

(2012) 01 PAT CK 0117
In the Patna High Court
Case No : CWJC No. 10247 of 1997

Angad Singh Kushwaha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 3 PLJR 402

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : Bishnu Kant Dubey, for the Appellant; Ray Saurabh Nath, for the Respondent

Judgement

Shivaji Pandey, J.—Heard Learned Counsel for the petitioner and Learned Counsel for the State. In this case the petitioner has claimed that the-period of officiation spent by him as Sub-Inspector of Police should be counted for the purposes of seniority as has been given the benefit to others who were petitioners in C.W.J.C. No. 2686 of 1991 (Anant Tiwari and Others vs. The State of Bihar and Others).

2. It has been contended that a Division Bench of this Court has considered this aspect of the matter earlier and has directed that the period spent by the petitioner on officiating basis as Sub-Inspector of Police be also counted for his seniority. It has further been contended that in pursuance of the order passed by the Division Bench of this Court dated 8.5.1996 (Annexure-4), the respondents have issued an order vide memo no. 4720 dated 20.8.1997 (Annexure-6) and accordingly juniors to the petitioner were given the benefit.

3. The facts of the case are that the petitioner was initially appointed as a matriculate constable on 1.4.1971 and was promoted in the rank of Sub-Inspector of Police on officiating basis in the month of July, 1972. He was confirmed in the rank of Sub-Inspector of Police on 2.7.1983. As per the Police Manual he was entitled to be confirmed just after one year. The petitioner has

claimed that he was granted promotion in the rank of Assistant Sub-Inspector of Police on officiating basis on 29.9.1981 later on he was granted regular promotion/confirmation upon the recommendation of the Central Selection Board on 20.8.1994.

4. Learned Counsel for the petitioner has submitted that he was selected by the Range Selection Board and only thereafter he was given the benefit of officiating promotion in the rank of Sub-Inspector of Police on 29.9.1981. In the year 1988-1989 the Central Selection Board convened its meeting to consider the cases of officiating Sub-Inspector of Police for their confirmation/regularization on that basis. The petitioner was found fit but recommendation for the promotion/confirmation was made by the Central Selection Board only for 417 officers and the order was communicated vide memo no. 3622 dated 15.6.1989 by the Deputy Inspector General of Police (Administration), Bihar, Patna. He has further submitted that he was found fit by the Central Selection Board for promotion/confirmation in the rank of Sub-Inspector of Police. He has further submitted that though he has continuously worked on the post as Sub-Inspector of Police from 1981 with the artificial break but ultimately he was granted regular promotion on 20.8.1994. He has further submitted that as he has continuously worked on the post of the Sub-Inspector of Police from 1981 upto 1994 and that period should also be counted for the purposes of seniority.

5. In support of aforesaid contention, he has further submitted that in a similar matter some of the persons who were affected by the said order had come to this Court in C.W.J.C. No. 2686 of 1991. In that case a Division Bench of this Court had considered every aspect of the matter and had come to the conclusion that the period spent as officiating period would be counted for the purposes of seniority. He has further submitted that in pursuance of the order passed by a Division Bench of this Court the persons benefited by that judgment were granted relief as per memo no. 4720 dated 28.8.1997 (Annexure-6). The petitioner has claimed that he should also be given the same benefit also as has been given by this Court in a Division Bench (Annexure-4).

6. It has further been submitted that against this order the State of Bihar has filed Special Leave to Appeal bearing SLP (Civil) Nos. 7286-7292/97 (The State of Bihar and Others vs. Anant Tiwari and Others) and the Hon'ble Supreme Court has dismissed the said SLP It will be relevant to mention that the writ petition was not dismissed on merit rather SLP was dismissed due to the delay caused in filing the S.L.P.

7. Learned Counsel for the petitioner has further submitted that he has filed representation before the Director General of Police (Annexure-7) and he has made a prayer that he should be given the same benefit as has been given to the petitioner of C.W.J.C. No. 2686 of 1991. It has been lastly submitted that those persons who have been given benefit in pursuance of the judgment of the Division Bench are juniors to the petitioner.

8. Learned Counsel for the State has submitted that the petitioner is not entitled to the benefit of officiation as during the period he was granted promotion on fortuitous circumstances not considering the case of others and as such that period cannot be counted for his seniority. In support of aforesaid contention, he has relied on the judgment in the case of Food Corporation of India Vs. Thaneswar Kalita and others, . Particularly relied on paragraph-4 of that judgment. State Counsel further contended that any order in favour of petitioner in connection with his promotion/ seniority would affect some persons and as such it will be proper before passing any order affected persons must be given notice on the representation of the petitioner.

9. Learned Counsel for the petitioner opposes the submissions of Learned Counsel for the State and submits that the aforesaid judgment is with respect to Food Corporation of India. The case is not the case of the Bihar Police Service and the judgment has been passed in its peculiar facts and circumstances of the case. So that judgment is not applicable in the present facts and circumstances of the case.

10. It is very difficult to dispose of this writ petition on merit of the case as the relevant documents which are required for consideration are not available on record. At the same time the claim of the petitioner is that similarly situated persons have been granted relief of officiation and as such he should also be given the same benefit. The fact of the case of the petitioner vis-a-vis others will be examined by competent authority.

11. In this view of the matter, this case is being remanded to the Director General of Police giving a liberty to the petitioner to file a fresh representation, stating full facts, annexing all the relevant documents in support of his claim. The Director General of Police is expected to dispose of the representation in accordance with law within a period of three months from the date of receipt/ production of a copy of this order. It is also expected that Director General of Police before passing any order will give notice to effected persons. However, this Court is not giving any opinion on the merit of the case. With the aforesaid observations and directions this writ petition is disposed of.