
(2002) 08 PAT CK 0091
In the Patna High Court
Case No : C.W.J.C. No. 7939 of 2002

Dhrub Prasad and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-08-2002

Acts Referred:

Citation : (2002) 3 BLJR 1874

Hon'ble Judges : Shashank Kumar Singh, J

Bench : Single Bench

Judgement

Shashank Kumar Singh, J.—The petitioners, who are Assistant Engineers in the Road Construction Department having been appointed in the year 1985, have moved this Court for a direction to the respondent-Secretary, Road Construction Department that in view of the fact that their names have been cleared by the Vigilance Department, their names should also be sent to Departmental Promotion Committee for consideration while considering the other names for empanelment for promotion to the post of Executive Engineer.

2. The contention on behalf of the petitioners is that in another Writ application bearing C.W.J.C. No 1817/2002, which was filed by one Mithlesh Kumar & others, who were appointees of the year 1991 a counter affidavit had been preferred by the State in which it was accepted that there were 128 Vacancies as on 13.10.2001. In view of the same a letter from the department has been sent to Vigilance Commissioner along with the name of 128 persons for vigilance clearance to enable them for consideration for empanelment for promotion as Executive Engineer. By filing another counter affidavit in the aforesaid writ petition the respondent took stand that the Vigilance report had already been received and the matter was pending before the Departmental Promotion Committee and as such two weeks" time was prayed, for taking a final decision.

3. The sole grievance of the petitioners is that the petitioners, who are appointees of 1985, fulfilled other requisite qualifications. Their names were duly cleared by the Vigilance, still the same have not been sent before the

Departmental Promotion Committee for consideration for empanelment for promotion as Executive Engineer. According to the learned Counsel, appearing on behalf of the petitioners, if the vacancy of the year 2001 and the vacancy likely to occur in 2002 and vacancy upto July, 2003 are taken into consideration, the same would be much more than the persons whose names are being considered by the Departmental Promotion Committee and as the life of the panel was only for one year inspite of their vigilance clearance and inspite of the fact that they were eligible persons and vacancies were available till date, their names were not sent to Departmental Promotion Committee for promotion to the post of Executive Engineer.

4. By filing a supplementary counter affidavit, in para "4 thereof it has been contended on behalf of the respondent-State that the vacancies likely to occur from July, 2002 to June, 2003 would be 45 only i.e. 19 plus 36. It has further been contended that 109 vacancies on the basis of their statement after vigilance clearance can be considered by the Departmental Promotion Committee, out of which 4 persons have already been granted promotion and 76 persons still remain in the panel. The vacancies as per the stand of the State would be 45 only, as such until these 76 persons would not be promoted, the panel would not exhaust. In view of the said fact it is stated that the petitioners of the present writ application admittedly are on lower in the gradation list than the persons whose names were sent to the Departmental Promotion Committee and as the empanelled persons would also not be promoted before the panel lapses, as such by not considering the name of the petitioners for empanelment no prejudice has been caused to them as their names will never come for consideration for promotion during the next one year i.e. till June 13, 2003.

5. With regard to the arguments of the petitioners that in view of the resolution of the Personal and Administrative Reforms Department, as contained in Annexure 1, names three times number of vacancies occurring in the year is to be sent for consideration before the Departmental Promotion Committee. It has been contended by the learned Counsel for the State that the said resolution is required to be followed as far as practicable. In the present case, admittedly, names three times the number of vacancies available and likely to occur in future have been sent for vigilance clearance and after obtaining the same, as the vacancies which are there and likely to occur for the post of Executive Engineer are about 42 1/2 only, as such 109 names out of those 128 were sent to Departmental promotion Committee. As 80 persons have been empanelled for promotion as Executive Engineer, many names who were above the petitioners have been left out before Departmental Promotion Committee itself and they did not require consideration for empanelment. Had the consideration of all the names sent to Departmental Promotion Committee, exhausted and still vacancies remained then the present petitioners could have taken benefit of the present situation which is not only mandatory in nature. In any view of the matter even persons who have been empanelled they have again to face vigilance clearance for their promotion when the vacancy is available. Though they were promoted

and their empanelment is there, but an undertaking has been given in the Court in C.W.J.C. No. 1817/2002 that any right to those persons would accrue only when actual vacancy arose on the post of Executive Engineer and they were promoted on those posts and that too after vigilance clearance.

6. In view of the discussions made above, as no prejudice is caused to the petitioners in view of non-consideration of their case this Court is not inclined to pass any order in their favour.

7. The writ petition is accordingly disposed of.

8. Before parting with the order the only direction which I would like to issue to respondent-State is to look into this aspect of the matter regarding vacancy, which is occurring in the joint cadre of Bihar and Jharkhand State as the vacancy of Jharkhand State which was also to be filled up by the present cadre as the same has not been bifurcated as yet, is still kept vacant. The authorities should take steps for filling up those posts in occurrence with law at the earliest.