
(2007) 04 PAT CK 0032
In the Patna High Court
Case No : CWJC No. 1943 of 2002

Devi Singh	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Citation : (2007) 2 PLJR 841

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Rupak Kumar and Nishant Kumar Pushkar, for the Appellant; Chandra Shekhar and Poonam Kumari for (PMC), Mr. A.K. Sharma, H.N. Ojha for Respondent No. 6 and Mr. Prabhakar Jha for Respondents 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the petitioners, the respondent Corporation and counsel for private respondents and the State. The basis of the entire dispute is a gradation list which was prepared by the Patna Municipal Corporation and is dated 15.12.2001. This has been brought on record at annexure-3. The respondent Corporation drew up seniority list of Sanitary Supervisor as well as Inoculator for promotion to the post of Sanitary Inspectors. This is a joint gradation list and it is for this gradation list, the Corporation issued an order contained in annexure-2 which is dated 2nd January, 2002. By virtue of this order 13 persons came to be granted promotion on the post of Sanitary Inspector.

2. From a perusal of annexure-3 two things emerge that Corporation in its wisdom decided to treat the date of confirmation or date of regular appointment of the employees in question on the post of Sanitary Supervisors or Inoculators as the base for granting seniority in the said gradation list. The authority also noticed that the post of Sanitary Inspectors in terms of the amended rule of the Corporation could be made available to only such persons who had passed and

obtained a certificate of the Sanitary Inspector from the recognised institution in this regard.

3. Based on the decision taken at annexure-3 petitioner Devi Singh was shown at serial no. 19 and Nesar Alam at serial no. 24 in the gradation list. The date of appointment on permanent basis has given as 1.5.1984, 1984, 1978 are the years when they had acquired the certificate of training of Sanitary Inspectors.

4. After the respondents Corporation issued annexure-2 by virtue of which promotions were granted to 13 persons, the respondents vide order dated 25.1.2002 which is annexure-1 reverted the petitioners to the post of Sanitary Supervisor. This was the post on which the petitioners were earlier working but they came to be appointed on the post of Sanitary Inspector after the High Court intervened in the matter and directed the respondents to consider the case of these petitioners in the background that they had been working as Sanitary Inspector for almost 20 years. One of the orders came to be passed in CWJC No. 4239 of 1993 and is dated 26.8.1994. Since nothing came to be done despite the above direction of the Court, a contempt application, bearing MJC No. 2894 of 1995 came to be filed. The matter was taken up and vide order dated 25.4.1997 the contempt was dropped on a categorical assurance given by the Administrator to the Court that order passed by the writ court shall be implemented within a month from today.

5. On the solemn undertaking given, the contempt was dropped. Thereafter, the respondent in compliance of the contempt order issued an order dated 7.1.2000. This is annexure-8 to the writ application. By virtue of this order the petitioner was promoted to the post of Sanitary Inspector in the pay scale of Rs. 1200-30-1800/-. While issuing this order however, the respondent authorities added a rider. The order states that the regular promotion being granted to the petitioners will be subject to final publication of the gradation list to be issued by the Corporation. In case the petitioners did not figure within the zone of consideration this promotion can be withdrawn. The petitioners by virtue of this order joined the post and continued to work as a Sanitary Inspectors till annexure-1 came to be passed on 25.1.2002. By virtue of annexure-1 the petitioners were reverted and despite having worked for two years as Sanitary Inspectors. They have been made junior to persons who were otherwise not eligible or seniority-wise to hold the post of Sanitary Inspector. The petitioners, therefore, have moved this Court again not only challenging the order of reversion contained in annexure-1 but also the order granting promotions to 13 persons which is annexure-2.

6. The gradation list dated 15.12.2001 contained in annexure-3 based on which promotions have been granted to 13 persons as well as the decision of the Establishment Committee dated 2.1.2002 contained in annexure-4 are also under challenge.

7. There are two basic thrusts of the petitioners in both these writ applications.

First contention is that the petitioners could not be reverted back to the substantive post of a Supervisors after more than two years when the promotion order in their favour was granted by virtue of judicial intervention of the High Court and a solemn stand which was taken by them in the contempt application. Once having accepted to implement the direction of the High Court in the contempt application there was no occasion to the respondent to revert the petitioners back on the same post of Sanitary Supervisor on which he was worked for almost two decades. The petitioners contend that it was not open to the respondent to undo the decision which was passed in furtherance of the judicial order after due adjudication between the parties. The petitioners in this regard rely on a decision rendered in the case of Food Corporation of India vs. S.N. Nagarkar reported in AIR 2002 S.C. 808. The petitioner specially draws my attention to paragraph 15 of the judgment which does have bearing on the present case.

8. But there is another aspect which this court has to take notice that while issuing annexure-8 i.e. order of substantive appointment and promotion to the petitioners the respondents had added a rider that this substantive promotion will be subject to gradation list which will be prepared by the respondents subsequently. The petitioners being on inferior bargaining position accepted the order and therefore did not challenge the same. The Court at this stage can only observe that the respondents while giving their undertaking in the contempt application did not indicate to the Court that promotion to be granted to the petitioners would be a conditional one. Under what circumstances this rider came to be added while issuing annexure-8 is not fully explained by the respondents as such.

9. The petitioners thereafter challenge the very foundation on which the gradation list contained in annexure-3 dated 15.12.2001 came to be issued. The petitioners questions the gradation list on six separate counts. The grounds of challenge has been stated in paragraph 35 of the writ application. Some of the grounds broadly taken note are that the joint gradation list of Sanitary Supervisor and Inoculators is only of trained individual. While issuing the gradation list the order categorically records that this gradation list will be subject to final verification of the genuineness of the appointment and promotion by a Committee of three persons set up by the Corporation. The respondents Corporation have not taken the date of completion of training of the various individuals while granting promotion to those 13 persons. One of the main challenge of the petitioners are that the petitioners' period of service on temporary/probation rendered under the Corporation for almost two years was not taken into consideration while deciding the seniority in question.

10. Petitioner Devi Singh states that he was initially appointed on the consolidated pay of Rs. 180/- on 20.10.1976 and in terms of the order he was put on probation for two years. Thereafter on 1.5.1984 he came to be regularised. The other petitioner Nesar Alam was initially appointed on daily

wages as Sanitary Supervisor on 22.5.1975. Subsequently he came to be appointed on a consolidated pay of Rs. 180/- along with some other persons, and he joined the post on 13.8.76. This position is borne out from annexure-5 in the second writ application. The petitioners contend that in terms of Rule 42 of Patna Municipal Corporation Officers and Servants Pension Rules the period which the petitioners have put in the Corporation on a temporary basis or on probation will have to be taken while deciding the seniority. The respondents have committed a mischief by ignoring rule in question and by arbitrarily fixing the date of substantive appointment of these persons while issuing the gradation list and fixing seniority.

11. Learned counsel for the petitioners thereafter drew the attention of the Court to another decision which has been rendered in CWJC No. 4195 of 2002 in the case of Ram Ratan Singh vs. Patna Municipal Corporation & Ors. and is annexed as annexure-26 of the supplementary affidavit to C.W.J.C. No. 1943 of 2002. A Bench of this Court vide order dated 20.11.2003 had to adjudicate and decided the same issue which is under consideration of this Bench. The petitioner of C.W.J.C. No. 4195 of 2002, Ram Ratan Singh, was aggrieved by seniority which was given in terms of annexure-3 to the writ application. The petitioner had submitted before the Bench that the respondent authorities have committed an illegality by ignoring the period he was appointed on a consolidated pay and his continuation as a probationer on the same said post and subsequent confirmation. The argument before the Court was that the respondents have committed an error by taking into account the date of confirmation for deciding the seniority and ignoring earlier appointments made on consolidated pay scale by the Corporation. By keeping the date of confirmation as the base for deciding the seniority, the respondents had ignored well settled principle of law that the earlier period of service rendered by any employee cannot be made negatory or ignored while deciding the seniority.

12. The High Court in its order dated 20.11.2003 after considering the legal position and taking into consideration the various circular which have been issued by the State Government through its Personnel and Administrative Reforms Department held in favour of Ram Ratan Singh and directed that the period which the petitioner had spent from the date of his appointment on consolidated pay till the date of confirmation shall be considered for seniority and his seniority would be accordingly redrawn up by the respondents. The Court also held that since Inoculators were working on a pay scale lower than Sanitary Supervisor, therefore, while deciding the seniority they cannot be given priority with Sanitary Supervisor merely because they came to be confirmed on the same said post. Laying down the law the learned Single Judge allowed the writ application with a direction that the period spent by the petitioner as a probationer should be included in his service. In other words the initial appointment of the petitioner on a consolidated pay had to be reckoned in deciding the seniority of that petitioner. It further held that since Vaccinators or Inoculators were in the cadre on the pay scale of Rs. 825/- which is lower than Rs. 950/- therefore the petitioner would

rank higher than the Vaccinators/Inoculators.

13. I am informed that this order dated 20.11.2003 had attained finality in the way because the LPA No. 5 of 2004 filed against this order was dismissed. However, learned counsel for one of the private respondents points out that liberty was granted to file review application in the matter and review application has been filed. As of today, therefore, the order of the learned Single Judge has not been interfered with and is holding the field.

14. This Court would further like to record that the conclusion which has been reached by learned Single Judge in his order dated 20.11.2003 has been after the Court considered the various circulars issued by the State Government, more so of the Department of Personnel and Administrative Reforms. The Court has taken note of Circular No. 3/R 1-107/75-18990 dated 22nd October, 1975. This lays down guidelines by virtue of which even the period of probation will have to be taken into consideration for seniority viz-a-viz those persons appointed on temporary basis even though regularised earlier. The second circular is dated 26.8.1972 which lays down that in the matter of settlement of seniority of a persons those drawing more salary in his basic cadre would be deemed to be senior to any person who is drawing less basic salary in his substantive cadre.

15. It was in this background the learned Single Judge has held that Vaccinators/Inoculators will rank junior to Sanitary Supervisor. If these two parameters are taken into consideration then the petitioners have a case in their favour because the Corporation had erred by fixing the date of confirmation as the basis for granting seniority in the gradation list. This Court has already taken note of the fact that petitioner, namely, Devi Singh was appointed on consolidated pay on 20.10.1976 and was put on probation for two years. As regards Nesar Alam he initially came on daily wages but was appointed on consolidated pay on 13.8.1976. If these two dates are included in the period of service which the petitioners have rendered with the Corporation then they have to be given higher seniority viz-a-viz other private respondents who have been impleaded in these two writ applications.

16. This court also notices that one Mr. Kishori Mahto has been shown at serial no. 3 of the gradation list contained in annexure-3 and he is in the category of Inoculator. If Inoculators are juniors to Sanitary Inspectors due to lower pay then obviously the respondent Corporation have committed an error by giving a position to Mr. Kishori Mahto higher than the other Sanitary Supervisors. Therefore this Court has no hesitation in recording that seniority given to Mr. Kishori Mahto who is respondent no. 7 is to that extent contrary to rules and law on the issue and he has to be relegated to the position where he belongs i.e. after sanitary supervisors.

17. Learned counsel for the private respondents have made their submissions and they have justified the gradation list by sailing along with the Corporation. Their contention has been that the Corporation has done no wrong by treating

the date of confirmation as the basis for preparation of the gradation list. Another submission is that since they have already got promotion by virtue of the order contained in annexure-2 in January, 2002 therefore it will be too harsh upon them if this Court interferes with the gradation list and directs altering of the same and even goes to the extent of setting it aside.

18. In so far as the first contention of the private respondents is concerned, this Court has already recorded that non-consideration of the period when the petitioners have rendered service on consolidated pay was a breach committed by the Corporation and if they have ignored the rules in this regard or the circulars of the State Government then it will accrue to their peril and not to the peril of the petitioners. In so far as the second contention is concerned, this Court can only record that if the private respondents have drawn advantage due to a decision which has been taken contrary to law then the mere fact that they have continued to occupy the post for a number of years to the detriment of the petitioners will not give them another advantage or privilege to continue on the same said post.

19. This being the position indicated above this Court has no option but to hold that the gradation list which has been prepared by the respondent Corporation as contained in annexure-3 is contrary to the rules as well as the law on the issue. Therefore the same is quashed. This Court also notice that while issuing annexure-3 the respondent Corporation had categorically recorded that a three members committee would be set up to examine the promotions and appointments but there is nothing on record to show that three members committee was ever set up or the committee ever gave its finding to the Corporation on the decision which was taken while issuing the order contained in annexure-3.

20. This Court got an impression that while issuing annexure-3 in the year 2001 the decision of the Corporation was a tentative one and it was subject to further scrutiny by three members committee but it seems that it was only a ploy used while issuing the order granting promotions and the same said decision has attained finality and has come to stay.

21. This Court accordingly also quashes the order dated 2.1.2002 by virtue of which promotions have been granted to 13 persons pursuant to recommendation which was made in the meeting dated 2.1.2002 and is contained in annexure-4. Annexure-4 too stands quashed. It will be open to the respondents to issue fresh gradation list which shall be worked out within the parameter which has been indicated by this Court and any order of promotion will thereafter be issued based on the newly drawn up gradation list.

22. The order of reversion as contained in annexure-1 is also accordingly quashed in the light of the reasonings given above.

23. This Court only hopes that the respondent Corporation shall take steps to settle the issue on priority basis and for this I think that four months time is

good enough to come to a decision in this regard. Both these writ applications accordingly stand allowed. However, there will be no order as to cost.