
(1992) 01 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 5296 of 1983

Chaturgan Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-01-1992

Acts Referred:

Citation : (1992) 2 BLJR 1259

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Judgement

Satya Brata Sinha, J.—In this application the petitioner has prayed for quashing of the orders as contained in Annexures 6, 7 and 8.

2. The fact of the matter lies in a narrow compass. The petitioner at the initial stage was appointed as Sub-Overseer in the Minor Irrigation Department and continuously officiated as Overseer till the date he was appointed as S.D.O. By an order No. 4787 dated 5-9-1983 the petitioner was asked to be relieved from the post of S.D.O. which was by way of local arrangement and to join the office of respondent No. 4. The petitioner challenged the aforesaid order dated 3-9-1983 and 5-9-1983 before this Hon'ble Court in C.W.J.C. No. 4128 of 1983. This case was admitted but stay was refused.

3. Three writ applications were filed in this Court by Braj Kishore Tiwary and others being C.W.J.C. No. 2644/82, 481/80, 481/80. In the said writ application it has been contended that the petitioners thereof were appointed as Overseer and the private respondents of the said application although appointed after them were appointed as overseers except respondent Nos. 1 and 10 of C.W.J.C. No. 482/80. The private respondents of the aforementioned writ applications, however, were promoted to the post of overseers with retrospective effect from the date of their initial appointment as they become senior to the petitioners to the aforementioned writ applications. By a judgment dated 25-2-1983, a Division Bench of this Court allowed the said writ application except the respondent Nos. 10 and 11 of C.W.J.C. No. 482 of 1980 on the ground that they were confirmed

as Junior Engineer in the year 1969-75 respectively. Against the aforementioned judgment the persons similarly placed to that of the petitioners filed Special leave application before the Hon''ble Supreme Court the Hon''ble Supreme of Court India on 2-5-1983 granted Special leave against the judgment dated 25-3-1983 but refused stay.

5. In the aforementioned judgment of this Court contentions in respect of the respondent Nos. 10 and 11 were recorded in the following words:

So far as respondent No. 10 Brijnandan Prasad and respondent No. 11 Swarn Singh are concerned, the impugned orders as contained in Annexures 3 and 4 were passed in their favour in 1969 and 1975. It has, therefore, been urged that the orders in their favour could not be interfered with as they remained in force for a considerable period without any challenge by the petitioners.

In this case also the petitioner was appointed as Sub-Overseer on 18-2-1961 and he was confirmed as junior Engineer with effect from 17-11-1969. The petitioner has further contended that he was granted selection grade with effect from 1-1-1975. It is also not in dispute that the order of confirmation of the petitioner in the post of Junior Engineer as also grant of selection grade to him had never been the subject matter of the aforementioned writ applications nor the same at any point of time had been challenged before this Court by any other person which could affect the petitioner. From a perusal of the judgment it appears that this Court held as follows:

For the reasons mentioned above, these writ applications have to be allowed except against respondents 10 and 11 in C.W.J.C. No. 482/80 Brijnandan Prasad, respondent No. 10, was promoted on 30-12-1964, that is before the appointment of several of the petitioners and the other in his favour (Annexure 3) was passed on 17-9-1969 and he has been considered to be senior to the petitioners for a considerable period without any challenge. C.W.J.C. 482/80 was filed on 20-2-1980 and no acceptable explanation has been given for the delay. The respondent No. 11 Swarn Singh was promoted as an overseer on 1-5-1960 that is, before the petitioner's appointment and by Annexure 4 dated 23-10-1975 he was allowed to count his seniority from the date of initial appointment in 1956. On the ground of delay in coming to this Court the writ application is fit to be dismissed as against him too.

It is, therefore, evident from the aforementioned judgment that the case of the petitioner is similar to that of respondents Brijnandan Prasad and Swarn Singh of the writ application and as against them the writ petition had been dismissed by this Court, the State of Bihar, thus, should not have passed the impugned orders which are contained in Annexures 6, 7 and 8 to the writ application in as much as the case of the petitioner is similar to the aforementioned persons.

6. In that view of the matter, this writ application is allowed and the impugned orders as contained in Annexures 6, 7 and 8 are quashed. However, in the facts and circumstances of the case there will be no order as to costs.