

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 3027 of 2016

Ashok Kumar Roy and others Petitioners

Versus

The State of Jharkhand and others Respondents

With

W.P.(S) No. 2984 of 2016

Naseem Ali and others Petitioners

Versus

The State of Jharkhand and others Respondents

With

W.P.(S) No. 3031 of 2016

Pradip Kumar Gupta and others Petitioners

Versus

The State of Jharkhand and others Respondents

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Petitioners: M/s. A.K. Sinha (Sr. Advocate), V.P. Singh (Sr. Advocate), K.P. Deo, Rashmi Kumari, Rahul Saboo, Vikas Kumar, Aashish Kumar, Chanchal Jain, Aparajita Bhardwaj

For the Respondents: M/s. Atanu Banerjee (G.A.), H.K. Mehta (A.A.G.), Srijit Choudhary (SC-III), J.C. to Sr. S.C.-I, Kumar Sundaram, Amrita Kumari, Krishna Murari

29/Dated: 17th August, 2017

(Oral order)

Per D.N. Patel, ACJ

1) W.P.(S) No.3027 of 2016 is to be heard along with W.P.(S) No.2984 of 2016 as well as with W.P.(S) No.3031 of 2016, because, the issues involved in this writ petition i.e. W.P.(S) No.3027 of 2016 and in other writ petitions are similar.

I.A. No.6600 of 2017 [in W.P.(S) No. 3031 of 2016]

2) This Interlocutory Application has been preferred for early final hearing of the writ petition.

3) Having heard learned counsels for both sides and the learned counsels in other Interlocutory Applications which are filed for joining the party-respondents and looking to the urgency into the matter, we, hereby, direct the Registrar General of this Court to enlist W.P.(S) No.3031 of

2016 along with W.P.(S) No. 3027 of 2016 and W.P.(S) No. 2984 of 2016 under the heading **For Hearing** on **7th December, 2017**.

4) This Interlocutory Application is allowed and disposed of.

I.A. No.6527 of 2017 [in W.P.(S) No. 3027 of 2016]

5) This Interlocutory Application has been preferred for joining the party-respondent in W.P.(S) No. 3027 of 2016.

6) Having heard learned counsels for both sides and looking to the facts and circumstances of the case, it appears that this applicant is also Junior Engineer and he is also in search of promotion which is in question in the writ petition.

7) Looking to these aspects of the matter, this Interlocutory Application is allowed. The applicant is permitted to be joined as party respondent No.7.

8) Necessary amendment shall be carried out by red ink in the writ petition being W.P.(S) No. 3027 of 2016.

9) This applicant is joined as party respondent No.7 at his own cost.

10) It is also prayed in the Interlocutory Application that the order passed by this Court dated 26th September, 2016, may kindly be modified to the extent that as per earlier prevailing Rules, the promotions may be given in the cadre of Engineers.

11) It is submitted by the counsel for the applicant that in the writ petition, newly enacted Rules, namely, Jharkhand Engineering Services Recruitment Rules, 2016 are under challenge, which is at Annexure 1, to the memo of W.P.(S) No.3027 of 2016 and this Court has granted stay to the effect that promotion to the post of Executive Engineers from the post of Assistant Engineers shall not be filled up. This order may slightly be modified to the extent that promotion to the post of Executive Engineers from the post of Assistant Engineers shall not be filled up as per the new Rules i.e. Jharkhand Engineering Services Recruitment Rules, 2016, meaning thereby that as per the earlier Rules, Regulations and Policies, the promotion may be continued. These promotions will be subject to the result of these Writ Petitions.

12) Thus, looking to the challenge in the writ petitions including W.P.(S) No. 3027 of 2016 and other writ petitions, which are on Board today, we hereby direct the State of Jharkhand not to promote any employee to the post of Executive Engineer from the post of Assistant Engineer as per the

Jharkhand Engineering Services Recruitment Rules, 2016. This modified stay will be continued to be operative during pendency and final hearing of the writ petition in W.P.(S) No.3027 of 2016 as well as W.P.(S) No.2984 of 2016 and W.P.(S) No. 3031 of 2016.

13) This Interlocutory Application is allowed and disposed of.

I.A. No.429 of 2017 [in W.P.(S) No.3027 of 2016]

14) This Interlocutory Application has been preferred for joining party respondents in W.P.(S) No.3027 of 2016. They are also Assistant Engineers (Diploma Holders) and they are also seeking promotion to the post of Executive Engineers.

15) Having heard learned counsels for both sides and looking to the facts and circumstances of the case, it appears that these applicants are vitally interested in the outcome of the decision in the aforesaid writ petitions. Hence, they are also joined as party respondents Nos.8 and 9 in W.P.(S) No. 3027 of 2016.

16) These applicants are permitted to be joined as party respondents No.8 and 9 at their own costs.

17) This Interlocutory Application is allowed and disposed of.

I.A. No.5096 of 2017 [in W.P.(S) No. 3027 of 2016]

18) This Interlocutory Application has been preferred for vacating the stay granted by this Court vide order dated 26th September, 2016.

19) Having heard learned counsels for both sides and looking to the facts and circumstances of the case, it appears that the Rules, viz., Jharkhand Engineering Services Recruitment Rules, 2016, is under challenge. As per these Rules, Junior Engineers (Diploma Holders) were to be promoted on the post of Assistant Engineers with a reservation of 40%. Now, after getting this promotion in Assistant Engineer with reservation, there was originally, no further reservation to the post of Executive Engineer. Now, reservation has been introduced even in the promotional cadre in the Executive Engineers i.e. those who are Assistant Engineers (Diploma Holders) shall have special reservation/quota for the promotion on the post of Executive Engineers. This has been introduced by way of enactment of new Rules namely, Jharkhand Engineering Services Recruitment Rules, 2016, which is under challenge. This reservation in promotion has been stayed by this Court vide order dated 26th September, 2016. We have also modified this stay in I.A. No.6527 of

2017 to the effect that the stay granted by this Court is only with respect to promotion as per the Jharkhand Engineering Services Recruitment Rules, 2016. Thus, promotion from the post of Assistant Engineer (Diploma Holder) to the post of Executive Engineer as per Jharkhand Engineering Services Recruitment Rules, 2016, shall remain stayed during pendency and final hearing of W.P.(S) No.3027 of 2016 and other writ petitions which are to be heard together along with this writ petition and they are W.P.(S) No.2984 of 2016 and W.P.(S) No.3031 of 2016.

20) Counsel for the applicant submitted that grant of stay during pendency and final hearing of the writ petitions will tantamount to allowing the writ petitions. We are not accepting this contention mainly for the reason that once the stay is vacated and if the Assistant Engineers (Diploma Holders) are permitted to be promoted to in reservation category/quota on the post of Executive Engineers, it will affect the career of the senior Engineers (Degree Holders) who are Assistant Engineers. Moreover, final seniority list has also been published which is annexed in the writ petition. Even otherwise also, we have already fixed the date of final hearing of the aforesaid writ petitions. In this set of circumstance, the promotion can always be given by the Government from the post of Assistant Engineers to the post of Executive Engineers, as per the earlier prevailing Rules, Regulations and Governmental policies, but, not as per the Rules, namely, Jharkhand Engineering Services Recruitment Rules, 2016. The promotions granted, as per earlier Rules, Regulations, Government Policy shall be subject to the result of these Writ Petitions.

21) With these observation, this Interlocutory Application is, hereby, disposed of.

(D. N. Patel, ACJ)

(Ratnaker Bhengra, J)