

(1996) 10 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 5068 of 1987

Daya Shankar Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1997) 1 PLJR 643

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : B.K.M. Tripathi and S.P. Bhakta, for the Appellant; Ashok Kumar Singh and Prabhat Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The writ petition was filed by the Petitioner for his appointment to the post of Assistant Engineer (Civil) in the Road Construction/ Building Construction Department of the State of Bihar, from the date the persons whose names are appearing below the name of the Petitioner in the merit list, have been so appointed.

2. The brief facts of the case (sic) as follows:

Under the Respondents-State, there are various Works Departments, which include Road Construction/Building Construction, Irrigation, Water Resources (Irrigation) and Public Health Engineering Departments. The erstwhile Public Works Department within the State of Bihar has been bifurcated into two Departments, namely, Road Construction Department and Building Construction Department. The cadres of Assistant Engineers (Civil) of both the Road Construction Department and Building Construction Department are combined cadre under the control of Road Construction Department. Such posts of Assistant Engineer (Civil) are the posts available in the Bihar Engineering Service Class-II. On the other hand, the posts of Assistant Engineer (Civil) in the Water

Resources (Irrigation) Department and Public Health Engineering Department are separate cadre respectively. While the post of Assistant Engineer (Civil) of the Bihar Engineering Service Class-II available in the Road Construction/Building Construction Departments and Irrigation Department, are guided by a separate Rule, namely, Bihar Engineering Service Class-II Rules. For Public Health Engineering Department the posts of Assistant Engineer (Civil) are guided by a separate Rule, namely, "Bihar Public Health Engineering Service Class-II Rules".

The Respondents-State came out with Advertisement No. 93 of 1985 in different newspapers, calling applications for appointments against 245 posts of Assistant Engineer (Civil) which were lying vacant in the joint cadre of Road Construction/Building Construction Departments (P.W.D.), under the Bihar Engineering Service Class-II. The Petitioner along with others applied for such appointment to the post of Assistant Engineer (Civil) in the said Road Construction/Building Construction Departments in pursuance of such Advertisement No. 93/85. Such application was filed within the stipulated period i.e. by 30th October, 1985. The Petitioner was provided with interview letter. He was asked to appear in the interview which was to be conducted by the Bihar Public Service Commission (for short the "Commission"), scheduled for 8th May, 1986. In the interview letter, it was specifically mentioned that such interview was to be held for appointment to the post of Assistant Engineer (Civil) under the Road Construction/Building Construction Departments.

The Petitioner appeared in the interview on 8th May, 1986. After such interview, a corrigendum was issued in the newspaper on 21st May, 1986, by which it was intimated that there are additional posts of Assistant Engineer (Civil) fall vacant, totalling of about 693 posts, for which date of receipt of further application was extended. The persons who had earlier applied were not required to apply afresh. It is for the said reason, the Petitioner did not choose to apply in pursuance of corrigendum dated 21st May, 1986. It was in the year 1986, the Respondents-State decided that the Road Construction Department will act as Nodal Department for appointment to the posts of Assistant Engineer (Civil), which were lying vacant in different Works Departments of the State of Bihar. All the Works Departments were asked to intimate the vacancies to the Road Construction Department, who (Road Construction Department), in turn was to communicate the same to the Commission.

After interview, a merit list was prepared by the Commission. Altogether, names of 878 candidates were recommended by the Commission for appointment to the posts of Assistant Engineer (Civil), as successful candidates, vide one letter dated 19th May, 1987. The name of the Petitioner was also recommended for such appointment, having declared successful. The position of the Petitioner in the merit list was actually No. 17.

However, when appointment letters were issued, the Road Construction Department/Building Construction Department issued appointment letters on 16th June, 1987, appointing 421 persons to the 8 posts of Assistant Engineer

(Civil) in the Bihar Engineering Service Class-II. The Petitioner was not provided with any such appointment in the said Road/Building Construction Department i.e. in the cadre of Bihar Engineering Service Class-II. The Petitioner was provided with appointment by another letter No. 99 dated 15th July, 1987, along with others by the Public Health Engineering Department to the post of Assistant Engineer (Civil), a post in the Bihar Public Health Engineering Service Class-II.

According to the Petitioner, as the Petitioner applied for the post of Assistant Engineer (Civil) in the Bihar Engineering Service Class-II under the Road/Building Construction Department and never applied for the post of Assistant Engineer (Civil) under the Bihar Public Health Engineering Service Class-II, there was no occasion to provide the Petitioner with such appointment in the Public Health Engineering Department. Further, it has been alleged by the Petitioner that the persons whose names were below the name of the Petitioner in the merit list, they have been provided with appointment to the post of Assistant Engineer (Civil) in Bihar Engineering Service Class-II under, the Road/Building Construction Department. Thereby, the Petitioner alleged arbitrary action on the part of the Respondents and violation of Articles 14 and 16 of the Constitution of India, his case having not been considered for appointment to the post of Assistant Engineer (Civil) in the Bihar Engineering Service Class-II under the Road/Building Construction Department.

3. A counter affidavit has been filed on behalf of Respondent No. 3. In the counter affidavit, the aforesaid facts have not been denied. It is stated that a combined merit list was prepared by the Commission, which was sent to the Nodel Department, namely, Road Construction Department. Out of the said combined merit list, persons have been recommended for appointments in one or other Department. While No. 1 in the merit list was recommended for appointment in the Road Construction Department; No. 2 was so recommended for appointment in the Irrigation Department; and No. 3 in the merit list was, accordingly, recommended for appointment in the Public Health Engineering Department. It is stated that the aforesaid rotation was followed with respect to the candidates whose positions were there in the merit list and in Petitioner's turn, he was recommended for the appointment to the post of Assistant Engineer (Civil) in the Public Health Engineering Department and so he has been appointed in the said Department.

4. Having heard the parties, according to this Court, the Petitioner has made out a case of discrimination. Admittedly, the Petitioner being eligible for appointment to the post of Assistant Engineer (Civil), has a right for consideration of his case for appointment to the post of Assistant Engineer (Civil) in the Bihar Engineering Service Class-II under, the Road/Building Construction Department.

The advertisement was also published for appointment to the post of Assistant Engineer (Civil) under the Bihar Engineering Service Class-II, available in the Road/Building Construction Department. The Petitioner applied in pursuance of the said advertisement and never applied for consideration of his case for

appointment to the post of Assistant Engineer (Civil), under Bihar Public Health Engineering Service Class-II in the Public Health Engineering Department.

Such being the position, there was no occasion for the Respondents to consider the case of Petitioner for appointment to the post of Assistant Engineer (Civil) in the Bihar Public Health Engineering Service Class-II, nor the Respondents could have refused to consider his case for appointment to the post of Assistant Engineer (Civil) in the Bihar Engineering Service Class-II, under the Road/Building Construction Department.

Further, the persons whose names were appearing below the name of the Petitioner in the merit list having been appointed to the post of Assistant Engineer (Civil) in the Bihar Engineering Service Class-II, under the Road/Building Construction Department, the Respondents cannot discriminate the Petitioner in the matter of such appointment.

5. For the reasons stated above, this Court directs the authorities of the Respondent-State in the Road Construction Department to provide the Petitioner with appointment to the post of Assistant Engineer (Civil) in the Bihar Engineering Service Class-II under the Road/Building Construction Deptt. Such appointment letter is to be provided, treating the date of appointment of the Petitioner as 16th June, 1987, the date the persons below the name of the Petitioner in the merit list were provided with such appointments. This direction of the Court is given, specifically taking into note that the Petitioner was provided with order of appointment by Public Health Engineering Department on 15th July, 1987. The Court is further taking into note that seniority of none of the persons will be affected by virtue of this Court's order, as the seniority is dependent on the position of the candidates, as mentioned in the merit list, all of them having been appointed by way of direct recruitment. While giving such appointment, the pay of the Petitioner is to be fixed, as he is receiving today, on the basis of his joining in the Public Health Engineering Department and thereby, the Petitioner will get the appropriate pay protection.

6. The order of this Court is to be complied by the Respondents within a period of four months from the date of receipt/production of a copy of this order.

7. The writ petition is allowed with the aforementioned observations and directions. No cost.