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(2016) 08 PAT CK 0067

In the Patna High Court

Case No : Civil Review No. 120 of 2016

Dipak Kumar APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 4 PLJR 530

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. S.D. Sanjay, Addl. Solicitor General of India and Mr. Tuhin Shankar, CGC, for the Union of India; Mr. Naresh Chandra Verma and Mr. Natraj Verma, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. Navaniti Prasad Singh, J.(Oral) - Heard learned counsel for the review petitioner and learned Additional Solicitor General of India for the Union of India.

2. The review petitioner was one of the respondents in C.W.J.C. No. 10247 of 2015 (Union of India and others v. Dhiraj Kumar and others). From the records it appears that the aforesaid writ petition was disposed of by us in terms of a separate judgment delivered in C.W.J.C. No. 12515 of 2015 (Union of India and others v. Ranjeet Kumar and others) on 11.01.2016. The issue in the case of Ranjeet Kumar was with regard to Stenographer Grade-III and the question was for consideration of promotion to Stenographer Grade-II. That was a separate cadre from that of Tax Assistant. Tax Assistant is a separate cadre having its own cadre rules.

3. In the judgment in the case of Stenographers this Court had held that upon voluntary inter-cadre transfer the person would lose his seniority and he would be placed at the bottom of the seniority-list in the new cadre, but having completed the minimum period of service, which shall include service in the

previous cadre, if he is to be considered for promotion, he cannot get the benefit of promotion over his seniors in his new cadre which would otherwise be effectively restoring his loss of seniority. In other words, what we have held was that unless the seniors'' case matures for consideration of promotion the juniors cannot be considered for promotion, even though they may have fulfilled the criteria. This principle be applied to the case of Tax Assistants as well. Learned counsel did not bring to our notice the cadre rules in respect of Tax Assistants which reads as follows :

"It is provided that :-

If a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation."

4. Having heard the parties, in our view, the submission is correct in view of the statutory provision noted above. It is clear that though upon inter-cadre voluntary transfer a person may lose his seniority and thus be placed at the bottom of the seniority-list in the new cadre, if the Tax Assistant has completed minimum regular service of three years in that grade, service being for the whole period irrespective of the cadre, he would be liable to be considered for promotion. In case, there was any senior in the seniority-list of the new cadre and had not completed the period, even though, would be considered accordingly. Thus, it would make a difference. No one''s promotion including the seniors and the juniors would be withheld once the juniors completed three years regular service in the grade and had qualified the departmental examination.

5. We accordingly, modify our judgment and order dated 11.01.2016, passed in C.W.J.C. No. 10247 of 2015(Union of India and others v. Dhiraj Kumar and others). This review application is, accordingly, disposed of.

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