(2004) 08 PAT CK 0053

In the Patna High Court

Case No : CWJC No. 8844 of 1999

Hari Kishore Pandey APPELLANT

Vs

Rajendra Agricultural University and Others RESPONDENT

Date of Decision : 13-08-2004

Acts Referred:

Citation : (2004) 2 BLJR 1520 : (2005) 3 PLJR 371

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Gajanan Arun, for the Appellant; B.K. Jha, for the respondent No. 6, S.K. Sinha and V.R.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—The present writ application depicts a sorry state of affairs under the hands and control of Rajendra Agricultural University, Samastipur.

2. The facts in nutshell for purposes of disposal of this writ application are that the Respondent No. 6 was made Incharge of the Office of Assistant Comptroller (Audit), the petitioner being aggrieved by the said arrangement came to this Court in CWJC No. 567 of 1997. The said writ application was disposed of on 16.5.1997. The Court found that the relevant statute provides that candidates for the promotion in question will be selected on the basis of merit cum seniority. The Court also referred to the statutory provision which is as under:

"Recommended percentage of vacancy should be filled up by promotion only when suitable qualified candidates are recommended on merit-cum-seniority basis by the Evaluation Committee."

3. The Court observed that in the past the criteria adopted for promotion was seniority-cum-merit in disregard of the statutory provision of merit-cum-seniority. The Court also observed that from Annexure-2, of the said writ application it appeared that a note in this regard was put up by the Director, Administration, before the Vice Chancellor bringing to his notice the said

irregularity. The Vice Chancellor very surprisingly observed that the existing policy be followed in place of statutory provision. The Court observed that the Counter Affidavit was filed by the University in the said matter wherein it was submitted that the order impugned was merely a working arrangement and the said Respondent No. 7 (present Respondent No. 6) was not in fact given any promotion to the post of Assistant Comptroller (Audit). This Court observed that undeniably even for the working arrangement the said Respondent was picked up by following a procedure contrary to the statutory provision. The Court accordingly, quashed the said Annexure-6. The Court directed that in case the post is filled up on the basis of promotion then the candidates including the petitioner would be considered for promotion on the basis of statutory criteria of merit-cum-seniority and not otherwise. After the said order was quashed, the Evaluation Committee of the University again met on 6.7.1999. They examined the cases of the three Senior Auditors, namely, Sri A.S. Jha (Respondent No. 6), Sri S.K. Thakur and Sri Hari Kishore Pandey (Present petitioner) for their suitability to the post of Assistant Comptroller (Audit) on the basis of merit-cum-seniority, as envisaged under the provisions of the Statutes of the Rajendra Agricultural University. From the order dated 7.7.1999 (Annexure-15) impugned in these proceedings it appears that the said Committee examined the matter in detail, the matter was examined in the Evaluation Committee meeting held on 28.6.1999 and a unanimous decision was taken to fill up the post of Assistant Comptroller (Audit) by direct recruitment as the earlier incumbent Sri S.C. Srivastava was a promotee. The Evaluation Committee made its recommendations that Senior Auditor Sri A.S. Jha be asked to work as Assistant Comptroller (Audit) in addition to his own duties till a regular appointment is made on the post of Assistant Comptroller (Audit). This arrangement undisputedly is going on for more than 5 years. The petitioner being aggrieved by the direction that the post would be filed by direct recruitment and the order giving charge to Sri A,S. Jha is again before this Court.

4. Learned counsel for the University at the very outset submitted that the University has decided that the post of Assistant Comptroller (Audit) shall be filled only by promotion. In that view of the statement, the first grievance of the petitioner stands redressed.

5. When this Court asked learned counsel for the University as to why the arrangements are going on for more than 5 years, learned counsel for the University submitted that the State Government has issued a direction that no fresh appointments can be made and as the promotion of the Senior Auditor to the Office of the Assistant Comptroller (Audit) would be an appointment by promotion the respondents are unable to do anything. In the opinion of this Court, in a hypertechnical sense it may be deemed to be an appointment by promotion but in the Government services when the promotion channels are available and a competent person is to be promoted from the lower cadre to the higher cadre or from the lower office to the higher office then this is a case of simple promotion and not an appointment by promotion. Under the

circumstances the respondents are obliged to fill the post by making regular promotion.

6. Learned counsel for the petitioner submits that from a perusal of Annexure-15 it would clearly appear that in view of the recommendations made by the Evaluation Committee the order has been issued in favour of the Respondent No. 6 while in fact the Evaluation Committee did not consider the comparative merits of the persons who are within the zone of consideration.

7. Learned counsel for the University submits that from the counter filed by the respondents it would clearly appear that the comparative merits of all the three persons were considered. In paragraph 10 of the counter filed by the University, they have made the following statements :

"That the deponent states and submits that the Vice- Chancellor of the University had convened a special meeting of Evaluation Committee to consider the matter relating to interim working arrangement for the post of Assistant Comptroller (Audit). The said Committee held its meeting on 6.7.1999 and endorsed the view of earlier Evaluation Committee which had held its meeting on 28.6.1999 and was of the view that the post of Assistant Comptroller (Audit) was till recently held by a promotee and since the post was to be filled up alternatively by direct recruitment/promotion, now it was the turn of direct recruitment."

8. In support of these pleadings they have filed Annexure-A with their counter affidavit. It is not known to anybody that who were the Members of the earlier Evaluation Committee which took up the task of considering the comparative merits on 28.6.1999. It is also not known to anybody that who were the Members of the subsequent Committee which endorsed the earlier view in the subsequent meeting on 67.1999. Even at this stage I must express that I am at a loss to understand that if these were the two different Evaluation Committee then how could the subsequent Evaluation Committee accept the evaluation report prepared or made by the earlier Evaluation Committee. The task of the Members of the Evaluation Committee is to consider the comparative merits and record a finding that amongst the persons present before them, who is the most meritorious person. The endorsement of the earlier Committee''s report by the subsequent Committee, in fact, would be bad and would show non-application of mind by the subsequent Committee. It is further to be seen from their counter that comparative merits chart is at page-15. For Sri A.S. Jha, 8 years'' Grades have been produced before the Evaluation Committee which show that he had received 2 ''A'', 2 ''B+'', 1 ''B'', 1 ''NR'' (not received) and 2 ''Nil''. For the petitioner Sri Hari Kishore Pandey, for a period of 9 Years no Grades were produced, no final remarks were produced before the said Committee. For Sri. S.K. Thakur, assessments have been made for 8 years - for 5 years he received ''B'' Grade while for other 3 years nothing has been shown. If the items of performance in relation to the present petitioner were not made available to the Evaluation Committee, in what manner and how could the Committee work is a question to be answered by the Respondent-University. Unfortunately but for

following the said comparative charts of the merits they have not said anything about it. When the merits are to be considered then the details relating to the merits, the grades, the adverse remarks etc. are to be produced before the Evaluation Committee. I must observe even at this stage that the Evaluation Committee was bent upon making arrangement in favour of Respondent No. 6, Sri A.S. Jha and therefore it collected all his CRs and the items of performance but did not take care to collect the merits in relation to the petitioner and Sri S.K. Thakur.

9. I asked the learned counsel for the University to satisfy me that on what basis the comparative merits were compared. Learned counsel for the University fairly submitted that the final remarks were not produced before the Evaluation Committee but on the available material the Committee had made its recommendations. The recommendations of the Committee are on page-11, under Annexure-A. On page-12, the Committee has observed as under:--

"The Committee today looked into the service records of (1) Sri A.S. Jha (2) Sri S.K. Thakur and (3) Sri H.K. Pandey, the three eligible candidates. The details of the service records are appended at Annexure-1. From the comparative picture of the three eligible candidates namely Sri A.S. Jha, Sri S.K. thakur and Sri H.K. Pandey, it is apparent that Sri A.S. Jha is the senior most among the three as Senior Auditor as well as because he is the only Junior Selection Grade Senior Auditor out of the three and at present he is in higher scale compared to the other two. It is also to be noted that while the substantive post of Senior Auditor is being held by Sri A.S. Jha since 2.8.1985, the same is being held by Sri S.K. Thakur since 9.8.85 and Sri H.K. Pandey since 2.1.1993."

10. From a perusal of these observations, it would appear that as an eye-wash the Committee was observing that they looked into the service records of Sri A.S. Jha, Sri S.K. Thakur and Sri H.K. Pandey, the three eligible candidates. They also observed that details of the service records were appended at Annexure-I. They observed that from the comparative picture of the three eligible candidates, it would be apparent that Sri A.S. Jha is the seniormost amongst the three as Senior Auditor. They also noted that Sri A.S. Jha was holding the substantive post of Senior Auditor since 2.8.1985 while the other two incumbents, namely, Sri. S.K. Thakur was holding the post since 9.8.1985 and the petitioner Sri H.K. Pandey was holding the post since 2.1.1993. It was further observed by them --

"A comparative statement of the Annual Assessment Report from the year 1991 to 1998-99 has been appended at Annexure-II. From perusal of the, Annexure-I I it is evident that in matters of the AARs right from the year 1991-92 to 1998-99, out of all the 3 candidates, definitely the AARs of Sri A.S. Jha and Sri S.K. Thakur are superior to those of Mr. H.K. Pandey and between Mr. A.S. Jha and Sri S.K. Thakur, Mr. A.S. Jha ranked higher to those of Mr. S.K. Thakur."

11. They had observed that a comparative merits assessment of the Annual Assessment Reports (AARs) as mentioned in the comparative chart on

page-15/16 from the year 1991 to 1998-99, appended at Annexure-II, was perused by them. They observed that from a perusal of Annexure-II it would be evident that in matters of AARs right from 1991-92 to 1998-1999, out of the three candidates, definitely the AARs of Sri A.S. Jha and Sri S.K. Thakur were superior to these of Mr. H.K. Pandey and between Mr. A.S. Jha and Sri S.K. Thakur, Mr. A.S. Jha may be ranked higher to those of Mr. S.K. Thakur. Annexure-II appended to the report, it appears, was not properly seen by the Members of the Evaluation Committee. They had observed that the AARs for the year 1991-1992 to 1998-1999 were seen but in relation to Mr. H.K. Pandey reports for the year 1990-91 to 1998-1999 were never produced before the Evaluation Committee. If they don''t look to the reports and start making observations and make recommendations then their action belies their honesty and gives a solid dent to the recommendations made by them. The comparative merits can be compared only after the reports/records are produced. I am at a loss to understand that in what manner the comparative merits were examined when the records relating to the petitioner were never produced before the Evaluation Committee. From Annexure-II appended to the recommendations it would clearly appear (hat for 9 years - the period under assessment, the records were not produced before the Evaluation Committee and even in absence of such records the Evaluation Committee observed that records of Mr. A.S. Jha are better in comparison to the records and AARs of Mr. H.K. Pandey, the petitioner. I would again repeat that the merits are to be compared on the basis of the material available and not in the air or in a fanciful or whimsical manner. The recommendations made by the evaluation Committee are bad; those could not have been accepted. The recommendations are hereby quashed. Consequently the order making arrangement in favour of Respondent No. 6 is also quashed.

12. The respondents are hereby directed first to make some policy that what would be the criteria to consider the comparative merits, this should be done by them within three months from the date of submission of copy of this order. After framing such a policy or the guidelines they would collect the AARs of the candidates for all the years. If AARs of particular persons are not available then they would see that such AARs are recorded by the person authorised to record such AARs. This exercise shall also be completed by them within three months next to framing of the policy. After comparing the comparative merits, they would pass an order in favour of the person, who is found best in the lot. It is expected of the Evaluation Committee that instead of giving undue mileage to the Respondent No. 6 that he has held the post for last 6 years or so; they would consider the comparative merits on basis of the post held by them and their performance as Senior Auditors.

13. The petition, to the extent indicated above, is allowed.

