

(2004) 01 PAT CK 0093
In the Patna High Court
Case No : L.P.A. No. 1030 of 2003

Awadhesh Kumar Upadhyay

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-01-2004

Acts Referred:

Bihar Intermediate Education Council Act, 1992 — Section 21

Citation : (2004) 2 PLJR 385

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : B.K. Kanth and Anshuman, for the Appellant; S.N. Jha and Birendra Narain Sharma, for the Respondent

Final Decision : Dismissed

Judgement

1. Being aggrieved by order dated 26th September, 2003 in C.W.J.C. No. 7424 of 2003 reported in 2004 (1) PLJR 194 the Petitioner-Appellant has filed the present Letters Patent Appeal.
2. The Petitioner-Appellant had filed the writ application for quashing the order dated 24.7.2003 passed by the Bihar Intermediate Education Council (hereinafter to be referred to as "the Council") whereby the earlier order dated 21.6.1990 promoting him as Statistical Officer with effect from 1.6.1990 has been cancelled and he was reverted to the original post of Assistant.
3. Learned writ Court taking into consideration all the relevant aspects of the matter including the fact that as the Petitioner-Appellant did not possess the qualification either for the post of Block Statistical Officer, Supervisor or the Junior Statistical Assistant, held that the Petitioner-Appellant was wrongly promoted although he did not possess the requisite qualification. Another aspect which was taken into consideration was that the aforesaid promotion was granted without recommendation of the B.P.S.C. As such, learned Court held that his promotion was also illegal.

4. Contention of Petitioner-Appellant's counsel that once the Petitioner-Appellant had been promoted he cannot be reverted to the post of Assistant, on the principle of Promissory estoppel was also not entertained as the Court found that the Petitioner-Appellant entered into service of the Council as a daily wage employee, thereafter absorbed as Assistant and subsequently promoted as Statistical/Senior Statistical Officer without undergoing any selection process whatsoever.

5. The short facts of the present case is that the Appellant was initially engaged on daily wages in the Council on 21.1.1983. By order dated 1.6.1985 he was regularised as an Assistant in the Council. Subsequently, as the Council felt the necessity of Statistical Officer, two posts of Senior Statistical Officer were created and the Chairman of the Council was empowered to take appropriate steps for filling up those posts. In view of aforesaid decision of the Council, by order dated 21.6.1990 (Annexure-1 to the writ application), the Appellant was provisionally promoted as Statistical Officer with effect from 1.6.1980 in anticipation of approval of the State Government. The aforesaid order dated 21.6.1990 goes to show that as the post on which the Appellant was promoted required technical qualification, as such, in view of aforesaid requirement, the Appellant was not entitled for promotion in the general cadre. Subsequently, by another order dated 14.9.1994" the Appellant was given a higher pay scale in the pay scale of Rs. 2200 to Rs. 4000 with effect from 1.6.1990 i.e. from the date of his promotion. As the pay scale given to the Petitioner-Appellant was less than the pay scale of Senior Statistical Officer, he moved this Court by filing C.W.J.C. No. 11853 of 1996 which was disposed of by order dated 12.2.1998. Though it is contended by counsel for the Appellant that in view of filing of the aforesaid writ application, the Petitioner was given a higher pay scale but from perusal of the order of this Court it would transpire that the stand of the counsel before the Court was that though the salary of the Appellant was fixed in the scale of Rs. 3000 to Rs. 4000 but as it had transpired that the promotion was wrongly given to the Appellant. The operation of the aforesaid order fixing him in a higher pay scale has been stayed and the entire matter was under the active consideration of the Council. The Court in view of aforesaid stand of the Council directed them to take a final decision in the matter within two months. From the order of the learned single Judge it would transpire that subsequently the case of the Appellant was considered in the meeting of the Council on 28.8.1998 and his salary was fixed in a higher scale.

6. Relying on the aforesaid facts it has been contended by the Appellant that now today when the matter had been examined and re-examined it was not open to the Council to again look into his promotion and revert him to the post of Assistant as his appointment itself has been found to be legal not being made illegal.

7. From the counter affidavit filed in the writ application it would transpire that the Appellant was promoted to the post of Statistical Officer without the

aforesaid post being created or sanctioned either by the Council or the State Government. Further stand is that power to create the post is vested with the State Government as required u/s 21 of the Bihar Intermediate Council Act. Further fact which has been brought on record that qualification for appointment of the Junior Statistical Supervisor/Block Statistical Supervisor is Bachelor Degree in Statistics, Economics, Mathematics or Commerce and as the Appellant does not possess the requisite qualification, his case could not have been considered.

8. Further stand on behalf of the Council in the aforesaid counter affidavit is that Statistical Officer is required to be appointed on the recommendation of the B.P.S.C. The promotion of the Appellant is admittedly without the recommendation of the B.P.S.C. Further contention made on behalf of the Intermediate Council is that the Appellant is working on a non-existent post and as such, Council did not err in reverting him to the original post i.e. as an Assistant in the Council.

9. The Appellant had relied on Annexures-10 and 11 of the writ application to show that the post of Senior Statistical Officer had been created and approved by the State Government.

10. From the argument on behalf of the Appellant on one hand and the Council on the other, few admitted facts which would transpire is that the Appellant was appointed in the Council initially on daily wages. Subsequently, his services were regularised as a Assistant and then promoted as Senior Statistical Officer. A fact which is not disputed is that the Appellant never went there in selection process or faced any competition, his entry was through the back door. From going through the relevant rules it would transpire that for appointment of an officer of the Council barring a few the recommendation of the B.P.S.C. was a must. As far as the Appellant's case is concerned, there was no such recommendation. The minimum qualification for the aforesaid post was Graduation in Mathematics or Statistics or Economics provided the Economics Graduates have Mathematics/Statistics as a paper in Graduation course. Admittedly, the Appellant does not possess a graduation degree either in Mathematics or Statistics or Economics with the aforesaid paper. The contention of the Appellant's counsel is that, the Appellant is a Graduate in Science and had Mathematics at Matriculation stage, under no stretch of imagination can be held as being a Graduate in Mathematics or Statistics. Another aspect which is not in dispute that the post to which the Petitioner was promoted was an ex-cadre post. Promotion to any post can only be done within the cadre. Once the post is accepted to be an ex-cadre post, there can only be an appointment by selection to the said post.

11. In view of discussions as made above, it is abundantly clear there was no advertisement or selection process was gone into, the Appellant did not have the minimum qualification and the recommendation was not made to the B.P.S.C. and the post being an ex-cadre post no promotion could be made on the same. In view of the same, the promotion granted to the Appellant was illegal and as

such, in our considered opinion, learned writ Court did not err in not interfering with the order of the Council reverting the Appellant to the post of Assistant.

12. The present Letters Patent Appeal is dismissed being devoid of merit.