
(2000) 08 PAT CK 0053
In the Patna High Court
Case No : C.W.J.C. No. 8236 of 1996

Binod Kumar Poddar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-08-2000

Acts Referred:

Citation : (2000) 3 BLJR 1988 : (2001) 3 PLJR 293

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner has assailed the validity of the order issued on 21.6.1996 passed by the Managing Director of the Bihar State Sugar Corporation Limited, Patna on 13.6.1996, contained in Annexure-15, whereby and whereunder his claim of seniority over respondent No. 8 has not been accepted and the representation filed by him on 24.3.1996 with respect to it has been rejected.

2. Mr. Sharavan Kumar, learned Senior Counsel appearing for the respondent-Corporation by way of preliminary objection has submitted that the writ petition suffers from gross delay and laches inasmuch as the petitioner is virtually challenging the initial order of absorption of respondent No. 8 passed on 5.4.1977 after lapse of almost 20 years. It is submitted that by virtue of the said order, respondent No. 8 got benefit in the matter of seniority and promotion both in the year 1982. The petitioner has questioned the seniority of respondent No. 8, which was finalised on 25.5.1982, vide Annexure-4.

3. Mr. Singh, learned Senior Counsel appearing for respondent No. 8 has submitted that the petitioner never challenged the validity of the seniority which was finalised on 25.5.1982 so much so that in the year 1987, though he filed a representation claiming his promotion in the Junior Selection Grade, but did not question the seniority of respondent No. 8.

4. Learned Counsel for the petitioner, however, submitted that in the facts and circumstances of the present case, the delay shall not defeat the right of the petitioner as he learnt about the order absorbing respondent No. 8 in the service of the Corporation for the first time in the year 1996, soon whereafter he filed representation before the Managing Director, which has been rejected by the impugned order. As such, according to the learned Counsel, the writ petition does not suffer from any deliberate delay and laches.

5. This Court is unable to accept the said submission of the learned Counsel for the petitioner. The petitioner filed the representation before the Managing Director of the Corporation in the year 1996 in which he claimed his seniority over respondent No. 8 on the ground that his absorption, vide order dated 5.4.1977, contained in Annexure-5, itself was irregular and as such, respondent No. 8 cannot be given the benefit of his absorption in the service of the Corporation with effect from 1.2.1977. It was claimed that since the petitioner joined the Corporation on 17.2.1977, vide Annexure-3, he was senior to respondent No. 8 as the respondent No. 8 at the time of his joining was simply working as Accounts Clerk carrying lower scale. This itself shows that the petitioner was very much aware that respondent No. 8 at the time of his joining was working on a post carrying lower scale of pay that he was getting. As such, in my opinion, the explanation that the petitioner was not aware of the letter of appointment dated 5.4.1977 till 1996 cannot be accepted to condone the delay and laches on his part, particularly when, in the meanwhile, respondent No. 8 got seniority over the petitioner and also promotion in the year 1982 itself.

6. The apex Court in the case of *Narender Chadha v. Union of India* AIR 1986 S.C. 638, has disapproved such challenges being made after lapse of more than 15 years. It has been held as follows:

It cannot be said that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in a case where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation, it would be certainly unjust to hold that they have no sort of claim to such post and could be reverted unceremoniously or treated as person not belonging to the Service at all, particularly where the Government is endowed with the power to relax the rules to avoid unjust results.

7. Thus, in my opinion, the submission of the learned Counsel for the petitioner that the very initial absorption of respondent No. 8 is irregular, void ab initio, mala fide, illegal and irregular is not tenable after lapse of more than 20 years and the petitioner cannot claim seniority over respondent No. 8 merely on that basis, particularly when he had failed to show any specific Rule relating to appointment/absorption of an employee in the Corporation.

8. Learned Counsel for the petitioner has cited the Full Bench decision of this

Court in the case of N.P. Mathur and Ors. v. State of Bihar and Ors. 1971 PLJR 471 (Para 59) in support of his contention that no appointment can be made with retrospective effect affecting the right of others. There cannot be any dispute to this proposition. The law in this regard is well settled up to the apex Court. Learned Counsel has also cited the decision of the apex Court in the case of Bhey Ram Sharma and others Vs. Haryana State Electricity Board and others, , in support of his argument that the date of appointment is relevant for determination of seniority and notional seniority given with retrospective effect is not relevant. There cannot be any dispute to the said proposition as well. In the absence of specific Rule, the date of appointment is relevant for the purpose of determination of inter se seniority in the cadre/grade, but the said proposition is not relevant in the present case as respondent No. 8 has not been given any notional seniority. Learned Counsel has also cited authority on the question of delay and laches. He has relied on the decisions of this Court in the case of Ram Narayan Renu v. State of Bihar 1996 (1) PLJR 191, and in the case of State of Bihar v. Kameshwar Prasad Singh 2000 (3) PLJR (SC) 81. This Court fails to appreciate as to how the said decisions are of any help to the petitioner. In the facts and circumstances aforementioned, in my opinion, the writ petition suffers from gross delay and laches and is fit to be dismissed on the said sole ground.

9. The writ petition is, thus, dismissed, but without costs.