

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No.1655 of 2016

1. Shambhu Prasad, son of Late Vishnu Bhagwan Sahay, resident of Village Madhopur Khairi, P.O. Waini, P.S. Waini, District Samastipur, Bihar at present posted as Steno (ASI), Bariatu P.S., P.O. Bariatu, P.S. Bariatu, District Ranchi, Jharkhand
 2. Bhuwan Rai, son of Late Lal Kumar Rai, resident of H-172, Arbindo Nagar, P.O. Doranda, P.S. Doranda, District Ranchi, Jharkhand at present posted as Steno (ASI)
 3. Lalan Prasad, son of Late Raj Ballav Prasad, resident of Mohalla Sri Krishna Nagar, P.O. Sri Krishna Nagar, P.S. Sri Krishna Nagar, District Motihari, East Champaran, Bihar at present posted as Steno (ASI)
 4. Amir Tanti, son of Late Ram Tanti, resident of Govt. Q. No.A/11, Mahila Thana Campus, Shaheed Chowk, P.O. GPO, P.S. Kotwali, District Ranchi, Jharkhand, at present posted as Assistant Sub Inspector of Police
 5. Gopal Chandra Ghoshal, son of Ram Chandra Ghoshal, resident of Village Moti Kochwan Lane, Kathalbari, P.O. Bari Khanjarpur, P.S. Kotwali, District Bhagalpur, Bihar at present posted as ASI, Special Branch, Ranchi
 6. Subodh Kumar, son of Sri Rajendra Sharma, resident of Village Khairwa, P.O. Ghosi, P.S. Ghosi, District Jahanabad, Bihar at present posted as ASI, STF, Dhruwa, Ranchi
- Petitioners

Versus

1. The State of Jharkhand
 2. The Home Secretary, Department of Home, Government of Jharkhand, Ranchi, Project Bhawan, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi, Jharkhand
 3. The Director General-cum-Inspector General of Police, Jharkhand, Ranchi, Police Head Quarters, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi
 4. The Inspector General of Police (Personnel), Jharkhand, Ranchi, Police Head Quarters, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi
 5. The Deputy Inspector General of Police (Personnel), Jharkhand, Ranchi, Police Head Quarters, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi
- Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Diwakar Upadhyay, Advocate
For the Respondents-State : Mr. Navneet Toppo, A.C. to S.C. V

CAV ON: 25.02.2021

PRONOUNCED ON: 26.03.2021

Heard Mr. Diwakar Upadhyay, learned counsel for the petitioners and Mr. Navneet Toppo, learned counsel for the respondent-State.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioners have preferred this writ petition for quashing the order dated 26.11.2015 passed by Director General-cum-Inspector General

of Police whereby order has been passed for treating the seniority of the petitioners from the cadre of Steno Assistant Sub Inspector to General cadre of Assistant Sub Inspectors from the date of conversion. Prayer is also made for treating the seniority of the petitioners from the date of conversion after five years of the initial appointment in the rank of Steno (ASIs) and not from the date of conversion in the General Cadre i.e. 19.08.2011.

4. Petitioner no.1 was appointed in Steno cadre as a Constable on 15.01.1982 and was further promoted to Steno ASI on 21.12.1988. Petitioner no.2 was appointed as Constable on 11.11.1980 and was further promoted to the post of Steno ASI on 06.09.1989 in Ranchi District. Petitioner no.3 was appointed as Constable on 01.06.1986 and was further promoted to the post of Steno ASI on 17.04.1990 in Special Branch, Ranchi. Petitioner no.4 was appointed as Constable on 01.07.1987 and was further promoted to the post of ASI on 12.08.1998 in Ranchi District. Petitioner no.5 was appointed as Constable on 08.12.1986 and was further promoted to the post of ASI on 06.06.2003 in Special Branch, Ranchi. Petitioner no.6 was appointed as Constable on 27.05.1998 and was further promoted to the post of ASI on 12.02.2004 in STF, Ranchi. Petitioner nos.1 to 4 were further promoted to the post of Sub-Inspector (General Cadre) on 04.11.2013 and petitioner nos.6 and 7 were given promotion to the Sub Inspector (General Cadre) in the year 2014. Petitioners were converted to the General Cadre of Steno ASI after working for five years as a Steno ASI. On 19.08.2011, the Director General-cum-Inspector General of Police-respondent no.3 took a decision for conversion of 61 ASIs of different batches of 1988 to 2004 with immediate effect. Earlier some of the Steno Sub Inspectors moved before this Court in W.P.(S) No.4272 of 2006 wherein the Division Bench vide order dated 13.09.2007 passed an order holding therein

(i) The post of Steno Sub Inspector/Steno Assistant Sub Inspector is a separate cadre from that of Sub Inspector/Assistant Sub Inspector of general cadre as the appointment procedure, nature of duties and pay scale between these two cadres are entirely different.

(ii) Ordinarily, the Steno Sub-Inspectors, after joining stenographer cadre would join district work on reversion after working for five years and even if they are retained by the Inspector General of Police for a period exceeding five years, they will not lose their seniority in the general cadre on reversion after expiry of the said five years.

(iii) The Steno Sub Inspectors as such cannot claim their seniority from the date of their initial appointment as Steno Sub Inspector but they can claim seniority only from the date of entry into General Cadre Sub Inspector of Police subjected to suitability and fitness after getting Police Training.

Aggrieved persons moved the Hon'ble Apex Court in Civil Appeal No.5874-5875 of 2009. The Hon'ble Apex Court vide order dated 18.12.2014 dismissed the SLP affirming the order of the High Court.

5. Mr. Diwakar Upadhyay, learned counsel appearing for the petitioners submitted that respondent authority in supersession of the earlier orders and in view of the decisions of the Hon'ble High Court and Hon'ble Apex Court came out with a fresh police order dated 07.10.2015 vide police order no.61/15 holding therein that seniority of the Steno ASI cadre will be treated from the date of conversion to the General Cadre after obtaining Police Training and found fit. He submitted that it was observed that all the earlier orders in the aforesaid context will remain rescinded or superseded or cancelled. He further submitted that respondent no.3 came out with a further notification dated 26.11.2015 to the effect that seniority of the Steno ASIs will be treated from the date of conversion to the General Cadre of ASI. 61 ASIs were converted to the General cadre of ASIs of different batches from 1988 to 2004 vide order dated 19.08.2011. He further submitted that earlier also the Director General-cum-Inspector General of Police-respondent no.3 came out with three different notifications dated 21.06.2013, 31.07.2012 and 03.12.2007 regarding seniority of the Steno ASIs from the date of conversion or five years from the date of initial appointment as per Police manual. He submitted that the petitioners being aggrieved by the notification/order dated 26.11.2015 and under the threat of being reverted to the original post made the representation to the Director General-cum-Inspector General of Police on 08.12.2015. He submitted that the Jharkhand Police Association also represented on 03.08.2015 to the respondent no.3. He submitted that if the date of conversion is taken as 19.08.2011 then the petitioners will be reverted back to their original cadre Steno ASIs and will never be considered for promotion to SIs.

He further submitted that Steno ASIs appointed in different dates cannot be treated as appointee of the same date in the General Cadre. He submitted that the impugned order is illegal. He further submitted that the case of the petitioners is fully covered in view of the judgment rendered by this Court in W.P.(S) No.4272 of 2006 and Hon'ble Apex Court in Civil Appeal No.5874-5875 of 2009. He further submitted that the impugned order is in contravention of the police manual particularly Appendix 42, Clause 5 of Volume 3 which talks of Rules for recruitment, training, examination and posting of Steno ASIs and Sub Inspectors and Typist, Assistant Sub

Inspector of Police. He submitted that illegality has been done which is required to be rectified by this Court.

6. Per contra, Mr. Navneet Toppo, learned counsel appearing for the respondent-State submitted that there is no illegality in the impugned order. He submitted that the case of the petitioners is not covered in view of the judgment of this Court as well as the Hon'ble Apex Court relied by the learned counsel for the petitioners. He further submitted that recently in the case of ***Girdhary Kumar Mishra & Others Versus The State of Bihar & Others*** passed by Patna High Court in Civil Writ Jurisdiction Case No.11717 of 2017 vide order dated 15th March, 2019 in the identical issue directed the petitioners to make fresh representation before Director General of Police, Headquarters within a period of three weeks from today which should be disposed of taking into account the factors stated in that order. He submitted that in that light, this matter can be disposed of as the representation of the petitioners are still pending.

7. In view of above facts and considering the submission of learned counsel appearing for the parties and on perusal of order passed by this Court in W.P.(S) No.4272 of 2006, it transpires that direction no.(ii) is in favour of the petitioners. By order dated 19.08.2011 contained in Annexure-2, 61 ASIs of different batches were provided seniority who were batches of 1988 to 2004 with immediate effect. The notification no.33/07 was again implemented and notification dated 31.07.2012 was cancelled. The Appendix 42 of the Jharkhand Police Manual of Clause 5 stipulates that Stenographers will serve for a period of five years after which they will ordinarily revert to district workout but before that they shall undergo the usual course of training at the Police Training College for ordinary Police duties. For the sake of brevity, Appendix 42 of Clause (5) the Police Manual is quoted hereinbelow:-

"5. The standard of educational qualifications, measurements, age and physical tests shall be the same in the case of steno sub-inspector as is for sub-inspector (unarmed), vide rule 658 and for steno or typist assistant sub-inspectors, those of constables vide rule 663. In suitable cases relaxation in height and chest may be done by Dy. I.G. Admin upto 1" and by Inspector General up to 2". In case of scheduled caste/tribe further relaxation may be done by 1". All candidates shall be allowed to appear in test of shorthand dictation/typing and after that and after that they may be required to appear in physical test meant for respective ranks. However, suitable candidates may exempted from these tests. The candidates shall be appointed by the Central Selection Board [Appendix 72(2)]. They will serve as Stenographers for a period of five years after which they will ordinarily revert to district work but before that they shall undergo the usual course of training at the Police Training College for ordinary Police duties. The Inspector

General shall be at liberty to retain them as stenographers for a longer period where necessary."

8. Considering Clause 5, the Division Bench of this Court has issued direction no.(ii) which is as under:-

Ordinarily, the Steno Sub-Inspectors, after joining stenographer cadre would join district work on reversion after working for five years and even if they are retained by the Inspector General of Police for a period exceeding five years, they will not lose their seniority in the general cadre on reversion after expiry of the said five years.

While considering this aspect of the matter in Civil Appeal No.5874-5875 of 2009, the Hon'ble Apex Court has discussed in para 24 and 25 as under:-

24. It was the pointed contention of the learned counsel, that the determination rendered by the High Court in Bhagwat Prasad Singh's case (supra) was premised on a very significant fact, namely, that the petitioners in the controversy settled by the High Court, had "opted" for their transfer from the Stenographers' cadre, to the general line of the police department. It was submitted, that the High Court was fully justified in the aforesaid factual background, to deny the petitioners (before the High Court) the right to take into consideration the service rendered in the Stenographers' cadre, towards seniority in the general line of the Police Department. It was submitted that the position in the present controversy is quite different, inasmuch as, herein the petitioners had not opted for their appointment to the general line of the Police Department. It was submitted that the position in the present case being converse to the position in Bhagwat Prasad Singh's case (supra), the appellants would certainly be entitled to seniority from the date of their appointment in the Stenographers' cadre.

25. It is not possible for us to accept the submission of the learned counsel for the appellants, that the appellants had not "opted" for their transfer from the cadre of Steno Sub-Inspectors/Steno Assistant Sub-Inspectors to the cadre of Sub-Inspectors/Assistant Sub-Inspectors in the general line of the police force. We have already recorded our conclusion hereinabove to the effect that the appellants having participated in the process of selection before the Central Selection Board, they must be deemed to have exercised an express option for moving from the Stenographers' cadre to the general line of the Police Department. Thus viewed, we are satisfied that the judgments relied upon by the learned counsel for the appellants rendered in respect of police personnel of the same department cannot be relied upon for the purpose canvassed by the learned counsel. We, therefore, hereby decline the third contention advanced at the hands of the learned counsel for the appellants.

Thereafter, the said SLP was dismissed. When earlier orders are there by the same Department by the impugned order, the petitioners have been deprived of the benefit that too in teeth of violation of Clause 5 of Appendix 42 of the Jharkhand Police Manual and accordingly, case of the petitioners are required to be considered by the said Department.

9. The impugned order dated 26.11.2015, is hereby, quashed. The matter is remitted back to the respondent no.3, who will consider the case of the petitioners. The petitioners are directed to file fresh representation before respondent no.3 within a period of four weeks from today which will be disposed of taking into account the factors stated hereinbefore and reasoned order shall be passed within a period of six weeks thereafter.

10. With the above observation and direction, this writ petition is disposed of.

(Sanjay Kumar Dwivedi, J.)

High Court of Jharkhand at Ranchi
Dated 26th March, 2021
Anit/N.A.F.R.