2026:JHHC:31970

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (S) No. 2835 of 2026

1. Robin Ajay Singh, aged about 49 years, son of Shri D. Francis Singh, resident of House No.82-B, Anantpur, P.O.-Doranda, P.S.-Chutia, District-Ranchi.
2. Pankaj Kumar, aged about 41 years, son of Shri Hira Mani Sahu, resident of Road No.3, Rajnagar, Power House Lane, Chutia, P.O. & P.S.-Chutia, District-Ranchi.
3. Sandeep Kumar, aged about 54 years, son of Shri Ram Krishna Prasad Sinha, resident of Near Shiv Temple, Nilanchal Colony, P.O. & P.S.-Saraidhela, District-Dhanbad.

…… Petitioner

V E R S U S

1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, having its office at Project Bhawan, Dhurwa, P.O. & P.S.-Dhurwa, Town and District-Ranchi.
2. The Principal Secretary, Water Resources Department, Government of Jharkhand, having its office at Nepal House, Doranda, P.O. & P.S.-. Doranda, Town and District-Ranchi.
3. The Deputy Secretary, Water Resources Department, Government of Jharkhand, having its office at Nepal House, Doranda, P.O. & P.S.-Doranda, Town and District-Ranchi.
4. The Under Secretary to Government, Water Resources Department, Government of Jharkhand, having its office at Nepal House, Doranda, P.O. & P.S.- Doranda, Town & District-Ranchi.
5. The Engineer-in-Chief, Water Resources Department, Government of Jharkhand, having its office at Nepal House, Doranda, P.O. & P.S.-Doranda, Town and District-Ranchi.

…… Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

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For the Petitioner(s) : Mr. Manoj Tandon, Advocate
Mrs. Neha Bhardwaj, Advocate
Mr. Siddharth Ranjan, Advocate
For the Resp.-State : Mr. Priyadarshi, G.P.-VI
Mr. Uttam Kr. Das, A.C. to G.P.-VI

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C.A.V. ON: 27/10/2026 **PRONOUNCED ON:02/11/2026**

1. Heard learned counsel for the parties.

2. The petitioners have filed the instant writ petition with a prayer to quash Memo No.234 dated 19.01.2026 (Annexure-11)

issued by the Secretary, Water Resources Department, Government of Jharkhand whereby the claim of the petitioners pursuant to order dated 24.09.2025 passed by this Court in *W.P.(s) No.4179 of 2019* has been rejected.

3. The petitioners have further prayed for promotion from the post of Assistant Engineers (Mechanical) to the post of Executive Engineers (Mechanical) after granting them promotion in the post of Assistant Engineers (Mechanical) with effect from November, 2012. Consequential benefits have also been sought for by the petitioners.

4. The facts as disclosed in the writ petition are that the petitioners were appointed on the post of Junior Engineers (Mechanical) against the sanctioned and vacant post in the pay scale of 5000-8000 on 13.11.2007. The petitioners were thereafter given appropriate posting on the post of Junior Engineers (Mechanical). On 01.09.2009, Government issued Resolution to consider the cases of promotion from the post of Junior Engineers to the post of Assistant Engineers with respect to those who secured higher qualification while in service. The petitioners completed 5 years, which is *Kalawadhi* for promotion from the post of Junior Engineers to the post of Assistant Engineers. Since there were vacancies available and the petitioners completed *Kalawadhi* with degree of AMIE, the

petitioners submitted representation for promotion to the post of Assistant Engineers.

5. As per the petitioners, the promotion should have been granted to them as they were eligible but since such request was not acceded to, the petitioners were constrained to file a writ petition, being *W.P.(s) No.4182 of 2014* which was disposed of on 10.11.2016. Thereafter the petitioners were promoted from the post of Junior Engineers to the post of Assistant Engineers on 20.11.2018.

6. The contention of the petitioners is that they should have been granted promotion with effect from November, 2012, as they became eligible and there were sanctioned and vacant posts available for such promotion. The petitioners have further pleaded that they are AMIE Degree holders and joined the service in the year 2007 on the post of Junior Engineers (Mechanical); accordingly, they were entitled for promotion on completion of 5 years of their services with effect from November, 2012.

7. The stand of the petitioners is that the delay which was caused on the part of the respondents may not be a ground to deny promotion from the relevant date. Since the case of the petitioners were not considered for promotion with effect from November, 2012, the petitioners were again constrained to knock the door of this Court by filing *W.P.(s) No.4179 of 2019* which was disposed of on 24.09.2025, directing the Secretary of the

Department to verify the records and pass an reasoned and speaking order and give consequential benefits within a period of 16 weeks.

8. The petitioners thereafter approached for compliance of the order but the claim of the petitioners for promotion from the post of Junior Engineers to post of Assistant Engineers with effect from November, 2012 was rejected on 19.01.2026 on the ground that there was a CBI Enquiry pending; that by Notification dated 12.04.2016, *Jharkhand Engineering Service Appointment Rules, 2016* came into effect; and that retrospective promotion was not permissible in the light of Rule 58 of Jharkhand Service Code and Rule 74 of Jharkhand Finance Rules.

9. It has been further pleaded that on 20.11.2008 itself a Circular was issued by the State of Jharkhand as to under what circumstance a person may not be entitled for promotion. It has been brought on record that there was a Resolution dated 07.03.2022 whereby the said 2016 Rule was directed to be kept in abeyance.

10. By filing counter affidavit, the State-respondent contends that it is true that *W.P.(s) No.4179 of 2009* was preferred and the same was disposed of with a direction to take appropriate decision within 16 weeks. In compliance of the order, the petitioners submitted representation.

11. It has been contended that the services of the petitioners were not confirmed because of the CBI Enquiry. However, the services were confirmed by Notification dated 20.10.2016 and 20.03.2017 (Annexure-B and B/1). *Jharkhand Engineering Service Appointment Rules, 2016* was notified on 12.04.2016, as per which the petitioners were not entitled for such promotion.

12. The petitioners, however, were granted promotion from the post of Junior Engineers (Mechanical) to the post of Assistant Engineers (Mechanical) on 20.11.2018. As per Rule 58 of the Jharkhand Service Code and Rule 74 of the Jharkhand Finance Rules, the petitioners are not entitled for retrospective promotion and therefore the reasoned order was passed on 19.01.2026.

13. Mr. Manoj Tandon, Ld. Counsel appearing for the petitioners submits that the order impugned dated 19.01.2026 by the Secretary, Water Resources Department, Government of Jharkhand is neither sustainable in law nor on facts. He submits that the case of the petitioners has been rejected on three grounds. Firstly, on the ground that there was a CBI Enquiry pending; Secondly, that Rules, 2016 came into effect as per which the petitioners were not entitled; and Thirdly that Rule 58 of Jharkhand Service Code and Rule 74 of Jharkhand Finance Rule, do not permit retrospective promotion.

14. To demolish the first ground, Mr. Tandon refers Resolution No.6227 dated 20.11.2008 (Annexure-12 of the writ

petition). As per this Resolution promotion can be withheld only in a case where an employee is put under suspension; there is a departmental proceeding pending in which memo of charge has been framed; or if there is a criminal case pending in which charge sheet has been submitted.

Mr. Tandon submits that neither the petitioners were under suspension in the month of November, 2012; nor there was any departmental proceeding or criminal case pending in which memo of charge or charge sheet has been submitted. He specifically contended that there was no F.I.R. even lodged against the petitioners in the month of November, 2012 or even thereafter. Therefore, Ld. Counsel submits that the first ground of rejection is a non est ground in the eye of the law.

15. To demolish the second ground, Ld. Counsel submitted that admittedly 2016 Rules were notified on 12.04.2016 and the same has not been given retrospective effect. He further submits that the promotion of the petitioners to the post of Assistant Engineers was due on or around 20.11.2012 and on that day the said Rule was not in vogue.

In this view of the matter, he submits that Rule, 2016 may not be an impediment in the case of the petitioners.

16. As far as the third ground is concerned, learned Counsel for the petitioners submits that Rule 58 of *Jharkhand Service Code* and *Rule 74 of Jharkhand Finance Rules* will not apply in

the case of the petitioners, as the delay was caused on the part of the respondents-employer. If the petitioners were entitled and the sanctioned and vacant posts were available but the same was delayed at the hands of respondents and the promotion was granted only in the year 2018, the petitioners are not responsible for the same. In this view of the matter, it is submitted that the third ground is also not sustainable in the eye of the law.

17. On the contrary Mr. Priyaddarshi, Ld. Counsel appearing for the respondent-State defends the impugned reasoned order dated 19.01.2026. He submits that since CBI Enquiry was pending, the 2016 Rule was notified on 12.04.2016, and Rule 58 of Jharkhand Service Code and Rule 74 of Jharkhand Finance Rule do not permit retrospective promotion, accordingly, the impugned decision was taken.

18. It is submitted by the learned Counsel appearing for the State that since the case of the petitioners have been considered and rejected, this court may not interfere.

19. In view of the facts of the present case, this Court is of the considered view that the writ petition deserves to be allowed for the following facts and reasons: -

> **(a)** The first ground on which the case of the petitioners has been rejected is that there was a CBI enquiry pending. It appears that some preliminary enquiry (PE) must be pending against the petitioners with the CBI. But nothing has been brought on record by the respondents that any charge sheet was submitted against the petitioners.

In fact, it appears that there was no F.I.R. lodged against the petitioners, as was submitted by the learned Counsel for the petitioners.

In view of the fact that there was no F.I.R. coupled with the fact that there was no charge sheet at all submitted against the petitioners in the criminal case, the case of the petitioners cannot be rejected on this count. Further, there is nothing on record that there was any memo of charge framed to initiate a departmental proceeding against the petitioners.

It has rightly been pointed out by Ld. Counsel appearing for the petitioners that in the year 2008 itself, Government of Jharkhand issued a Resolution/Circular dated 20.11.2008 (Annexure-12 of the writ petition) whereby the promotion of an employee could be withheld only in a case where *(i) an employee is put under suspension, (ii) if charge has been framed in a departmental proceeding; and (iii) if a criminal case has been lodged in which charge sheet has been submitted.* This circular is too clear on this point. In view of this Circular, the case of the petitioners could not have been rejected by the respondent concerned.

(b) The case of the petitioners has been rejected also on the ground that *Jharkhand Engineering Service Appointment Rules, 2016* was notified on 12.04.2016 as per which the petitioners were not entitled for such promotion.

This ground is also fallacious in view of the fact that no Rule could be given retrospective effect. In fact, this Rule was never issued with retrospective effect. The promotion of the petitioners to the post of Assistant Engineers was due on 20.11.2012 itself. On 20.11.2012 this 2016 Rules was not in effect. Therefore, the claim of the petitioners cannot be rejected on the ground of a Rule which was framed after 4 years from the date the petitioners were entitled to as per their seniority and the

vacancy position. Rejection of the promotion of the petitioners on this ground is absolutely arbitrary.

(c) Reference has also been made to *Rule 58 of Jharkhand Service Code* and *Rule 74 of the Jharkhand Finance Rules* to reject the claim.

In this context, this Court holds that these Rules cannot be an impediment to grant promotion to an employee who was entitled to promotion but the delay was caused at the hands of the respondents. It is well settled a law that if the delay is caused on the part of the respondents, the Court under Article 226 is not powerless to direct the respondents to grant promotion with retrospective effect.

The Division Bench of Patna High Court in the case of ***Dr. Parasnath Prasad Vs. The State of Bihar, reported in 1990 (2) PLJR 248*** held that if the person who is entitled to promotion, but not promoted, is entitled to invoke writ jurisdiction. Rule 58 of Bihar (now Jharkhand) Service Code was specifically dealt with in paragraph no.19. It was further held that withholding promotion and denying other benefits was nothing but grave injustice to the employee. In fact, the Division Bench compensated by directing payment of interest @15% compoundable per annum on the benefits (salary and other allowances) to which the petitioner was entitled.

This Division Bench judgement in the case of *Dr. Parasnath Prasad (supra)* has been followed in the case of ***Satyendra Tiwari Vs. State of Jharkhand***, reported in ***2021 (2) JLJR 195*** by a Coordinate Bench of this Court and the same was upheld in L.P.A. No.274 of 2021, decided on 26.04.2022.

There are several judgments on this point including ***Satya Dev Prasad Vs. State of Jharkhand***, reported in ***2010 (3) JLJR 238 (Jhar)***, ***2000 (1) PLJR 768*** which was followed by a Coordinate Bench of this Court in the case of ***Gauri Shankar Mishra Vs. State of Jharkhand***,

decided on 13.11.2017 and the same was upheld in ***L.P.A. No.264 of 2018,*** decided on 11.12.2023.

Therefore, this Court holds that *Rule 58 of Jharkhand Service Code* and *Rule 74 of Jharkhand Finance Rule* will not be an impediment in the case of the petitioners as there is no fault on the part of the petitioners and the matter was delayed for no reason by the respondents only.

(d) The respondents have not denied that these petitioners were entitled for promotion in the month of November, 2012. The grounds taken to reject the claim of the petitioners are nothing but lame excuses. It is well neigh settled that right of consideration of an employee for promotion is a fundamental right. The fundamental right of the petitioners for consideration in the month of November, 2012 was violated by the respondents in the present case. All the grounds as stated above, do not come in the way of the petitioners for promotion from due date.

20. In view of what has been held above, the impugned decision in the shape of reasoned order dated 19.01.2026 (Annexure-11), is hereby, quashed and set aside.

21. The respondents are accordingly directed to promote the petitioners from post of Junior Engineers (Mechanical) to the post of Assistant Engineers (Mechanical) with effect from 20.11.2012 with all consequential benefits.

22. Consequently, after granting the promotion to the petitioners from 20.11.2012, their cases are also required to be considered for promotion to the post of Executive Engineers with

effect from the date the petitioners complete the *Kalawadhi*, as per applicable Rules.

23. Formal order to the aforesaid effect be issued within a period of 12 weeks from the date of receipt/production of a copy of this order.

24. Accordingly, the instant writ application stands allowed. Pending I.A., if any, also stands disposed of.

(Deepak Roshan, J.)

Dated: 02 / 11/2026
Amardeep/
A.F.R
Uploaded on
03.11.2026