
(1995) 02 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 1861 of 1993

Abdul Aziz Ashraf

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 15-02-1995

Acts Referred:

Citation : (1995) 02 PAT CK 0009

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner filed the present writ application for consideration of the case of the Petitioner for promotion to the post of Superintendent (Typing) for the period from 1st of March, 1989, to 28.2.91 that is the date when the Petitioner superannuated from the said post, and for consequential benefit of the same.

2. The Petitioner was appointed on 14th May, 1956 as Typist Grade II and was subsequently granted promotion to the post of Typist Grade I with effect from 1.4 1964. Thereafter provided with Junior Selection Grade scale with effect from 1.5.1980 and Senior Selection Grade scale with effect from 1st of May, 1985.

3. In the Land Reforms Department of the State of Bihar there is only one post of Superintendent (Typing). Such solitary post is to be filled up by promotion from amongst the seniormost Typist. The Petitioner being the seniormost typist, vide Order dated the 4th March, 1989 (Annexure-1) was made in-charge Superintendent (Typing) with effect from 1st of March, 1989 i.e. the date the Petitioner joined the post of Superintendent (Typing) having fallen vacant. The Petitioner continued as Incharge against the said post of Superintendent (Typing) and the case for regular promotion was not considered. In the meantime, on 20th of February, 1991 (after-noon), he retired from service.

4. After retirement of the Petitioner as evident from Annexure-A to the counter-affidavit of the State, on 22nd January, 1993 the cases of the Petitioner as well as Anr. Sri Bishnu Bhagwan, Typist were considered for regular promotion to the

said single post, of Superintendent (Typing), from retrospective date. It may be taken into note that after retirement of the Petitioner, since 26th June, 1991 Bishnu Bhagwan, the next junior was made Incharge to the post of Superintendent (Typing). The Departmental Selection Committee rejected the claim of the Petitioner for promotion to the post of Superintendent (Typing) with effect from 1st of March, 1989 on the ground that the Petitioner belongs to General category and the post of Superintendent (Typing), which fall vacant on 1st of March, 1989 goes, according to the Roaster point, in favour of the Scheduled Caste category. So far as Bishnu Bhagwan is concerned, he was made Incharge with effect from 26th June, 1991 and he being the Scheduled Caste candidate, his case was considered and he has been given regular promotion to the post of Superintendent (Typing) with effect from 26.6.91 vide notification dated the 6th August, 1993.

5. It will be evident from the proceeding of the Departmental Establishment Committee dated the 22nd January, 1993 (Annexure-A), it was taken into note and the single post of Superintendent (Typing) was treated to be reserved on the basis of Roaster Point No. A.3, in favour of the Scheduled Caste candidate, and for the said reason the Petitioner was not provided with regular promotion from the date the Petitioner held charge of such higher post of Superintendent (Typing).

6. Counsel for the Petitioner submitted that the case of the Petitioner was wrongly not considered treating the single post of Superintendent (Typing) as reserved for Scheduled caste category; the same is violative of Article 16(A) of the Constitution of India. Counsel for the Petitioner referred to a decision of the Hon"ble Supreme Court in the case of Chakradhar Paswan Vs. State of Bihar and Ors, and pointed out that a single post of the cadre cannot be reserved in favour of one or other category. It was also argued that the Circular of the State Government dated 8th November, 1975 was held to be illegal by the Hon"ble Supreme Court. He has also relied upon a decision of this Court in the case of Fasi Ahmad v. The State of Bihar and Ors. reported in 1990 (1) P.L.J.R. 591 wherein this Court has reiterated the same principle. The Counsel for the State pointed out that the Petitioner was made incharge of the post of Superintendent (Typing) in his own scale of pay, thereby the Petitioner had no right to claim for promotion to the said higher post of Superintendent (Typing). It has been also contended by the Counsel for the State that in terms of the policy decision of the State Government contained in letter dated the 6th July, 1992 as contained in Annexure-"G" even a single post can be reserved in favour of the reserved category, whenever Roaster point goes in favour of reserved category.

7. Having, heard learned Counsel for the Petitioner and the State I accept the argument as advanced by the Counsel for the State that the Petitioner had no right for promotion for the post of Superintendent (Typing) and for that he has no right to move this Court claiming for promotion. But in the present case it is to be taken into note that the case of Petitioner was considered by the

Departmental Promotion Committee. He was not declared unfit for such promotion. He was not granted promotion only on the ground that the Petitioner belongs to General Category, whereas the post is reserved for Scheduled Caste category.

8. It would be evident from Article 16(4) of the Constitution of India that therein provision has been laid down for the purpose of reservation in a service but no provision has been made therein for reservation of a particular post which is solitary post, which do not belong to any particular service. This matter is covered by a decision of Hon'ble Supreme Court in the case of Dr. Chakradhar Paswan (supra), as well as covered by a decision of this Court in the case of Fasi Ahmad (supra). Thereby I hold that the case of the Petitioner was wrongly rejected by the Departmental Establishment Committee vide decision dated 22nd January, 1993, treating the single post of Superintendent (Typing) as reserved for Scheduled Caste Category, which is not permissible. Further in this particular case, after retirement of the Petitioner, the case of the Petitioner was considered by the Respondent State themselves. This would be evident from the proceeding of the Departmental Establishment Committee by 22nd June, 1993 (Annexure-"A") to the counter-affidavit. Such case of the Petitioner was considered for regular promotion with effect from 1st of March, 1989 to the post of Superintendent (Typing) but wrongly rejected the same treating the post reserved for Scheduled Caste category. On the other hand, the person who was junior to the Petitioner, namely, Bishnu Bhagwan, his case has been considered and he has been granted promotion from retrospective effect from 26th June, 1991 that is from the date the said Bishnu Bhagwan was holding charge of the post of Superintendent (Typing). This rejection of the claim of the Petitioner on one or the other ground has certainly given cause of action in favour of Petitioner.

9. In the facts and circumstances I direct the Respondents to consider the case of the Petitioner afresh for regular promotion to the post of Superintendent (Typing) with effect from 1st of March, 1989. i.e. from the date the Petitioner held the charge of the said higher post of Superintendent (Typing), treating the post of Superintendent (Typing) as unreserved post. If the Petitioner is found fit for such promotion, the Respondents should come out with a proper notification of such promotion giving him proper promotion to the post of Superintendent (Typing) for the period from 1st of March, 1989 to 28th of February, 1991 i.e, the date the Petitioner superannuated from service. I further direct the Respondents to provide the Petitioner with the consequential benefits of the same, if found fit, including arrears of salary. Consequential revision of the post retirement benefit of the Petitioner and arrears thereto be also paid in favour of the Petitioner. I direct the Respondents to decide the matter relating to the promotion within a period of three months from the date of receipt/production of a copy of this order and further direct the Respondents to pay the arrears, if any, as mentioned above, within a period of Anr. three months from the date of issuance of notification of promotion (if any.)

10. This writ petition is allowed with the aforesaid observation and direction. There shall be no order as to the cost.