
(2003) 01 PAT CK 0043
In the Patna High Court
Case No : C.W.J.C. No. 10346 of 2001

Birendra Prasad Singh and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 3 PLJR 303

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : S.N. Jha, Ajay Kumar, Asim Jha and D.K. Sinha, for the Intervenors, for the Appellant; Rajiv Kumar Sinha and Jitendra Singh for the Corporation and Ajat Shatru, for State, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the order dated 30th of July, 2001 (Annexure-1) passed by the Administrator, Patna Municipal Corporation whereby the Petitioners have been reverted to their original post of Sanitary Inspectors. Further prayer made by the Petitioners is to quash the consequential order dated 20th July, 2001 (Annexure-2) whereby the Petitioners have been posted as Sanitary Inspectors at Patna City and Bankipur Circle.

2. Shorn of unnecessary details, facts giving rise to the present application are that by order dated 11.9.2000 (Annexure-3) Petitioners were promoted on ad-hoc basis to the post of Chief Sanitary Inspectors in the scale of Rs. 1800-3300. While granting ad-hoc promotion it was made clear that on account of seniority, eligibility or the roster point, Petitioners are not found fit for promotion, the ad hoc promotion shall stand cancelled. It is the stand of the Petitioners that they are eligible to be promoted but the impugned order has been passed only on the demand made by the Employees' Union.

3. Counter affidavit has been filed on behalf of Respondents 2 and 3 and in that, to justify their action, various pleas have been raised. It has been stated that the post of the Chief Sanitary Inspector has not been sanctioned, promotion of the Petitioners has not been approved by the State Government and further the Petitioners are not the senior most persons.

4. An application for intervention has been filed on behalf of two persons namely Mahendra Kumar Sharma and Sia Ram Paswan claiming that they are senior to the Petitioners.

5. It is the stand of Respondents 2 and 3 that persons seniors to the Petitioners were not considered for promotion. Interveners' stand is that they are seniors to the Petitioners but they were not considered for promotion as Chief Sanitary Inspectors, while promoting the Petitioners. Dr. Sadanand Jha, Senior Advocate appearing on behalf of the Petitioners does not dispute that one of the intervenors namely Mahendra Kumar Sharma is senior to the Petitioners but submits that in view of his past conduct he does not deserve to be promoted as Chief Sanitary Inspector. As regards the other intervenor namely Sia Ram Paswan, he submits that he is not eligible to be promoted as Chief. Sanitary Inspector because he is not a matriculate. Counsel representing him disputes that and asserts that he is eligible. Be that as it may, fact of the matter is that person junior to him has been promoted, without considering his case. Mr. Singh appearing on behalf of Respondents 2 and 3 and Mr. D.K. Sinha, Sr. Advocate appearing on behalf of the intervenors submit that persons senior to the Petitioners have the right to be considered for promotion and whether they are fit or eligible for be promoted or not is to be decided by the employer. They submit that on account or non-consideration of the cases of the said Mahendra Kumar Sharma and Sia Ram Paswan their rights guaranteed under Articles 14 and 16 of the Constitution of India have been violated and as such Respondent-Corporation did not err in cancelling the order of promotion.

6. On consideration of the rival contention, I find substance in the submission of Sri Singh and Sri Sinha. Whether Mahendra Kumar Sharma is fit to be promoted or the aforesaid Paswan is eligible to be promoted has to be decided by the employer. Undisputedly their case for petition has not been considered. In that view of the matter, Respondents 2 and 3 did not err in cancelling the order of ad-hoc promotion of the Petitioners.

7. Dr. Jha then submits that while promoting the Petitioners on ad-hoc basis to the post of Chief Sanitary Inspector certain conditions were put. He points out that non-consideration of the case of senior has been made a ground for cancellation. He submits that from perusal of the impugned order it is evident that Petitioners promotion has been cancelled on account of the demand made by the Union of the striking employees of the Corporation, emphasises that order of promotion is not fit to be cancelled on the basis of the demand made by the Union.

8. Mr. Jha contends that validity of the order has to be judged from the reactions stated in the order and cannot be supplemented in the affidavit filed by the Respondents.

9. Mr. Rajiv Kumar Singh appearing on behalf of Respondents 2 and 3 however submits that from perusal of the order it seems that the demand was made by the union but the reasons for the demand have not been indicated in the order. He points out that when it was found that persons senior to the Petitioners were not considered for promotion, the order of ad-hoc promotion was cancelled, when the (sic) plea was raised by the Union.

10. Having appreciated the rival submission, I do not find any substance in the submission of Dr. Jha. The order promoted the Petitioners on ad-hoc basis clearly indicates that their promotion is ad hoc in nature and can be cancelled in case it is find that the persons senior to them have not been considered. It is relevant here to (sic) that orders impugned are not statutory in nature and when the plea is made in Court of law regarding their validity, Respondents had placed the reasons which weighed with them while passing the impugned orders. A distinction has to be made between the statutory order and quasi judicial order than an administrative order.

11. As the matter pertains to the appointment to the post of Chief Sanitary Inspector which is essential for proper functioning of the Municipal Corporation, I deem it expedient that Respondents 2 and 3 consider the case of the Petitioners and of other eligible candidates for promotion to the post of Chief Sanitary Inspector within eight weeks from the date/receipt of a copy of this order. I direct accordingly.

12. In the result, I do not find any merit in the application and it is dismissed accordingly with the aforesaid direction.