
(2003) 07 PAT CK 0120
In the Patna High Court
Case No : C.W.J.C. No. 9263 of 2002

Ashok Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Citation : (2003) 07 PAT CK 0120

Final Decision : Allowed

Judgement

Shashank Kumar Singh, J.—The present writ application has been filed for quashing the final Gradation List, as contained in Annexure-12, as it has been contended by the learned Counsel for the Petitioners that while deciding the seniority of the Petitioners their services in gland and Revenue Department as Assistant Consolidation Officer has not been counted.

2. In support of his contention that the aforesaid services were required to be counted, it has been contended by the learned Counsel for the Petitioners that an advertisement was issued for different class III non-Gazetted posts, in the State of Bihar by the Bihar State Sub-Ordinate Services Selection Board on 20.4.1981. The said advertisement was a common advertisement for all such class-III posts and specific vacancies department wise had not been advertised. However, by another advertisement dated 26.12.1981, department wise vacancies were advertised, though the vacancies of Land Revenue Department were not mentioned in the aforesaid advertisement. Persons, who had applied pursuant to earlier advertisement, were given exemption for applying, pursuant to second advertisement. On 1.3.1982 the written test was held. On 11.3.1983 some results were published. Second list was also published after deducting the marks obtained in Hindi. The third list was also published in view of the direction of this Court, as those results have been withheld in view of the stand that the copies of the examinees have been lost. Petitioners were one of those persons. Petitioner No. 1 got 211 marks and Petitioner No. 2 got 184 marks. The Petitioners were recommended for appointment as Assistant Consolidation Officer under Revenue

and Land Reforms Department, where they joined. In the meantime 138 persons were appointed on the post of Supply Inspector. Respondents 3rd set joined in 1985. Thereafter the Petitioners were given promotion to junior and senior selection grade by the Promotion Committee. However, by a policy decision, the State of Bihar, decided to postpone the Consolidation Scheme and adjust the employees working under the Consolidation Scheme on the equivalent post in their pay scale. The Petitioners being on the top in the Gradation List of the Assistant Consolidation Officer, were adjusted by way of transfer on the post of Supply Inspector in 1995. Subsequently, another batch of Assistant Consolidation Officers were adjusted on the post of the Circle Inspector-cum-Kanoongo. Persons at the bottom in the Gradation List, were retained in the Consolidation Department as Assistant Consolidation Officer.

3. The contention on behalf of the Petitioners is that while their services were being transferred as Supply Inspector, it had categorically been made clear that their inter se seniority shall be decided/ determined subsequently. Today, it has been contended by the learned Counsel for the Petitioners that by issuing Annexure-12, a gradation list, which has been published putting the Petitioners virtually at the bottom of the list, i.e., taking their entry in the cadre of the Supply Inspector in 1995, as their initial date of joining. This according to the learned Counsel has been done without inviting any objection or otherwise and has caused prejudice to the Petitioners, though no fault on their part lies.

4. In this regard Annexure-7 has been relied upon by the learned Counsel for the Petitioners, i.e., an order of this Court in C.W.J.C. No. 686 of 1984; Kaushal Kishore Singh and Ors. v. The State of Bihar and Ors. and analogous cases in which this Court in the matter arising out of the same advertisement, held that as the merit list of selected candidates had not been released taking into consideration the merit of the candidates, as such, it was directed that all earlier recommendations be cancelled and a fresh recommendation be made taking the option of the candidates, who rank higher in the merit and then publish the same.

5. In the present case also it has been contended that the Petitioners had secured more marks than Respondents third set. It was not by their choice that they have been appointed as Consolidation Officer, if the scheme has been abandoned they cannot be made to suffer and a person, who was below them in the merit list, cannot be placed above them in the gradation list. As they have been adjusted in the supply department by the State Government, their seniority as in the Consolidation Department is also required to be counted and accordingly, their placement, has to be made in the gradation list.

6. It has further been contended that the Petitioners cannot be made to suffer due to arbitrary action on behalf of the Board or non-consideration of their earlier experience in publication of the gradation list.

7. The contention on behalf of the Petitioners is that had the Subordinate Selection Board published their result earlier, i.e. along with that of the

Respondents they having secured higher marks would have been above the Respondents and would have opted for supply department or other department and automatically would have been in the gradation list much above the Respondents. A fact, which is admitted, is that the Petitioners' result was withheld, as the copies are said to have been lost and only after the intervention of this Court in the year 1985, their result had been published and though they had obtained higher marks but their names did not find place in the earlier list, i.e., dated 14.11.1983 and, as such, they could not get supply or other department and persons, who actually had obtained lesser marks than the Petitioners got those departments. The posting of the Petitioners as Consolidation Officer was not of the Petitioners choosing but was in the circumstances, and that too not of the Petitioners making.

8. A further argument has been made that though it is a fact that the seniority in the cadre has to be reckoned from the date one enters in the cadre but in the present case, the Petitioners are not entering in the cadre by their choice, rather it is a decision of the State Government to abolish the Consolidation Scheme in the State of Bihar and in view of the same as they have become surplus they have been, transferred to the supply department, as such, their seniority cannot be lost.

9. Regarding publication of the provisional gradation list, it has been contended that a provisional gradation list had been published on 18.12.1981. Though objection had been invited, but during the aforesaid period as the Petitioners had not entered the aforesaid cadre, there was no question of their filing any objection to the provisional gradation list and after their entering into the cadre, Annexure-12, i.e. final gradation list has been published. In this regard, reliance has also been made on Annexure-14 to the writ application which is a memo issued by the Department of Personnel and Administrative Reforms, as to how the seniority is to be reckoned, and relying on the same, it has been contended that the same has to be done as per their position in view of the result of the B.P.S.C. or in case of persons promoted from different services at the same time their inter se Seniority or in view of the higher pay drawn by such officers. According to the learned Counsel, this Circular of the State Government has also been given a go-by while publishing the final gradation list, as contained in Annexure-12.

10. Lastly, it has been argued that persons, who were also appointed with the Petitioners but were much below them, have been retained as Circle Inspector-cum-Kanoongo, i.e., persons at serial Nos. 304 to 308 are discharging their duties in the Consolidation Office as Assistant Consolidation Officer retaining their seniority from the date of their entering into service. As such, it has been contended that the Petitioners, who were much above all of them have been made to suffer due to laches, which is not on their part.

11. In the counter-affidavit filed on behalf of the State, it has been contended that due to winding up the Consolidation Programmer its employees were

declared surplus including the Petitioners. It has further been contended that after due consideration, the Government decided vide Chief Secretary's letter No. 50 dated 17.1.1994 (Annexure-8 to the writ petition) to adjust these surplus employees on different posts in different departments/Boards and Corporation according to their pay scale.

12. It has further been contended that as the posts of the Supply Inspector were lying vacant, as such, the Government took a decision to adjust these surplus employees and in view of the said decision, the Petitioners along with others, about 101 such surplus employees were adjusted in the first phase and thereafter 86 in the second phase and 34 in the third phase giving them fresh appointment with pay protection. As such, it has been contended that as the present appointment has been given to them after granting them pay protection, the appointment being fresh one, their seniority should be reckoned only from the date of their adjustment/appointment and the same cannot be treated as transfer on administrative exigency.

13. In a supplementary counter-affidavit filed on behalf of Respondent Nos. 7 to 9 it has been contended that in view of the order of this Court, as contained in Annexure-7, a direction was given to the Commission to ask for option from the persons whose appointments have been quashed on a particular post in a particular department and thereafter re-allot the departments to the affected persons keeping in view of their position in the merit list. The Commission issued advertisement asking for option. Thereafter, till date no recommendation has been received.

14. Though, it has been admitted in the said counter-affidavit that the recommendation of the Commission had been quashed but in view of pendency of Civil Appeal No. 1606 of 1987, no steps were being taken by the department. Further contention has been made that a SLP was preferred against the aforesaid order of this Court and the Supreme Court vide its order dated 10.4.1997 directed the State Government to act in view of law laid down in that order, meaning thereby that the order of the writ Court had been affirmed by the Supreme Court. In the aforesaid counter-affidavit, it has further been contended that the further direction was that the order would be applicable only to those cases where appointments had not become final.

15. Learned Counsel for the private Respondents has also tried to justify their position in the gradation list, as it has been contended that the seniority of a person has to be reckoned from the date of entry into service and the seniority of the Petitioners has been reckoned from that date and their earlier experience cannot be counted for the purpose of their seniority.

16. Learned Counsel for the Petitioners in support of his contention has relied upon a judgment of the apex Court in the case of Ramesh K. Sharma and Another Vs. Rajasthan Civil Services and Others, wherein it has been held that while deciding the case of a surplus employee appointed substantively to a

permanent post in the service or cadre in which he is observed (sic- absorbed?) it was held that appointment of surplus employees to the service after a regular selection by duly constituted committee pursuant to administrative order in absence of statutory rules operative in the field, held that substantive and not ad hoc in nature. These surplus employees having been substantively appointed prior to the direct recruits would be senior to the direct recruits.

17. Another judgment has also been placed in the case of Prafula Kumar Swain v. Prakash Chandra Misra and Ors. along with analogous cases reported in Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others, for the same purpose.

18. It has been contended by the learned Counsel for the Petitioners relying on the aforesaid judgment that the Petitioners had also applied pursuant to the said advertisement. In view of the direction of this Court, their result was subsequently published, but as they were found possessing more marks their position had to be above the other selected candidates, who got lesser marks and having procured higher marks, though subsequently appointed as Assistant Consolidation Officer for which also laches were not on the part of the Petitioners and as by Annexure-7. the said recommendation having been quashed by this Court today the State cannot turn back and say that as it failed to act and due to its inaction the Petitioners would be made to suffer.

19. A fact, which is not in dispute, is that the Petitioners and the Respondents had applied pursuant to the same advertisement. It is also not in dispute that the Petitioners had secured higher marks than the Respondents. As such, their position was above the Respondents. The same was tested by this Court and by Annexure-7, an order to that effect had been passed by this Court. The Petitioners had not been given Revenue and Land Reforms Department as per their own choice. It was (sic) policy decision of the State to wind up the Consolidation Department and as such, the Petitioners had become surplus. A decision was taken to absorb them in other departments vis a vis the seniority of the Petitioners has to be reckoned denying their date of entry into the substantive service as their date of entry in the cadre. A land which is also clear, is that when the provisional gradation list was published. Petitioners had not entered into the said cadre. As such, they could not file their objection. An opportunity was required to be provided and the same was required to be considered, before the gradation list attained finality.

20. In the facts and circumstances of this case, this Court has no option but to quash Annexure-12 and direct the Respondents authorities to proceed first by publishing the provisional gradation list in view of the directions as made above and call for objections and after considering and disposing of the same publish a final gradation list in accordance with law as laid down and after following the directions of the Supreme Court and this Court.

21. In the result, the present writ application is allowed to the extent indicated above.