

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 130 of 2023

Shashiranjan Kumar (aged about 47 years), son of Late Krishna Deo Singh, Resident of Quarter No.-A-1, Audrey House Campus, Meur's Road, Near Raj Bhawan, P.O.-University Sub P.O., P.S-Lalpur in the District of Ranchi-834008 (Jharkhand). **Petitioner**

... ... **Petitioner**

Versus

1. State of Jharkhand through its Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, Ranchi, P.O & P.S.-Dhurwa, District-Ranchi-834004.
 2. Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, Ranchi, P.O & P.S.-Dhurwa, District-Ranchi- 834004.
 3. Secretary, Office of Lokayukta, Booty Road, Karamtoli Chowk, P.O & P.S - Bariatu, District-Ranchi- 834008(Jharkhand). **Respondents**

With

W.P. (S) No. 136 of 2023

Sandip Mazumdar (aged about 43 years), son of Late Chitta Ranjan Mazumdar, Resident of B - 1515/2 Sector-2, Near H.E.C. L.T.D. Dhurwa, P.O.-Dhurwa, P.S. Jagarnathpur, in the District of Ranchi-834004 (Jharkhand).

... ... Petitioner

Versus

1. State of Jharkhand through its Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, Ranchi, P.O & P.S.-Dhurwa, District-Ranchi-834004.
 2. Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, Ranchi, P.O & P.S.-Dhurwa, District-Ranchi- 834004.
 3. Secretary, Office of Lokayukta, Booty Road, Karamtoli Chowk, P.O & P.S - Bariatu, District-Ranchi- 834008(Jharkhand). **Respondents**

STICE ANUBHA RAWAT CHOUDHARY

: Mr. Sudarshan Shrivastava, Advocate

Mr. Sunil Singh, Advocate

For the State : Mr. Abhinay Kumar, Advocate
(WPS No. 130/2023)

For the Resp. No. 3 : Mr. Sushavan Bhowmik, Advocate
(WPS No. 136/2023)
: Mr. Rajesh Kumar, Advocate
(In both the cases)

06/16th April 2024

1. Learned counsel for the parties are present.
2. Both the writ petitions have been filed for the following reliefs: -

"a) To quash and set aside the order as contained in Letter No. 3941 dated 04-07-2022 (Annexure-9) issued under the signature of Respondent no.-2, whereby the Respondent No.-3 has been prohibited/restrained to discharge any function and also from issuing any such notification of promotion in favor of the petitioner; and

b) For issuance of a writ of mandamus directing the Respondent No.-3 to issue the required notification of promotion to the petitioner as recommended by the Departmental Promotion Committee (DPC) from the date the petitioner was found fit for promotion, duly constituted by the then Hon'ble Lokayukta and also direct the Respondent No.-3 to re-fix the pay scale of the petitioner in the promoted scale of pay with its consequential benefits and pay the same to the petitioner forthwith; and/or

For issuance of any such other appropriate relief/reliefs to which the petitioner is found to be entitled in the facts and circumstances of this case as also to do consonable justice to the petitioner."

3. It is not in dispute that the petitioners have been working in the office of Hon'ble Lokayukta and their service was also confirmed. Thereafter, the State Government finalized the rules, namely, the Jharkhand Lokayukta (Condition of Service) Rule, 2001. As per the service condition, the petitioners completed the required service period for their promotion to the next higher scale but on account of several reasons, the Departmental Promotion Committee (DPC) could not be constituted and ultimately when a request was made to the Hon'ble Lokayukta vide representation dated 20.10.2020, DPC was constituted under the chairmanship of the Secretary to the Hon'ble Lokayukta and appropriate office order dated 15.03.2021 was issued.

4. The meeting of the DPC was held on 25.03.2021 and the petitioners were found eligible for promotion but the necessary notifications could not be issued on account of ban on promotion issued by the State Government vide letter dated 6752 dated 24.12.2020. Ultimately, the said letter dated 24.12.2020 has been quashed by this Court vide judgment dated 13.01.2022 passed in **W.P.**

(S) No. 1390 of 2021 and analogous cases and direction has been issued to all the departments to grant promotion even to those candidates whose cases were already considered for promotion under DPC. In compliance of the order passed by this Court, appropriate fresh order was issued by the Department of Personnel, Administrative Reforms and Rajbhasha vide letter No. 3479 dated 03.06.2022 addressed to all the heads of the department. Under such circumstances, the petitioners filed representation before the respondent No. 3 and the respondent No. 3 sent letter dated 14.06.2022 to the respondent No. 2 requesting the said authority to grant approval for issuance of required notifications with regard to the promotion of the petitioners. However, in response, the respondent No. 2 issued impugned letter dated 04.07.2022 wherein it has been communicated that no such power has been vested with respondent No. 3 to issue such a notification.

5. The learned counsel for the petitioners in both the cases, while assailing the common impugned order, has submitted that the case of the petitioners was duly considered by the Departmental Promotion Committee and their case was also recommended for promotion but on account of aforesaid order dated 24.12.2020 which was a blanket ban on all promotions, the follow up notifications could not be issued but now there is no impediment in issuance of notifications but the respondent No. 2 is arbitrarily interfering with the issuance of notifications of their promotion, which the petitioners are otherwise entitled under law. The learned counsel submits that primarily it is on account of the reason that the office of Hon'ble Lokayukta is vacant.

6. The learned counsel has relied upon the ***Jharkhand Lokayukta (Condition of Service) Rule, 2001*** to submit that as per Rule 25 the head of the office is the Secretary of Hon'ble Lokayukta and therefore he has got the necessary jurisdiction to issue the follow up notifications after the clearance from the Departmental Promotion Committee.

7. Learned counsel appearing on behalf of the respondents-State has opposed the prayer and has submitted that the order impugned is self-speaking, inasmuch as, it has been clearly mentioned that the notification can be issued

only by due permission of the Hon'ble Lokayukta and in absence of Hon'ble Lokayukta, such follow up notifications cannot be issued by the Secretary. The Secretary is only the head of the office but in absence of any order by the Hon'ble Lokayukta, the same cannot be issued and therefore the impugned order does not call for any interference.

8. The learned counsel has referred to Section 13 of the Jharkhand Lokayukta Act to submit that the staff of Lokayukta are appointed by Lokayukta himself. He has also submitted that all the decisions with regard to service of the establishment of Lokayukta including appointment, promotion etc. are taken by the Hon'ble Lokayukta himself and the Secretary has no role to play in the matter even in the absence of Hon'ble Lokayukta.

9. A counter-affidavit has been filed on behalf of respondent No. 3 also, but in absence of Hon'ble Lokayukta, the affidavit has been filed in the capacity of Secretary to the office of Lokayukta and not on behalf of Hon'ble Lokayukta.

10. After hearing the learned counsel for the parties and considering the facts and circumstances of this case, it is not in dispute that the case of the petitioners was placed before the Departmental Promotion Committee constituted by the Hon'ble Lokayukta and they were found fit for promotion. However, on account of letter No. 6752 dated 24.12.2020 passed by the State Government, the promotion order could not be issued. In the meantime, office of the Hon'ble Lokayukta became vacant. Thereafter, the said letter dated 24.12.2020 has been set-aside by this Court in writ petition being **W.P. (S) No. 1390 of 2021 vide judgment dated 13.01.2022** and accordingly, the impediment in the matter of issuance of notifications pursuant to Departmental Promotion Committee recommendations does not survive any more.

11. In the aforesaid circumstances, the respondent No. 3 issued letter to the respondent No. 2 so as to allow him to issue necessary notifications regarding the promotion of the petitioners.

12. The records further reveal that the respondent No. 2 declined to do the needful in view of the fact that the office of the Hon'ble Lokayukta is vacant and while refusing, the respondent No. 2 has referred to Rule 25 of the

aforesaid Rules of 2001 and also Rule 2(v) to submit that the appointing authority is the Hon'ble Lokayukta himself and in absence of Hon'ble Lokayukta, the necessary notifications cannot be issued.

13. This Court is of the considered view that in terms of Section 13 of the Jhrakhand Lokayukta Act, 2001 as well as the specific provision in connection with definition of appointing authority in Rule 2(v) of the aforesaid Rules of 2001, there is no doubt that the Hon'ble Lokayukta is the appointing authority. This Court is of the considered view that merely because recommendations have been made for promotion of the petitioners, the same by itself does not entitle the respondent No. 3 to issue any follow up notifications unless the matter is again placed before the Hon'ble Lokayukta and appropriate orders to that effect are passed by the Hon'ble Lokayukta.

14. Considering the fact that the office of the Hon'ble Lokayukta is still vacant, the impugned order does not call for any interference. However, as soon as the office of the Hon'ble Lokayukta is filled up, it is expected that the respondents shall expeditiously take up the matter regarding promotion of the petitioners without any further delay.

15. These writ petitions are accordingly disposed of.

16. Pending I.A., if any, is closed.

(Anubha Rawat Choudhary, J.)

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