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(2005) 04 PAT CK 0025

In the Patna High Court

Case No : CWJC No. 10929 of 2001

Chandrakant Chaudhary and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Citation : (2005) 2 PLJR 689

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioners have assailed the validity of the order dated 27.4.2000 passed by the Director, Secondary Education, Bihar, contained in Annexure 1, rejecting their claim for promotion from Class IV to Class III. The said order was passed pursuant to the direction of this Court on the writ petition filed by the petitioners earlier. Learned Counsel for the petitioners has contended that the Director has assigned three reasons for rejecting the claim of the petitioners, namely, (i) there was no vacant post for promotion; (ii) no test as claimed by the petitioners was ever held and (iii) the vacancies are to be filled up by the Commission after taking examination. According to the Learned Counsel, all these three grounds are erroneous and contrary to the fact as well as the provisions. Learned Counsel for the petitioners has placed reliance on the Government resolution No. 2215 dated 11.2.1985 issued by the Personnel and Administrative Reforms Department, which provides for filling up 25% of Class III post from those working in Class IV and possessing required qualification and age by holding limited examination.

2. A counter affidavit has been filed on behalf of the Director (respondent No. 3), from perusal whereof it appears that the Director has specifically stated that the Personnel and Administrative Reforms Department, Government of Bihar, vide Notification No. 11423 dated 6.12.1995 provided that 50% of the posts of 3rd grade employees in the Regional Office will be filled up by the 4th grade employees through combined competitive examination, which is only for the 4th

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grade employees and that the said examination is to be conducted by the Bihar Public Service Commission. According to him, there is no provision to fill up the post of Class III employees by promoting 4th grade employees in the Department where the petitioners are working.

3. Learned Counsel for the State has submitted that the perusal of Government Resolution dated 6th December, 1995, which was published in the Bihar Gazette and has been brought on record as Annexure B, shows that the said resolution has been taken in supersession of earlier resolutions. It has been submitted by the Learned Counsel for the State that as per Annexure B, there is no provision like the one as provided in Government resolution No. 2215 dated 11.2.1985, upon which reliance has been placed by the Learned Counsel for the petitioners. Learned Counsel for the State has submitted that it is true that even after the said notification, some cases have been considered for promotion from Class IV to Class III but this was done in the tight of the direction given by this Court. Learned Counsel submitted that the Department did not bring the said Government resolution dated 6th December, 1995 to the notice of this Court and in ignorance thereof the direction was given, upon which some cases were considered but, according to the Learned Counsel for the State, the petitioners cannot take advantage out of it as neither they have claimed that their juniors have been promoted nor they have based their claim on such promotion, which on the face of Annexure B were illegal and bad.

4. I find substance in the submission of the Learned Counsel for the State. The Government resolution dated 6th December, 1995 (Annexure B) has been issued in supersession of alt earlier Government resolutions with respect to filling up of Class III posts. According to Annexure B, 50% of Class III posts are to be filled up by the 4th grade employees through combined competitive examination in the offices other than Secretariat and allied offices.

5. Learned Counsel for the petitioners has admitted that the office where the petitioners were working are allied offices and as such f do not find any provision in the Government resolution (Annexure B) providing for filling up Class III posts by promotion of 4th Grade employee working in the Secretariat and allied offices.

6. Learned Counsel for the petitioners has further submitted that the case of the petitioners will be governed by the earlier resolution dated 11th February, 1985. I am unable to appreciate the said submission of the Learned Counsel for the petitioners. He has failed to show that the petitioners ever based his claim oh Government resolution dated 11th February, 1985. However, they filed the writ petition in this Court only in the year 1998, by which time the Government resolution dated 6th December, 1995 (Annexure B) had already come into existence in supersession of all earlier such resolutions. As such, it has rightly been submitted on behalf of the State that the case of the petitioners will be governed by 1995 resolution and not 1985 resolution. In that view of the matter, I do not find any merit in the writ petition and the same is, thus, summarily dismissed.

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