
**Manindra Kumar Sinha Vs Mineral Area Development Authority and
Others**

C.W.J.C. No. 3587/9BR

Court: Patna High Court

Date of Decision: March 31, 2000

Citation: (2000) 4 PLJR 193

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

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

In this writ application the petitioner has prayed for quashing the order dated 8.3.97 as contained in annexure 17 to the

writ application issued by respondent no.3, the Secretary Mineral Area Development Authority, Dhanbad whereby the petitioner has been

reverted to class IV post after serving for more than 17 year"s on class III post as typist-cum-clerk and for further direction to confirm the service

of the petitioner as typist-cum-clerk as several junior persons have been given promotion from the post of disinfects (class IV post) to class III

post. Petitioner"s case is that he was appointed in 1981 as Disinfector Sodhak at Jharia Mines at Dhanbad after following all the procedures of

appointment. It is stated that there was enough vacancy of typist-cum-clerk at Jharia Mines Board and, therefore, the petitioner being qualified in

all respects for working as typist-cum-clerk, was authorised/directed by the respondents to render his services on the post of typist-cum-clerk in

terms of the office order dated 16.3.81. It is stated that since 1981 the petitioner started working as typist-cum-clerk and, therefore, he made

representation on 28.1.83 before the authorities to pay him salary of the post of Assistant. It is stated that in spite of several representations the

petitioner was not paid salary at par with typist-cum-clerk. However, after rendering services as such for 17 years, the respondents issued the

impugned order reverting him to the post of Disinfector (class IV).

2. A counter affidavit has been filed stating that the petitioner was initially appointed in class IV post and he is still continuing to his substantive post

of Disinfects and was never promoted to class III post. It is further stated that there is no such vacant sanctioned post of typist-cum-clerk in the

Building Division of Mineral Area Development Authority. The respondents, therefore, denied the entailment of the petitioner to get the pay scale

of clerk specially because his substantive post is that of Disinfects (class IV post). It is contended that the substantive post of the petitioner is

Disinfects and his services were returned back to the said post when he expressed his desire and/or he declined to work as typist-cum-clerk.

3. Admittedly the petitioner was appointed in class IV post in 1981 but at the same time he was allowed to work in class III post and since then he

has been working as such. It has not been disputed by the respondents that the petitioner did not possess the requisite qualification of the post of

typist-cum-clerk. In 1983 the petitioner filed representation for regularizing him in class III post and for payment of salary at par with the

employees of that post. In spite of repeated representation the respondents did not take any decision. In the year, 1990 the petitioner, therefore,

made representation that if he was treated to have been holding class IV post, then he should be granted cycle allowance and other benefits

payable to class IV employee. In reply to the request, the respondents issued letter dated 26.6.90 informing that the petitioner is not entitled to

cycle allowance for the reason that he has been working as typist-cum-clerk. A copy of the said letter has been annexed as annexure 4. It further

appears by office order dated 1.8.90, the petitioner was posted as typist-cum-clerk in the law department of the respondent-Authority. In 1991

by office order dated 20.2.91 the petitioner was again transferred and posted as typist clerk in Building Division for rendering services of typist-

cum-clerk. All the office orders have been annexed as annexures-5, 6 and 7. The petitioner has also annexed copy of the certificate dated 4.1.83

showing that he passed Hindi Noting and Drafting examination conducted by the respondents. In para 15 of the writ petition it is categorically

stated that one Arun Kumar Keshri who was also appointed as Disinfector, was also allowed to work as class 111 employee and subsequently he

was regularized and was given regular pay scale of the post of typist-cum-clerk on 20.11.83. This fact has not been denied by the respondents,

rather, it is stated that the petitioner was never given assurance for promotion or regularisation in the post of typist-cum-clerk.

4. Having regard to the facts stated in the affidavits it is clear that although the petitioner was appointed in class IV post in 1981 but in the same

year by office order, he was allowed to work as typist cum-clerk. It has also not been disputed that the petitioner did not possess requisite

qualification for appointment to the post of typist-cum-clerk nor it has been disputed that the petitioner has not been working as such for last 18-19

years. Simply it is stated that there is no vacant sanctioned post of typist-cum-clerk. In my opinion, the stand taken by the respondents is wholly

arbitrary and unjustified. It is really surprising that the petitioner was allowed to work in class III post in 1981 and continued as such for about 18-

19 years and now the respondents have issued impugned order reverting him to class IV post and that too without any plausible reason/ground. I

am also of the view that in the facts of the case the petitioner has acquired indefeasible right to be regularized in class 111 post and also to get the

pay scale of class III post. For the reasons aforesaid, this writ application is allowed and the impugned order as contained in annexure 17 is

quashed. The respondents are directed to regularize the petitioner in the post of typist-cum-clerk and to pay him the scale at par of typist-cum-

clerk. The petitioner shall be entitled to get difference of salary also from the date of filing of this writ application i.e. from December, 1998.