
(2006) 09 PAT CK 0028
In the Patna High Court
Case No : CWJC No. 468 of 2005

Asharfi Baitha

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Constitution of India, 1950 — Article 16(4)(A)

Citation : (2006) 4 PLJR 455

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard Sri Shivaji Pandey for the petitioner and Sri S.P Verma, J.C. to G.P. V for the State of Bihar. The petitioner is a Class-III employee in the Collectorate at Hajipur. He has filed this writ petition for a direction to the respondent District Magistrate, Vaishali to consider his case for promotion on the post of Office Superintendent which has become vacant after superannuation of Awadh Narain Baitha after making necessary correction in the gradation list bearing memo No. 468 dated 6.7.2005, annexure 6 as there under Kamal Deo Narain Singh, Basisth Prasad Gupta and others who were junior to the petitioner in the basic grade have been shown as seniors which is very much evident from the perusal of the said list with reference to the date of appointment.

2. It is submitted on behalf of the petitioner that against the aforesaid gradation list bearing memo No. 468 dated 6.7.2005, annexure 6 the petitioner has also filed representation which is dated 13.7.2005, 2.8.2005 and 9.8.2005, which is addressed to the District Magistrate, Vaishali and is contained in annexure 7 series.

3. Learned counsel for the State with reference to the counter affidavit has submitted that the petitioner is not entitled to be considered for promotion on the post of Office Superintendent as the post meant for the SC category has already been filled up from the persons coming from that category and his case for such promotion can only be considered as and when roster point of that

category becomes vacant.

4. In reply, learned counsel with reference to the insertion of Article 16{4}(A) of the Constitution of India has submitted that the State respondents in the light of the said amendment has already issued resolution dated 7.6.2000, annexure 11 and in the tight of the provisions contained therein the petitioner is entitled to be considered for promotion on the post of Office Superintendent after it became vacant on superannuation of Sri Awadh Narain Baitha. Having heard the counsel for the parties and having perused the pleadings filed by them including the gradation list as contained in memo No. 468 dated 6.7.2005, annexure-6 and the representations filed against the same dated 13.7.2005, 2.8.2005 and 9.8.2005 as contained in annexure 7 series, I am of the view that the case of the petitioner for promotion on the post of Office Superintendent can be considered only after the representation of the petitioner as contained in annexure 7 series is considered and appropriate correction is made in the gradation list dated 6.7.2005, as such, the writ petition is disposed of with direction of the DM, Vaishali that he should consider the representation of the petitioner, annexure 7 series at an early date and pass appropriate order as early as possible in any case within a period of three months from today and thereafter consider the case of the petitioner on the post of Office Superintendent in the light of the instruction of the Government contained in resolution dated 7.6.2002, annexure 11.