

Yogendra Ram Vs. Human Resource Development

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Court : Jharkhand

Decided On : Apr-08-2015

Appellant : Yogendra Ram

Respondent : Human Resource Development

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI WP(S) No. 2136 of 2013 ----
Raghunandan Koerie ... Petitioner -Versus- 1.The State of Jharkhand 2.The
Secretary, Department of HRD,Govt. Of Jharkhand, Ranchi 3.The Director,
Secondary Education, Ranchi. 4.District Education Officer, Ranchi. 5.The
Secretary, Department of HRD, Govt. of Bihar, Patna 6.The Director, Secondary
Education, Patna... ... Respondents With WP(S) No. 2808 of 2013 Yogendra Ram
... Petitioner -Versus- 1.The State of Jharkhand 2.The Secretary, Secondary
Education, Department of HRD, Ranchi 3.The Director, Secondary Education cum
Joint Secretary, Ranchi. 4.The Regional Deputy Director of Education, Ranchi.
5.The District Education Officer, Ranchi Respondents ---- CORAM :HONBLE
MR. JUSTICE APARESH KUMAR SINGH ---- For the Petitioners :M/s. I.Sen
Choudhary & A. Aditya & A.K.Sinha For the Respondents :M/s. Atanu Banerjee,
G.A., Kaustav Panda, JC to AG Jay Shankar Tiwary, JC to SC I ---- 04-
08.04.2015 Heard learned counsel for the petitioner in both the writ petitions and
the State.

2. Essentially the issue involved in both the writ petitions is common i.e whether
the petitioners are entitled to claim promotion to Class III post from Class IV post

to which they were substantially appointed at different point of time though the procedure laid down for such promotion under Circular dated 11.2.1985 issued by the Personnel Department, Government of Bihar has not been followed. In case of petitioner Raghunandan Koerie, he has been reverted to the post of peon by the impugned reasoned order dated 18.2.2013 from the post of Head Clerk, passed by the District Education Officer, Ranchi, Jharkhand. In the case of petitioner Yogendra Ram, his claim for promotion to Class III post has been rejected by the Director, Secondary Education, Human Resource Development Department, Government of Jharkhand by impugned order dated 10.1.2013.

2. 3. Certain facts of the individual petitioners are being noticed hereunder. For the sake of convenience, the petitioner in WPS No.2136/2013 shall be referred to as the first writ petitioner and petitioner in WPS No.2808/2013 shall be referred to as the second writ petitioner hereinafter.

4. The case of first writ petitioner has a chequered history in the sense that initially he was also appointed as a Peon on 30th December, 1970 in a Non-Government School, Giridih which was taken over by the Government on 2nd October, 1980. The District Education Officer, Ranchi by an office order dated 31st January, 1991 had promoted him on the sanctioned vacant post of correspondence clerk in Grade-III for 6 months in Project High School, Ginjo, Thakurgaon and the same was extended from time to time vide orders enclosed as Annexure-5 Series. Once when his salary was not being paid for Class-III post, he approached this Court in W.P.(S) No. 4895 of 2003 for release of the same in which the concerned authority was directed to take a final decision in the matter. Such decision was taken on 6th December, 2003 by the respondents holding that he is entitled to salary for Class-III post from March, 2002 till date of payment, but at the same time it also held that he should be reverted to the Post of Peon as his promotion was not proper in the eye of law. The challenge to the said order in W.P.(S) No.36 of 2004 was negated and the writ petition was dismissed vide judgment dated 11th July, 2006, Annexure-9, however, granting him liberty to make a representation before the respondents for consideration of his claim for such promotion on its own merit. The petitioner had occasion to approach the writ court again in W.P.(S) No. 7660 of 2006, as the respondents were not taking any decision in respect of the promotion

claimed by him. However, the said writ petition was permitted to be withdrawn vide judgment dated 17th January, 2008, Annexure- 12/A on 3. the statement made by learned counsel for the petitioners themselves that a list is being prepared by the department for promotion in which his name also appears. Thereafter, the petitioner again approached the Court in W.P.(S) No. 4218 of 2009, which was disposed of simplicitor without getting into the merits of the contention by directing the respondents to take a decision on his representation also appreciating the circular dated 11th February, 1985. The petitioner perhaps had raised the contention that other juniors to him had been given promotion to Class-III post while he was not granted the said promotion and that he was considerably senior in the seniority list as is disclosed through Annexure-10 enclosed to the present writ petition, which was prepared for the district of Ranchi. The Director, Secondary Education, by a detailed reasoned order, which is impugned herein, however, has rejected the petitioner's claim after examining it in the context of the circular dated 11th February, 1985 by holding that the procedure required for promotion after holding a limited competitive examination amongst eligible Class-IV employees had not been followed. He refused the claim of the petitioner on the ground that juniors have been given promotion by stating that if the promotion of the juniors had not been done as per the procedure laid down, he can not sustain a claim on that account. The Director, Secondary Education also issued a direction upon the District Superintendent of Education in different districts of the State to examine instances of promotion given to the post of Class-III employees without following the procedure laid down under the circular dated 11th February, 1985. Thus, petitioner being aggrieved, is before this Court.

5. The first writ petitioner was appointed as a peon in Grade IV post on 1.6.1976 in the High School, Banta Hazam, Ranchi. He claims that he was promoted to Class III post on issuance of first order dated 16.8.1990 by the DSE Ranchi, Annexure 2, which was extended from time to time 4. and was also given recognition by communication of the same officer in Memo No.8298 dated 14.9.1994, Annexure-6. After remaining in the said post and availing of the salary till February,2013 the impugned order has been passed reverting him to the post of peon. He has retired on 30th June,2013 . The reasoned order in his case passed by D.S.E Ranchi records that he was never promoted in a regular manner in accordance with the

procedure laid down under Resolution dated 11.2.1985 as per which 25% of Class III post were to be filled up by promotion from Class IV employees through a written competitive test. It also refers that any promotion which the petitioner claims to have been given to him in the year 1990 and thereafter were irregular and could not confer any right upon him to hold the post.

6. The contention of the 2nd writ petitioner is that after continuing in Class-III post all along till few month before his retirement when promotion had also been confirmed in 1994, reversion by the impugned order is bad in law and inequitable also. He has further submitted that the impugned order, in fact, amounts to changing his service condition in the teeth of Section 73 of Bihar Re-organization Act since he was enjoying Class-III post before bifurcation of Parents State of Bihar. It is also submitted that at the fag end of service the benefit of promoted post would be denied on his post retirement benefits. His continuance on Class-III post would also not be to the detriment of other persons as he has already retired.

7. The contention of 1st writ petitioner is that all along since he was granted promotion initially in the year 1990 the respondents had accepted it and posted him from one school another which was also confirmed by the District Education Establishment Committee, as would be evident from Annexure-5 dated 30th December, 1998 by which he was 5. transferred to Marwari High School, Ranchi from his earlier place of posting. It is also his case that the respondents have continued to take duties of Class-III post from 2004 onwards till January, 2013 as would also appear from Annexure-15 series, a communication of the Incharge Principal of Project Girls High School, Darmaltadag, Lapung, Ranchi.

8. The contention of both the petitioners is that they should not suffer if the respondents have failed to hold competitive exam for promotion to Class-III post throughout as it was not the fault of the individual petitioners. It is contention of the 1st writ petitioner that he has retired on 31st October, 2013 and had all along had been serving in Class-III post. Based upon this assertion, the petitioners have challenged the impugned order passed in their respective cases.

9. Learned Government Advocate, appearing on behalf of the respondent-State, submits that the petitioners do not have a legal right to claim promotion to the post

of Class-III post as they have never been promoted earlier as claimed by them after giving due opportunity to all other eligible persons in Grade-IV, who may also be entitled for such promotion. These petitioners, cannot claim any substantive right to Class- III post in such a manner. The procedure laid down under the circular dated 11th February, 1985 has not been followed before giving any such promotion in their individual cases. Therefore, the petitioners do not have a sustainable ground for challenging the impugned order, since the irregularity/illegality which has been perpetuated all along has only been corrected.

10. I have heard learned counsel for the parties and gone through relevant materials on record including circular dated 11th February, 1985. The relevant extracts of the said circular is required to be noticed herein, which has material bearing upon the controversy in question herein.

6. [fcgkj ljdkj] dkfeZd foHkkx] ladYi la[k 2215 dk0] fnukad 11&2&1985 dh izfrfyfiA] fo"k;% oxZ3miyC/k fjfDr;ksa esa fnup;kZ fyfid@i=kpkj fyfid Vadd ds 25 izfr'kr inksa dks visf{kr ;ksX;rk vf/kdre vk;q lhek dks NksM+dj j[kus okys prqFkZ oxhZ; deZpkfj;ksa rFkk lgk;d in ds 25 izfr'kr inksa ij visf{kr ;ksX;rk vf/kdre vk;q lhek dks NksM+dj j[kus okys fnup;kZ fyfid@i=kpkj fyfid@Vadd ls lhfer lh/kh HkrhZ ls Hkjk tkukA fnukad 28 flrEcj] 1984 dks jkT; ljdkj ds izfrfuf/k;ksa ,oa jkT; deZpkjh f'k{k d leUo; lfefr vkSj fcgkj jkT; ljdkjh deZpkjh inkf/kdkfj;ksa ,oa f'k{k d leUo; lfefr ds izfrfuf/k;ksa ds chp gq, le>kSrs esa ls fuEukafr nks fcUnq fuEu :i esa gSa& d oxZ&3 ds fxus pqus gq, in tSl ls fnup;kZ fyfid@i=kpkj fyfid@Vadd ds fjDr gksus okys 25 izfr'kr inksa dks visf{kr ;ksX;rk vf/kdre vk;q lhek dks NksM+dj j[kus okys prqFkZoxhZ; deZpkfj;ksa ls lhfer lh/kh HkrhZ ls Hkjk tk;s rFkk [k lfpoky; lgk;d ds fjDr gksus okys 25 izfr'kr inksa dks visf{kr ;ksX;rk vf/kdre vk;q lhek dks NksM+dj j[kus okys fnup;kZ fyfid@foi= fyfid Vadd dk lhfer lh/kh HkrhZ ls Hkjk tk;sA mi;ZqDr le>kSrs ds vkyksd esa ljdkj }kjk fuEukafr fu.kZ; fy;s x, gSa & 2-1 ljdkjh ladYi la[k 203] fnukad 11&10&1974 dh dafMdk 4 esa fnup;kZ fyfid ds inksa ij fu;qfDr dk tks dze fu:fir gS mlds LFkku ij vc fuEufyf[kr O;oLFkk jgsxh& d fnup;kZ fyfid dh fjfDr;ksa ij 50 izfr'kr in lhfer izfr;ksfxrk ijh{kk ds vk/kkj ij eSfVd rFkk uu eSfVd vfHkys[kokgksa ,oa dks"kkxkj ljdkjksa ls iwoZor~ Hkjs tk;sxsA [k 25 izfr'kr inksa ij [kqys cktkj ls lh/kh HkrhZ iwoZor~ dh tk;sxA x 25 izfr'kr inksa ij oSl prqFkZ oxhZ; deZpkfj;ksa dks] tks in ds fy, visf{kr ;ksX;rk vf/kdre vk;q lhek dks NksM+dj j[krs gSa] lhfer

izfr;ksfxrk ijh{kk ds vk/kkj ij fu;qDr fd;k tk,xkA22 dafMdk 2-1 x ds fy, ijh{kk dk ikB~;dze ogh jgsxk tks lh/kh HkrhZ ds fy, mi;qZDr dafMdk 2-1 esa mfYyf[kr ladYi esa fu/kkZfjr gSA31 dkfeZd foHkkx ds ladYi la[k 20366] fnukad 11&10&1974 dh dafMdk 3 esa Vaddksa ds inksa ij lh/kh HkrhZ dh tks O;oLFkk fu:fir gS mlds Lfkku ij fuEukafr O;oLFkk izfrLFkkfir dh tkrh gS & 7 d Vaddksa ds fjDr inksa ds 75 izfr'kr in ijh{kk ds vk/kkj ij lh/kh HkrhZ izfdz;k ls iwoZor~ Hkjs tk;saxsA [k 25 izfr'kr in lhfer ijh{kk ds vk/kkj ij visf{kr ;ksX;rk vf/kdre vk;q lhek dks NksM+dj j[kus okys prqFkZ oxhZ; deZpkfj;ksa ls Hkjs tk;saxsA32 mi;qZDr dafMdk 3 [k ds fy, ijh{kk dk Lrj ogh jgsxk tSlk fd lfpoky; vuqns'k esa dafMdk 3-1 d ds fy;s fu:fir gSA51 lgk;d ds inksa ij fu;qfDr dh O;oLFkk dkfeZd foHkkx ds ladYi la[k 20366] fnukad 11&10&1974 esa fu:fir g SA foRr foHkkx ds ladYi la[k 751] fnukad 12&1&1972 esa lfpoky; ,oa layXu dk;kZy;ksa ds lgk;dksa ds 25 izfr'kr in izosf'kd ;k mlds led{k ijh{kk esa mRrh.kZ vuqlfpoh; deZpkfj;ksa ds fy, lqjf{kr g SA 'ks"k 75 izfr'kr inksa ij lh/kh HkrhZ dh izfr;ksfxrk ijh{kk ds vk/kkj ij fu;qDr dh tkrh gSA52 vc le>kSrs ds vk/kkj ij ftldk mYys[k dafMdk 1 [k esa fd;k x;k gS iwoZ ls lqjf{kr 25 izfr'kr inksa ds vfrfjDr 25 izfr'kr inksa ij visf{kr ;ksX;rk vf/kdre vk;q lhek dks NksM+dj j[kus okys fnup;kZ fyfid@foi=fyfid@Vadd ls lhfer ijh{kk ds vk/kkj ij Hkjk tk;sxA 'ks"k 50 izfr'kr inksa ij iwoZor~ lh/kh fu;qfDr gksrh jgsxA53 dafMdk 5-2 }kjk lqjf{kr inksa ij fu;qfDr gsrq ijh{kk dk ikB~;dze ogh jgsxk tks lh/kh HkrhZ ds fy, dkfeZd foHkkx ds mi;qZDr ladYi esa lgk;d ds inksa ij fu;qfDr ds fy, fu:fir gSA6 mi;qZDr dafMdk 2-1 x] 3-1 [k ,oa 5-2 ds fy, lhfer izfr;ksfxrk ijh{kk esa Hkh dsUnzhd`r :i ls fcgkj jkT; voj lsok p;u i"kn ds ek;/e ls vk;ksftr dh tk;sxA7 i=kpkj fyfid vFkok fyfid dk in eq Qfly dk;kZy;ksa esa gh miyC/k g SA bu inksa ij fu;qfDr dh izfdz;k dkfeZ; foHkkx ds ladYi la[k 1918] fnukad 28&1&1976 esa mfYyf[kr g SA fu;ekuqlkj vc eq Qfly dk;kZy; esa oxZ3fyfid inksa ij fu;qfDr;k fuEudze esa gksxA d 75 izfr'kr fyfid ds inksa ij [kqys cktkj ls iwoZor~ lh/kh HkrhZ dh izfdz;k ls] [k 25 izfr'kr inksa ij visf{kr ;ksX;rk vf/kdre vk;q lhek dks NksM+dj j[kus okys prqFkZ oxhZ; deZpkfj;ksa lsA71 dafMdk 7 d ,oa [k dh fu;qfDr;k dkfeZd foHkkx ds ladYi la[k 98] fnukad 28&1&1976 esa fu:fir izfdz;k ds vuqlkj gksxA72 mi;qZDr dafMdk [k dh dksfV esa fu;qfDr gsrq lacaf/kr fu;qfDr inkf/kdkjh ,slh fjfDr;ksa dh lwpuk le; ij fudkyk djsaxs vkSj IEC) LFkkiuk ds deZpkfj;ksa ls ,d le; lhek fu/kkZj.k dj vkosnu i= vkefU=r djsaxs vkSj tks vkosnu i= nsaxs mUgha ds ekeyksa ij fopkj fd;k tk;sxA

11. Upon perusal of relevant orders relied upon by the two writ petitioners, which they claimed to be the basis for their promotion to 8. Class-III post, in the first place it does not appear that the same are in the nature of regular order of promotion issued after conducting a limited competitive exam amongst all eligible persons in Grade-IV in the respective districts in their cadre where the individual petitioners have been serving. The orders relied upon by the individual petitioners, as referred to hereinabove, are isolated instances of grant of such promotion by District Superintendent of Education which also initially also appears to be for a temporary period and had been extended from time to time. The aforesaid orders of promotion cannot have a sanctity of a substantive promotion as required in terms of circular dated 11th February, 1985. Admittedly no limited competitive exam was held amongst the eligible persons before such a promotion was granted to the individual petitioners 12. In case of 1st writ petitioner, his reversion by the order dated 6th December, 2003 was not interfered by learned Single Judge in W.P.(S) no.36 of 2004 vide judgment dated 11th July, 2006. This writ petitioner thereafter has been pursuing his claim for such promotion to Class-III on the basis that he is the senior most person in the District of Ranchi in Grade-IV and other juniors to him have been promoted as such, such as instances of the 2nd writ petitioner Yogendra Ram. However, the Director, Secondary Education by the impugned order dated 10th January, 2013, Annexure-13 in the 1st writ petition (WPS No.2136/2013) after taking into account the import of circular dated 11th February, 1985 has issued a direction upon the respective District Superintendent of Education to examine instances of such persons who have been promoted to Class-III from Class-IV post without following the mandate of the circular dated 11.2.1985. In the case of 1st writ petitioners since no such promotional exercise was also held, his contention that he should be promoted as certain juniors were promoted earlier, has, therefore , rightly been rejected. In fact from the perusal of the impugned order 9. passed in the case of the 2nd writ petitioner, Yogendra Ram also it appears that direction issued in the case of 1st writ petitioner, Rajendra Koerie by the Director, Secondary Education dated 10.1.2013 has also been noticed while examining his case. It has been found by the DSE Ranchi in the case of the 2nd writ petitioner that there was no legality or regularity attached to his promotion granted earlier in the year 1990 or 1994 by the then District

Superintendent of Education as the mandate of the departmental circular dated 11.2.1985 had not been followed. In such circumstances this Court finds that there is no substantive legal right in the case of both the petitioners to hold the class III post. The reversion of the 2nd writ petitioner, Yogendra Ram to Class IV post by the impugned order dated 18.02.2013 passed in his case and the rejection to the claim for promotion to class I II post by the Director , Secondary Education by the impugned order dated 10.01.2013 in the case of 1st writ petitioner cannot be said to be suffering from any illegality or error in the eye of law. The 2nd writ petitioner may have continued for so long on the basis of the orders passed earlier but if these orders do not stand the test of legal scrutiny, the petitioner cannot claim a substantive legal right to class III post for claiming post retirement benefits as a consequence thereof. In case of 1st writ petitioner, however, it is to be observed that after his reversion by the order dated 6.12.2003 there was no legal basis for the concerned respondents to continue to take work from him in class III post till January,2013.

13. The argument of the learned counsel for the first writ petitioner that the impugned order amounts to changing the service condition of the petitioner by relying upon judgment rendered by this Court in the case of Bachchu Prasad Vs. State of Jharkhand & ors, reported in 2013(3) JCR419 will not come to his aid as in the case of the present petitioner the conditions of service are not being changed by his reversion. His chances 10. of promotion, which may be part of service conditions, do not get affected rather a promotion granted in an irregular/illegal manner has only been set aside by the concerned respondent-Department by the reasoned order, which is impugned in the present writ petition.

14. Having come to the aforesaid findings and in the backdrop of aforesaid facts and circumstances of the case, therefore, the question posed at the outset in the writ petitions is answered accordingly. The petitioners do not fulfil the mandate as prescribed under circular dated 11.2.1985 for staking a claim of promotion to the class III post. Therefore, the impugned orders passed in the respective cases are proper in the eye of law and require no interference.

15. Accordingly, both the writ petitions are dismissed. (Aparesh Kumar Singh, J.

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