
(2013) 07 PAT CK 0014
In the Patna High Court
Case No : CWJC No. 13499 of 2010

Anil Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2013) 4 PLJR 683

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Ambuj Nayan Choubey, Amit Kumar, Arpana Jha and Sanjay Pandey, for the Appellant; Ranjit Kumar Singh for Respondent No. 6, Mr. Ranjit Kumar Sinha for the B.P.S.C. and Mrs. Shail Kumari for the State, for the Respondent

Judgement

Navaniti Prasad Singh, J.—The petitioner is an Architect and in Government Service. By this writ petition, he claims his right to be considered for the post of Senior Architect in the Department of Building Construction, Government of Bihar, which is a singular post. According to him, he is the senior-most Architect and has a clean service record. Since 2006 he has been functioning and acting as Senior Architect, though in his own pay-scale, as the post is vacant since 2002. He is aggrieved by the action of the State in considering only the private-respondent No. 6, Mukti Prasad for the said post neither on merit nor on seniority but on basis of reservation alone. Let it be noted that this Court had restrained the State from granting promotion to respondent No. 6 during pendency of the writ petition. Accordingly, petitioner continues to act as Senior Architect and the matter of promotion of respondent No. 6 is still pending with the Departmental Promotion Committee. State and respondent No. 6, who was noticed and has appeared, have filed counter affidavits and with consent of all the parties, this writ petition has been heard for its final disposal at this stage itself.

2. Learned counsel for the petitioner submits that the post of Senior Architect in the Building Construction Department is a singular post which is to be filled up

not by direct recruitment but by promotion. There is no notification of the State Government notifying the reservation of this singular post. It is also submitted that this being a singular post, it could not have been reserved. It is, accordingly, submitted on behalf of the petitioner that petitioner being the seniormost, he cannot be kept out of consideration for the said post.

3. To the contrary, the stand of the State and that of respondent No. 6 is that prior to bifurcation of the State in the Building Construction Department, Government of Bihar, as it then was, there were two posts of Senior Architect. In 1986, the second post of Senior Architect became vacant. On application of 100 point roster, the second post in the roster point was for Scheduled Caste. Accordingly, in 1986, the post had to be filled up by a Scheduled Caste candidate but none was available. Accordingly, it was decided that it should be filled up by general category candidate but the next vacancy upon his superannuation would be filled up only by reserved category candidate. Accordingly, in the year 1986, one Rai Ravi Kul Bhushan Verma of the general category was appointed as Senior Architect. On 15th of November, 2000 State was bifurcated and State of Jharkhand was created. One post of Senior Architect, out of the two, was given to the State of Jharkhand and one remained with the State of Bihar. The post remained vacant. According to the State, this post was the second post as would be evident from Government notification of the year 1986 wherein it was provided that the vacancy would, after superannuation of Sri Verma, be treated as reserved for Scheduled Caste. Accordingly, after bifurcation of the State, petitioner, being of general category, was asked to officiate in his own pay-scale as Senior Architect from 2006 and as it was to be filled up on basis of 2nd roster point by Scheduled Caste candidate, respondent No. 6 was being considered to the exclusion of the petitioner. It is these conflicting stands which have to be resolved in this writ petition.

4. In my view, the stand of the State precisely is that this singular post, now available to the State of Bihar, is the second post to which point No. 2 of 100 point roster would apply. This is stretching things a bit too far. Whatever may be the position prior to bifurcation of the State, the position underwent a radical change upon bifurcation. Point No. 2 of 100 point roster would apply only if there were two posts available. As noted above, upon bifurcation of the State of Bihar, it was left only with a singular post. For a singular post, if the 100 point roster is applied, it would be found that point one is general category and there is a reason and rational for the same. The reason is that a singular post top in a cadre in the hierarchy cannot be reserved. Therefore, point No. 1 of the 100 point roster has always to be open for general category. It is so in the 100 point roster. If this is kept in mind, then upon bifurcation of the State, State having been left with the single post, the 100 point roster, even if applied, the post would be an open category or a general category post with no reservation. State cannot ignore the march of time and changed circumstances. What happened in 1986 when there were 2 posts available is now after bifurcation of State in 2000 totally irrelevant inasmuch as now, after bifurcation only one post is available. If

that be the situation then the whole stand of the State and respondent No. 6 becomes erroneous. There cannot be reservation. There cannot be carry over of vacancy and it has to be filled up considering it to be unreserved post.

5. In such a situation, excluding petitioner from consideration, cannot be justified. Considering respondent No. 6 exclusively also cannot be justified. Seniority of petitioner over respondent No. 6 is not in dispute. Thus, State Government would be obliged to consider filling up the said post immediately treating the said to be unreserved. I order accordingly. The State and the Bihar Public Service Commission (B.P.S.C.) to act accordingly within a period of one month from today, especially as this post has been lying vacant since bifurcation of the State with no permanent appointee to the said post.

6. Before parting, I may note another grievance of the petitioner. Though petitioner was fully qualified and seniormost in the cadre for being considered for appointment to the said post since 2006, he has been asked to function and discharge duties and responsibilities of Senior Architect in his own pay-scale of substantive post of Assistant Government Architect. This could not be done without fully remunerating the petitioner commensurate to the post on which he was working. In other words, what is submitted is where a Government servant, who is otherwise qualified, is made to officiate at higher post involving higher responsibility, he cannot be deprived of the privileges and prerequisites financial or otherwise, this was not a stop-gap short term officiation of the said higher post.

7. Learned counsel for the petitioner is correct. That is the service law in the State. Here, we have a person duly qualified and senior to be permanently appointed to a higher post. Retaining him substantively at the lower post, he is being made to work and discharge functions of a higher post not as a stop-gap arrangement for a short time but now for over 7 years. In such a situation, he is fully entitled to all benefits including financial benefits of the higher post right from the time he was appointed to officiate on the said post. But, for a short period or as a purely temporary stopgap arrangement, a person holding a junior post cannot be made to work on a senior post for which he is qualified without remuneration of that post. That would not only be arbitrary but would be rank exploitation which is not permissible to the authority.

8. Thus, I direct the State to fill up the post of Senior Architect without treating to be a reserved post it being a singular post and to fully remunerate the petitioner commensurate to the post of Senior Architect on which he is working since 2006. Both of which must be done by the State and the Bihar Public Service Commission within a period of one month from today. With the aforesaid observations and directions, the writ petition is allowed.