

(2007) 04 PAT CK 0034
In the Patna High Court
Case No : CWJC No. 2678 of 2007

Dr. Radha Krishna Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Citation : (2007) 2 PLJR 805

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Mr. Tej Bahadur Singh, counsel for the petitioner, G.P. XII representing the State and Mr. Manan Kumar Mishra, counsel appearing on behalf of respondent no. 8. The question that arises for consideration in this case is what would be the basis of seniority for the purpose of transfer at the option of the teacher in terms of Rule 12 (kha) of the Bihar Nationalised Secondary School Service Conditions Amendment Rules, 2006 issued under notification no. 1410, dated 5.8.2006.

2. The facts of the case are brief and simple and can be stated thus. The petitioner is an Assistant Teacher in a nationalised secondary school. He was earlier posted at High School, Kasab. Bhojpur. He made an application for transfer as per his choice under rule 12 of the aforesaid Rules to M.P High School, Buxar. His application was allowed and by order, dated 2.9.1996 he was transferred to M.P. High School, Buxar. He joined there but on 19.10.2006 another order was issued cancelling his transfer to M.P. High school, Buxar. The petitioner's transfer to the School of his choice was cancelled on the ground that another teacher, namely, Ram Bachan Mishra (respondent no. 8) had also made an application for transfer to a school of his choice. In his application he had given the name of M.P. High School as his second choice. He could not be accommodated in the school of his first choice. He was senior to the petitioner and therefore, in terms of Rule 12(2)(ga) he had a preferential claim for being

posted to that school. Accordingly, respondent no. 8 was posted at M.P. High School and the petitioner's transfer to that school was cancelled.

3. The petitioner then came to this court in CWJC No. 13628 of 2006 challenging the order, dated 19.10.2006 by which his transfer to M.P. High School was cancelled and respondent no. 8 was sent to that school. According to the petitioner, though respondent no. 8 was appointed in 1970 long before him, he had lost his seniority on the basis of his date of appointment as a result of his transfer in September, 1990 from Saran Division to Patna Division that he had taken on his own request. It was contended that as a consequence of his earlier transfer his seniority could only be reckoned from the date he joined in the Patna Division and, he would, thus, rank much junior to the petitioner.

4. In the earlier writ petition it was stated on behalf of the State that the departmental authorities were willing and prepared to reconsider the matter. The earlier writ petition was, therefore, disposed of by order, dated 3.1.2007 with a direction to the Director, Secondary Education to reconsider the matter and to pass appropriate orders, in accordance with the rules.

5. In pursuance of the court's direction the Director, Secondary Education heard the parties and the Regional Dy. Director of Education, Patna. He upheld the petitioner's contention that in the gradation list of teachers of Patna Division the petitioner would rank much higher to respondent no. 8 because respondent no. 8 came to this Division in 1990 long after the petitioner's appointment. He further held that respondent no. 8 would be junior to the petitioner for other service benefits. But since the provision of Rule 12(2)(ga) stipulated that the basis of seniority would be the date of appointment, for the purpose of optional transfer he would be senior to the petitioner. The Director accordingly reiterated the earlier order of posting of respondent no. 8 to M.P. High School, Buxar.

6. The view taken by the Director though based on the plain language of the rule is apparently anomalous because no employee can have two different positions in the seniority list on the basis of two different criterion for determining seniority. It is, therefore, necessary to correctly and properly understand the true meaning of the provision in light of the previous amendments.

7. The Bihar Nationalised Secondary Schools (Service Conditions) Rules were first framed in 1983 and were notified under memo no. 75-398, dated 9.6.1983. Rule 12 of the Rules dealt with transfer and sub-rule (kha) provided that transfer of a teacher outside the cadre, on his request, would be possible only at the loss of seniority. The rule was amended by memo no. 437, dated 28.4.1988. Sub-rule (ja) of the amended Rule 12 provided that if a teacher wished to go to a different cadre from his own, he could do so only by sacrificing his seniority.

8. It is not in dispute that the cadre of secondary school teachers is Division based. It is also an admitted position that respondent no. 8 was appointed in 1970 in a school in Saran Division and in September, 1990 he was transferred from there to a school in Patna Division at his own request. In terms of clause

(ja) of Rule 12 as introduced by the 1988 amendment, he undeniably lost his seniority on the basis of his date of appointment being 1970 and for all intent and purpose his seniority could only be reckoned from the date of his transfer to Patna Division.

9. The rule was further amended in 1997 under memo no. 4575, dated 29.10.1997. Under the 1997 Rules too the same provision was retained under clause (jha) of rule 12 and then finally came the present amended rule in which it is stated that for the purpose of optional transfer the seniority between two claimants would be judged on the basis of the dates of appointment.

10. In the background of the changes in the rules, as indicated above. I have no doubt that clause (kha) of Rule 12 would relate only to such teachers who had not taken any inter-divisional transfer in the past. Clause (kha) of Rule 12, in case of a teacher who has already taken inter-divisional transfer on his own request must be read to mean seniority as readjusted on the basis of the earlier inter-divisional transfer. Any other view would lead to the highly anomalous situation where a person would have two seniority positions, one for other service benefits and the other for transfer on optional basis. The law does not recognize two seniority positions or two different basis of seniority of the same person. This would also have the unreasonable result of a person taking benefit of transfer according to his choice twice over without any loss of seniority.

11. For the reasons stated I have no doubt that for the purpose of optional transfer under rule 12(2) seniority of a teacher must be determined taking into account any earlier inter-cadre, if any. Seen in this view, the petitioner would be undeniably senior to respondent no. 8. I accordingly quash the orders, dated 24.1.2007 and 19.10.2006 as contained in Annexures 1 and 1/A respectively. The authorities are directed to allow the petitioner to continue at M.P. High School, Buxar.

12. Mr. Manan Kumar Mishra submitted that respondent no. 8 had only one and a half year left of his service and it was in that situation that he wanted to be posted at a school near his village home. The authorities while giving a fresh posting to respondent no. 8 may consider his -request and try to accommodate him at a nearby place. In the result, this writ petition is allowed but with no order as to costs.