
(1992) 07 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5063 of 1989

Akhilanand Upadhayay

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Citation : (1993) 1 PLJR 365

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : Bamdeo Pandey, T.P. Verma and Shree Prakash Dwivedy, for the Appellant; Ram Suresh Roy for the State and Mrs. Santosh Singh for the Board, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh, J.—In this writ application the petitioner has made a grievance that the respondent Bihar State Housing Board has been denying to him the opportunity of promotion to the post of Assistant from the post of Clerk on the illegal ground that he is not an employee of the Bihar State Housing Board. It is contended that having regard to the facts and circumstances of the case the petitioner is entitled to promotion and he has been wrongly denied promotion. The relevant facts of the case are not in dispute. The petitioner was appointed as a Correspondence Clerk on 27th June, 1960 in the Department of Housing in the Government of Bihar. He was thereafter confirmed as such in the year 1971. In the year 1972 the Bihar State Housing Board was constituted and the work done by the Housing Department of the Government of Bihar was to be done by the said Housing Board. At the time of its initial constitution the technical and non-technical Staff working in the Housing Department were transferred to the Board on certain terms and conditions. They were to maintain their seniority inter se in the Board as well. The petitioner is one such person whose services stood transferred to the Bihar State Housing Board.

2. The petitioner makes a grievance that in the year 1979-80 when the

respondent-Housing Board decided to fill up the vacant posts of Assistant, the case of the petitioner was not considered despite his representation. Sixteen Routine Clerks and Correspondence Clerks of the Board were appointed to the posts of Assistant between 16th April 1983 and 3rd August, 1983. Those persons were junior to the petitioner, because they had been appointed by the Board after the petitioner had joined the Board on transfer. Reliance is placed upon the seniority list (Annexure-4) which shows that petitioner was at serial no. 15, whereas some of the persons promoted were at serial nos. 30 to 38 and 41 to 43. The petitioner, therefore, was continued in the lower pay scale while his juniors were promoted as Assistant in the Higher pay-scale. It appears that the then Secretary in the Department of Housing, Government of Bihar, had brought this fact to the notice of the Managing Director of the respondent-Housing Board, but despite that the petitioner was not promoted. From Annexure-6 it appears that the Establishment Committee had also considered the cases of the petitioner and others like him and recommended their promotion as Assistant, but the Board did not promote them as Assistant. It appears that the Board took the view that since the petitioner and others like him were employees of the Government of Bihar and were only on deputation to the Bihar State Housing Board, they formed a separate cadre distinct from the cadre of Clerks appointed by the Board itself. The Board therefore, took a view that between these two classes of employees there could be no question of inter se seniority because each class constituted a separate cadre.

3. In its counter-affidavit the Board has reiterated the stand that the petitioner was an employee of the Government of Bihar and not of the Board and, therefore, such transferred employees constitute a separate cadre distinct from the cadre of Clerks appointed by the Housing Board directly. As regards the seniority list, it is stated that the seniority list does not disclose the correct position and it was made under some misapprehension and was never finalised. The list is merely tentative and not final. It is further stated that the Board constituted a Sub-Committee to consider the grievance of the petitioner in the light of the writ petition filed by the petitioner in this Court. The report of the Sub-Committee is Annexure-A. A perusal of the report of the Sub-Committee indicates that the Sub-Committee was also of the view that the petitioner was an employee of the Government of Bihar and, therefore, could not be promoted as Assistant in the Board. The Sub-Committee also took the view that those transferred from the State of Bihar, and those appointed by the Bihar State Housing Board, constituted two distinct cadres and, therefore, the question of inter se seniority does not arise as between these two classes of employees.

4. The State of Bihar in its counter-affidavit has stated that the posts and the employees stood transferred to the Bihar State Housing Board and thereafter it was not necessary for the State of Bihar to do anything in the matter. It was for the Board to deal with such employees as its own. Reliance is placed on the Notification dated 7th September, 1972, whereby the services of the technical and non-technical staff of the Housing Department along with their posts were

placed at the disposal of the Housing Board. The Notification clarifies that the officers and staffs whose services had been placed at the disposal of the Board were to enjoy under the Board the same service condition in respect of pay, increment, leave, promotion, discipline and other fringe benefits as admissible under the Board, but they will not be allowed any deputation allowance, though their pensionary rights were kept intact. The State of Bihar, therefore, has taken the stand that transferred employees for all purposes became the employees of the Housing Board, and they had a right of being considered for promotion to higher posts in the Housing Board. In fact, in the Housing Department there were no posts to which such transferred employees could be promoted since virtually the entire establishment stood transferred to the Bihar State Housing Board.

5. From the facts stated above it cannot be disputed that so far as the petitioner is concerned, he was originally in the employment of the Government of Bihar, but by notification dated 7.9.1972 he along with his post stood transferred to the Bihar State Housing Board. Nothing has been brought to my notice to show whether the Bihar State Housing Board has subsequently absorbed him in the Board. Therefore, it is not necessary for me to express any opinion on this question, neither it is necessary for me to go into the question whether the petitioner is an employee of the State of Bihar or Bihar State Housing Board, because the only claim made by the petitioner in this writ petition is that he should be considered for promotion to the post of Assistant.

6. As has been observed earlier, technical and non technical staff stood transferred under Notification dated 7th September, 1972. The Junior Engineers, who had been transferred with effect from 1.9.1972 to the Bihar State Housing Board under the same Notification dated 7.9.1972, had been promoted as Assistant Engineers, who were directly recruited, on the ground that they were not employees of the Bihar State Housing Board, but were officers on deputation, who could not be promoted, nor could their names be included in the gradation list. The contention was negated by this Court, and it was held that if some persons are on deputation, there is no reason why till such time as they are on deputation they cannot be given a higher post in the Department or in the statutory body where they are on deputation. It was therefore, held that the Board could appoint in such transferred Junior Engineers as Assistant Engineers. The judgment of this Court was pronounced in C.W.J.C. No. 3141 of 1983 (Annexure-13). In my view, the same principle will govern the case of the petitioner as well. It cannot be disputed that the petitioner has been serving the Bihar State Housing Board for the last about 20 years. It is also not in dispute that the persons, who were subsequently appointed by the respondent-Housing Board, have been promoted as Assistant in the higher pay scale ignoring the case of the petitioner and others like him on the sole ground that they are not employees of the Bihar State Housing Board and, therefore, form a separate cadre and can claim no seniority over the persons directly recruited by the Board. In view of the Division Bench judgment by this Court, which is binding

upon me, the principle adopted by the Board is illegal and, therefore, it must be held that the petitioner has been illegally deprived of promotion which was due to him. In these circumstances, this writ petition is allowed and it is declared that the petitioner is entitled to promotion with effect from the date on which any person junior to him in the Housing Board was appointed as Assistant in the Housing Board. However, I may notice one fact, namely, that in paragraph no. 13 of the writ petition the petitioner has stated that persons junior to him have been promoted, but the petitioner did not intend to make them parties in this writ petition, because there were 13 existing vacancies against one of which the petitioner could be appointed. In that view of the matter, though the petitioner will be entitled to all monetary benefits, he cannot adversely affect the rights of others, who had been promoted earlier to him and who are not parties to this writ petition. The Housing Board shall, therefore, fix a date with effect from which the petitioner is entitled to be promoted and extend to him all monetary benefits. But that shall be without prejudice to any right which others may have acquired, who are not parties in this writ petition. This writ petition is allowed in the manner indicated above. There will be no order as to costs.