

(2003) 04 PAT CK 0078
In the Patna High Court
Case No : L.P.A. No. 331 of 1996

Dr. Sarvesh Chandra Prabhakar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Bihar Educational Service (Class I) and Bihar Educational Service (Class II)
Recruitment Rules, 1973 — Rule 4

Citation : (2003) 2 BLJR 852 : (2003) 2 PLJR 787

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Rajendra Prasad Singh, Niranjana Kumar, Rajeev Kumar Singh and Sanjay Kumar Singh, for the Appellant; Dilip Kumar, JC to GP 5 and Man Mohan, Rupak Kumar and Virendra for Respondent 6, for the Respondent

Final Decision : Allowed

Judgement

R.N. Prasad, J.—Respondent No. 6 was appointed in Rashtra Bhasha Parishad vide letter dated 13-11-1975. He joined on 1-12-1975. He was given selection grade vide order dated 1-2-1986 and senior selection grade scale vide order dated 1-2-1989. The appellants came in service of Rashtra Bhasha Parishad later than respondent No. 6. A seniority list was prepared in the cadre of Subordinate Educational Service (upper division) in the Bihar Rashtra Bhasha Parishad. In the seniority list respondent No. 6 was placed at serial No. 1 and the appellants were placed at Serial Nos. 2 to 4. The appellants were promoted vide notification dated 10-3-1995 to the Bihar Educational Service class II. Respondent No. 6 aggrieved by the said notification dated 10-3-1995 filed CWJC No. 2862/95 making prayer therein to quash the said notification on the ground that his case was not considered for promotion though he was at serial No. 1 in the gradation list in the cadre of Subordinate Educational Service. The promotions to the Bihar Educational Service Class II are made on the basis of Seniority in the Subordinate Educational Service according to the Rules framed under Article 309 of the Constitution of India. In spite of the Rules his case was not considered and

the appellants were allowed promotion to Bihar Educational Service Class II.

2. The appellants, pursuant to the notice, appeared, in the case and filed counter-affidavit. Their stand was that for promotion on the post of Research Officer in Class II Bihar Educational Service the requisite qualification was M.A. in Hindi or Sanskrit. No one can be promoted to the post as indicated above unless he possesses requisite qualification. The appellants possessed requisite qualification and as such they were promoted to the post of Research Officer. Respondent No. 6 was not possessing requisite qualification and as such he was not allowed promotion on the post of Research Officer.

3. The writ petition was allowed on 9-2-1996 and the order impugned was quashed. Respondents were directed to consider the case of respondent No. 6 and other eligible candidates including the appellants for vacant post of Research Officer in accordance with law and fill up the vacancy as expeditiously as possible. The said order has been challenged by the appellants in this Letters Patent Appeal.

4. Before advertizing to the question involved in this case it would be pertinent to mention that there was Rule known as "The Bihar Educational Service (Class I) and the Bihar Educational Service (Class II) Recruitment Rules, 1973". Rule 4 of 1973 Rules is relevant which deals with appointment/promotion to the post of Research Officer and other post in the institutions including Rashtra Bhasha Parishad says that if suitable and fully qualified and experienced candidates in desired subjects are available, their case for promotion will also be considered. The relevant portion of Rule 4 is quoted here-in-below :

"(4) Appointments to the posts of Subject Teachers in the Training Colleges, Government College of Health and Physical Education, Government School of Arts and Crafts, Institutes of Science, Education and English, Director, Professors and Lecturers, Research Fellows in the various Research Institutes, Re-search-cum-Teaching Institutes such as Nava Nalanda Mahayihara, Institute of Prakrit and jainology, K.P. Jaiswal Institute, Mithila Sanskrit Research institute, Rashtra Bhasha Parishad, Sanskrit College, Madrasa Islamia Shamsul Huda, Reformatory Schools and Pilot Centre for Juvenile Delinquent shall be made by open advertisement in accordance with the rules in Part III. Provided that where suitably and fully qualified and experienced candidates in the desired subjects are available to fill the vacancies by promotion, their cases for promotion will also be considered. The name of any institute of similar type may be included in this group from time to time by the order of the Governor published in the official gazette."

5. There was amendment in 1973 Rules. The notification with respect to amendment was issued on 16-5-1987 and a provision was made that for appointment/ promotion on the post of Professor/Research Officer in the Rashtra Bhasha Parishad and other institutions the minimum qualification must be post graduate degree in second class, besides other requirement. The amended Rule

has been annexed as Annexure 1. Therefore, it is quite clear that for promotion on the post of Professor/ Research Officer the minimum qualification has been prescribed i.e. master degree in the subject.

6. Admittedly, respondent No. 6 did not possess the master degree in the required subject whereas the appellants possessed master degree and they were promoted vide notification dated 10-3-1995, Annexure 6, to the post of Research Officer. Obviously the person who does not possess the requisite qualification as required under rule cannot claim promotion on the promotional post. The aforesaid aspect of the matter was not considered and the writ petition was allowed only on the ground that respondent No. 6 was senior in the gradation list. It is to be noted that even in the case of promotion by seniority-cum-merit if the candidate does not possess requisite qualification as required under the Rule no legal claim can be made for promotion. The Rule itself prescribes minimum qualification for the promotional post. In the order impugned also Rule was noticed but it was stated that nothing was brought on the record to show that there was any rule prescribing qualification. Learned Counsel for the appellants contended that Rule has been framed under Article 309 of the Constitution of India and, as such, such Rule cannot be ignored. Learned Counsel for respondent No. 6, however, could not be able to controvert the submission of the learned Counsel for the appellants. Moreover, he could not be able to justify the order under appeal.

7. Thus on consideration, we find that respondent No. 6 did not possess requisite qualification for promotion on the post of Research Officer on which the appellants have been promoted and as such he cannot claim promotion on the post. In such a situation, the order under appeal cannot be allowed to sustain. Accordingly, the appeal is allowed. The order impugned is hereby set aside but without cost.

Ravi S. Dhavan, C.J.

I agree.