

(2000) 02 PAT CK 0108
In the Patna High Court
Case No : C.W.J.C. No. 5881 of 1996

Dr. Ram Sewak Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Citation : (2000) 4 PLJR 104

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

Bench : Single Bench

Advocate : Sadanand Jha, Mahendra Pd. Sharma, for the Appellant; A.N. Singh for State, Mr. Santosh Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The writ petition was preferred by petitioner for direction on the respondents to promote the petitioner to the post of Reader w.e.f. 20.5.1983 and then to the post of Professor w.e.f. 20.5.1988, in the department of "Sanskrit Sanhitya Exam Moulin Sidhant in Government Ayurvedic College at Patna. When the case was taken up and the counsel for the petitioner was confronted to the question that the petitioner had no right to be considered or promoted from the aforesaid retrospective date, in absence of rule/guideline and/or till he shows that juniors had been promoted, the counsel for the petitioner confined his argument for promotion to the post of Reader in the then scale of Rs. 3000-4500/- w.e.f. 1.7.1989 i.e. from the date the 5th respondent Dr. Maheshwar Pandey had been so promoted, during pendency of the writ petition vide Memo no. 880 dated 17.12.1999, subject to the decision of the present case.

At this stage, it is permnent to mention that the petitioner, in the meantime retired in 1999 from the services of the State.

In the circumstances, the sole question to be determined is as to whether the petitioner was senior to 5th respondent or not.

2. According to the petitioner, he having appointed as lecturer from earlier date

than the 5th respondent, is senior to him for the purpose of promotion to next higher post of reader.

On the other hand, the counsel for the 5th respondent and the State relied on Resolution no. 206 dated 24.11.1991 issued by the State whereby the nomenclature of the post of demonstrator was changed to lecturer with stipulation that the persons earlier worked as demonstrator will get benefit of experience as lecturer from the date of their appointment as demonstrator. The stand of the respondents is that the 5th respondent having appointed prior to petitioner as demonstrator, shall rank senior to petitioner, as allowed by the State, nomenclature of demonstrator having changed to lecturer.

3. To determine the aforesaid question, it is necessary to look into the details of service career of both the petitioner and the 5th respondents, as recorded hereunder :

The petitioner was appointed as temporary demonstrator (Sanskrit Padarth Vigyan) in the scale of Rs. 340-490/- vide order dated 17.5.1975 (Annexure-1) with effect from the date of joining i.e. 20.5.1975. On the other hand, the 5th respondent was so appointed as demonstrator (Sanskrit Padarth Vigyan) on temporary basis in the scale of Rs. 340-490/- by earlier order dated 12.5.1975 (Annexure-6) with effect from the date of joining i.e. 17.5.1975.

Thereby, it is evident that the 5th respondent was senior to petitioner as demonstrator (Sanskrit Padarth Vigyan).

So far as appointment to the post of lecturer is concerned, both the petitioner and the 5th respondent were initially appointed on temporary basis. While petitioner was appointed as lecturer (Sanhoity) in the scale of Rs. 415-745/- vide order dated 6.12.1977 (Annexure-5), 5th respondent was appointed as temporary/adhoc lecturer (Ras Shastra) vide earlier order dated 2.12.1977 (Annexure-6A). However, from the order contained in Annexure-B to the counter-affidavit and Annexure-8 dated 14.12.1984, it appears that the 5th respondent was subsequently reverted to the post of demonstrator since 5.2.1978, whereas the petitioner continued as adios lecturer.

The service of the petitioner was regularised as lecturer (Sanhitya) w.e.f. 20.5.1978 vide order dated 3.8.1982 (Annexure-9). On the other hand, the 5th respondent was posted subsequently as lecturer (Sanhitya) vide order dated 14.12.1984 (Annexure-8) against a post created vide letter no. 192 dated 20.3.1979. Thus, it will be evident that the date of appointment of 5th respondent as lecturer (Sanhitya) is later than the date of appointment of petitioner as lecturer (Sanhitya). The post against which the 5th respondent was adjusted having created on 20.3.1979, i.e. much after the regular appointment of petitioner made w.e.f. 20.5.1978, even for the purpose of argument, it is presumed that the date of appointment of 5th respondent will go back to the date of creation of the post, the 5th respondent cannot claim seniority over petitioner as lecturer (Sanhitya).

4. So far as resolution dated 24.11.1991 (Annexure-D to the counter affidavit) is concerned, by the said resolution, the State Government merely changed the nomenclature of demonstrator as lecturer. The same was not given retrospective effect for the purpose of determination of seniority. It merely stipulated that the persons earlier worked as demonstrator, such period to be counted as lecturer for the purpose of experience but it does not provide any such benefit in respect of "seniority". This apart, the seniority vis-a-vis petitioner and 5th respondent as lecturer having already settled prior to 24.11.1991, the said resolution cannot effect (sic-affect ?) the same.

Thereby, I hold that the petitioner was senior to 5th respondent as lecturer (Sanhitya) and accrued (sic-acquired?) right to be considered for promotion to the post of Reader w.e.f. 1.7.1989 i.e. from the date 5th respondent has been granted such promotion.

However, as the 5th respondent has been promoted as Reader w.e.f. 1.7.1989 vide order contained in Memo no. 880 dated 17.12.1999, i.e. after the retirement of petitioner and in any manner even on notional promotion, petitioner cannot joint such post of Reader, I am not inclined to disturb the order of promotion issued in favors of 5th respondent on 17.12.1999. But petitioner having accrued (sic-acquired?) right to be considered, I direct the respondents to consider the case of petitioner for notional promotion to the post of Reader w.e.f. 1.7.1989 in the then scale of Rs. 3000-4500/- and issue appropriate order thereon within a period of four months from the date of receipt/production of a copy of this order.

Further the 5th respondent having not granted financial benefit on such promotion from retrospective date the petitioner will also not be entitled for financial benefit of arrears of salary, on retrospective promotion, if granted, However, the petitioner will be entitled for consequential re-fixation of pay for the purpose of determination of retrial benefits, including the arrears of retrial benefits on such revision. The writ petition is allowed, with the aforesaid observations/directions.