years but is 25 years and accordingly, the petitioner's case has not ripen for considering the second time bound promotion.

5. A rejoinder to the counter affidavit has been filed by the petitioner. Referring to Section 85 of the Bihar Reorganization Act, 2000, the counsel for the petitioner submits that the claim of the respondents that the earlier circular of the State of Bihar is no more in force in the State of Jharkhand is totally misleading, as because the aforesaid circular issued by the concerned department of the State of Bihar has neither been altered, repealed nor amended by any legislative authority and therefore, it has to be deemed that it is still in force in the State of Jharkhand.

6. As regards the other aspect regarding the eligibility of the petitioner for his second time bound promotion, learned Counsel for the petitioner refers to annexure-B filed along with the counter affidavit of the respondents and submits that this annexure is a circular issued by the Panchayat Department of the State Government on 14.10.2003 which categorically indicates that the government servants who have completed 24 years of continuous service are eligible for second time bound promotion.

7. There is force in the submissions made on behalf of counsel for the petitioner. The circular referred to by the respondents issued by the Panchayat Department of the State of Bihar, has admittedly not been altered, modified or repealed within the period of two years after reorganization of the State of Bihar under the provisions of Section 85 read with Section 86 of the Bihar Reorganization Act, 2000, it will be deemed that the circular is in force in respect of the government servants in the State of Jharkhand also.

8. As regards the contention of the respondents that the period of continuous service for earning second time bound promotion is 25 years, learned Counsel

explains that for the purpose of second time bound promotion, the length of continuous service has been stipulated under the rules as 25 years, although for the purpose of computing the A.C.P., the period is 24 years of continuous service.

9. Learned Counsel for the petitioner contradicts by referring to annexure-B to the counter affidavit filed by the respondents and submits that according to annexure-B which is a circular issued by the concerned department of the State Government, the period of continuous service to be rendered by the employee for his eligibility to the second time bound promotion is 24 years from the date of his initial appointment and therefore, his case needs to be considered and he should be given the second time bound promotion.

10. Regard being had to the facts and circumstances, I find merit in this application. Accordingly, the petitioner's prayer in this writ application is allowed. The respondents are directed to consider the petitioner's case for his promotion to the post of Gram Panchayat Paryavekshak and also to grant him second time bound promotion, from the date it falls due, along with all consequential benefits. This exercise must be concluded within two months from the date of filing a copy of this order along with a fresh representation by the petitioner.

11. With these observations, this writ application is disposed of.

12. Let a copy of the order be given to the counsel for the respondent State.