

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 6288 of 2017**

Rahul Kumar Tripathy, son of late Sachidanand Tripathy, Resident of Bairiya, P.O. Sudna, P.S. Daltonganj, District- Palamu ... **Petitioner**

-Versus-

1. State of Jharkhand
2. Secretary, Human Resources Development Department, Government of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District- Ranchi
3. Deputy Commissioner, Palamu, P.O., P.S. & District- Palamu
4. Regional Deputy Director of Education, Palamu, P.O., P.S. & District- Palamu
5. District Superintendent of Education, Palamu, P.O., P.S. & District- Palamu

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Amit Sinha, Advocate
For the State : Mr. Debesh Krishna, S.C. (Mines)-III

04/30.09.2020. Heard Mr. Amit Sinha, learned counsel for the petitioner and Mr. Debesh Krishna, 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 on merit.
3. The petitioner has preferred this writ petition for quashing the office order dated 14.06.2017 contained in Annexure-8, issued under the signature of the Deputy Commissioner, Palamau, whereby, the claim of the petitioner regarding change of his post from Class-IV to Class-III has been rejected.

4. Mr. Amit Sinha, learned counsel for the petitioner submits that the father of the petitioner died in harness on 01.09.2005 during his service while he was posted as Assistant Teacher in Government Primary School, Kokarsha, Patan, Palamau. After the death of his father, the petitioner applied for his appointment before the respondent authorities on the compassionate ground in the prescribed format. The date of birth of the petitioner is 05.10.1988 and he was having the Certificate of Madhyama, which is equivalent to the Matric. After verification and scrutinisation of form submitted by the petitioner, the District Superintendent of

Education, Palamau has recommended the case of the petitioner for his appointment against Class-III post, which is evident from the letter dated 05.09.2006 contained in Annexure-1 to the writ petition. Thereafter, the compassionate appointment Committee held its meeting on 05.02.2007 and on the said meeting the Committee took up the matter with regard to the compassionate appointment of the petitioner along with other persons, whereby, the case of the petitioner has been recommended for his appointment against Class-IV post, as contained in Annexure-2. Learned counsel for the petitioner further submits that the petitioner has already filed representation and in spite of that no action has been taken on his representation. He draws attention of the Court to the recommendation of the Committee at Annexure-3 particularly Serial nos. 2 and 3 and submits that the persons, who are having Matric Certificate, were recommended for Class-III post, whereas, the petitioner has been arbitrarily put in Class-IV post. He also submits that the State cannot discriminate the petitioner like this. He further submits that pursuant to the order of this Court in W.P.(S) No. 5908 of 2002, the case of Ravindra Kumar was considered and his cadre has been changed from Class-IV to Class-III post by the respondents. He further submits that the petitioner has been discriminated. He also submits that in the impugned order, one letter dated 01.12.2015 has been referred and on that basis, the claim of the petitioner has been rejected. He further submits that the letter dated 01.12.2015 cannot be taken into effect retrospectively. The case of the petitioner is of the year 2007. The appointment was made in the year 2010 and he has filed representation in the year 2008 and in that view of the matter the ground taken by the respondents is not sustainable in the eyes of law.

5. On the other hand, Mr. Debesh Krishna, learned counsel for the

respondent-State submits that there is no illegality in the impugned order. He further submits that the respondents have already filed their counter affidavit. He also submits that other persons are having Matric certificate, whereas, the petitioner is having the certificate of Madhyama and in that view of the matter, the case of the petitioner has been rightly rejected by the respondents.

6. Having heard learned counsel for the parties, the argument advanced by the learned counsel for the respondent-State is not accepted by the Court as this is not the ground for rejecting the claim of the petitioner. It is well settled provision of law that by way of argument or affidavit, further ground cannot be allowed to be taken. The said ground is not reflected in the impugned order. Pursuant to the order passed by this Court in W.P.(S) No. 5908 of 2002, the post of that petitioner (Ravindra Kumar) has been changed by the respondent-State. The letter dated 01.12.2015 cannot be taken into effect retrospectively. The case of the petitioner is of the year 2007 and the petitioner has been appointed in the year 2010. The petitioner has already filed representation in the year 2008.

7. As a cumulative effect of the above discussions, the impugned order cannot sustain in the eyes of law. Accordingly, the impugned order dated 14.06.2017 contained in Annexure-8 is quashed. The matter is remitted back to the respondent-State to take a fresh decision in light of the discussions made herein above, within a period of twelve weeks from the date of receipt/production of a copy of this order. It goes without saying that if the petitioner's case is similar to the case of Ravindra Kumar [petitioner in W.P.(S) No. 5908 of 2002], same benefit will also be provided to the present petitioner.

8. With the above observations and directions, this writ petition stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/