
(2006) 03 JH CK 0055
In the Jharkhand High Court
Case No : L.P.A. No. 782 of 2004

Akhileshwar Prasad and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Citation : (2006) 2 JCR 436

Hon'ble Judges : S.J. Mukhopadhaya, J; Dilip kumar sinha, J

Bench : Division Bench

Advocate : Delip Jerath and C.J. Sahay, for the Appellant; A. Allam, Pankaj Kr. and P. Modi G.P. 1, for the Respondent

Final Decision : Dismissed

Judgement

1. Appellants were appointed in the service of the State of Bihar as Junior Engineers. While they were in service they passed A.M.I.E. Examination, equivalent to A.M.I.E. degree course. As per the Government Scheme 3% of the next higher post were to be filled up from amongst Junior Engineers, who have passed A.M.I.E. Examination having five years of experience. The appellants were promoted against the said 3% of reserved quota as Assistant Engineer on 28th December 1987. After eight of their promotion they preferred a writ petition before Ranchi Bench of Patna High Court being C.W.J.C. No. 2035 of 1995 (R) and prayed for a direction on the respondents to treat them to have been promoted as Assistant Engineer with effect from 11th December 1984 i.e. the date they were given charge of the higher post. The learned Single Judge by order dated 21st August 1995 allowed the prayer and directed the respondents to treat the appellants' promotion w.e.f. 11th December 1984 as Assistant Engineers. Against the said order the State of Bihar preferred Civil Review Nos. 58 of 1995 (R) and the learned Single Judge having noticed the fact that the appellants were not promoted w.e.f. 11th December 1984 but merely given charge of the higher post reviewed the order passed in the writ petition vide judgment dated 20th December 1995 and directed the respondents to consider

the claim of the appellants for their promotion atleast w.e.f. 18th December 1985. The respondents on consideration rejected their prayer by the impugned letter No. 231 dated 6th April 1996. Thereafter the appellants preferred another writ petition (C.W.J.C. No. 2015 of 1996 (R)) challenging the order of rejection dated 6th April 1996 . They also prayed for a direction on the respondents to grant them promotion to the post of Assistant Engineer w.e.f. 18th December 1985. The learned Single Judge dismissed the writ petition. From the rejection letter No. 231 dated 6th April 1996 it is evident that there was no post of Assistant Engineer vacant as on 18th December 1985 against the said 3% of the reserved quota. In absence of such vacancy their claim for promotion with retrospective effect is rejected. It was also brought to the notice of the Court that there was bar to grant promotion with retrospective effect . This apart the learned Single Judge has noticed that if the appellants are given retrospective promotion with effect from 18th December 1985 then they became senior to their seniors. But they have not challenged their seniority or gradation list in the writ petition.

2. Learned counsel appearing for the appellants relied on one or other office note(s) to suggest that there was vacancy. But such disputed issue cannot be determined by the learned Single Judge in the writ petition.

3. There being no merit, the appeal is dismissed.