
(2003) 3 JCR 407

Jharkhand High Court

Case No: Writ Petition (S) No. 2674 of 2002

Durga Narain Ojha

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: July 8, 2003

Citation: (2003) 3 JCR 407

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Ram Kishore Prasad, for the Appellant; Ritu Kumar, GP-IV and S.P. Roy, for the Respondent

Judgement

M.Y. Eqbal, J.

In this writ application the petitioner seeks direction upon the respondents particularly respondent No. 2, Deputy Commissioner, Lohardaga to decide the seniority of the petitioner vis-a-vis respondent No. 3 on the basis of passing final accounts examination and on the basis of gradation list and also to promote the petitioner on the post of Office Superintendent in the Lohardaga Collectorate.

2. Petitioner's case is that he was appointed in 1967 on the post of clerk and passed departmental accounts examination on 18.3.1974. In the year 1988 a gradation list was prepared in which the petitioner's name was shown at Serial No. 12 whereas the name of the respondent No. 3 was shown at serial No. 13. It is contended that inspite of the placement of the petitioner above respondent No. 3 in the gradation list, he was granted promotion in 1998 whereas respondent No. 3 was granted promotion in 1996. Petitioner said to have filed several representations before the Deputy Commissioner, Lohardaga but nothing has been done.

3. The case of respondent No. 2 on the other hand is that the seniority of the employees is to be calculated on the basis of initial appointment and not on the basis of passing the accounts examination. It is contended that in the district there is only one cadre. It is also

stated that it has been held by this Court in CWJC No. 411/1993 that in the Commissionary there is only one cadre for the clerks.

4. Respondents' case in the counter affidavit is that a provisional seniority list was prepared in 1990 and objections were invited from the concerned persons and thereafter final seniority list was issued in 2000 wherein petitioner's name appears at serial No. 38 whereas the name of respondent No. 3 appears at serial No. 34. Thereafter vide office order dated 25.11.2000 the petitioner has been given benefit of time bound promotion as per resolution of the Finance Department.

5. Admittedly initial appointment of the petitioner was on 6.6.1967 whereas respondent No. 3 was appointed on 1.6.1966. However, petitioner passed accounts examination in 1975 while respondent No. 3 passed such examination in 1984. Merely because of passing of accounts examination earlier, the petitioner can not be said to be senior to respondent No. 3. The petitioner has not denied the averments made by respondent No. 3 in the counter affidavit that vide order dated 25.11.2000 he has been given benefit of time bound promotion as per Finance Department's resolution dated 8.2.1999. It is stated by respondent No. 2 that the petitioner will be given promotion and other monetary benefits against the future vacancy. It is also evident from the office order dated 22.10.1975 issued by the Personal and Administrative Reforms Department, Government of Bihar that the seniority is not to be counted from the date of passing of final accounts examination rather the same has to be counted from the date of initial appointment.

6. Taking into consideration all these facts I am of the opinion that the petitioner can not be declared senior to respondent No. 3. However, as stated by respondent No. 2, the case of the petitioner shall be considered for further promotion in future vacancy. Respondent No. 2, the Deputy Commissioner, Lohardaga, is therefore, directed to consider the case of the petitioner for further promotion in accordance with law.

7. With the aforesaid direction and observation this writ application is disposed off.