
(2008) 07 PAT CK 0135
In the Patna High Court

Indrajit Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 1 PLJR 30

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—C.W.J.C. No. 8880 of 2001 has been filed by the petitioner praying inter alia to direct the authorities of the Zila Parishad, Sitamarhi to produce the entire records of the proceeding dated 6.6.2001 whereunder private Respondent Nos. 4 and 5 have been promoted on the post of Vaidya ignoring the better claim of the petitioner as contained in Annexure-B to the Counter affidavit of C.W.J.C. No. 8880 of 2001 as also to quash the order dated 7.6.2001 as contained in Annexure-C to the counter affidavit of C.W.J.C. No. 8880 of 2001 whereunder private Respondent Nos. 4 and 5 have been informed of the decision to promote them on the post of Vaidya.

2. C.W.J.C. No. 4549 of 2005 has been filed by the petitioner praying inter alia to direct the authorities of the Zila Parishad, Sitamarhi to pay the petitioner arrears of salary of the post of Vaidya for the period between July, 1999 to March, 2001 when he served as Vaidya in the light of the order bearing Memo No. 1007 dated 30.3.1991 passed by the Deputy Development Commissioner-cum- Chief Executive Officer of Zila Parishad, Sitamarhi as contained in Annexure-1 of C.W.J.C. No. 4549 of 2005. Under order dated 11.12.2006 C.W.J.C. No. 4549 of 2005 was directed to be listed along with C.W.J.C. No. 8880 of 2001 which order was again reiterated on 24.4.2008 when it was directed that C.W.J.C. No. 4549 of 2005 be taken up side by side with C.W.J.C. No. 8880 of 2001, accordingly both matters were heard together and are being disposed of by this common order.

3. Petitioner was appointed as a Compounder in the Zila Parishad, Sitamarhi. He was promoted as Vaidya by the Zila Parishad under order bearing Memo No. 1007 dated 30.3.1991, issued under the signature of the Deputy Development Commissioner-cum-Chief Executive Officer as contained in Annexure-2 in C.W.J.C. No. 8880 of 2001, which promotion was challenged by private Respondent No. 5, Vijay Kant Jha by filing C.W.J.C. No. 3425 of 1991 which writ petition was dismissed in limine under orders dated 9.9.1992 as contained in Annexure-3 in C.W.J.C. No. 8880 of 2001.

4. Private Respondent No. 4, Prakash Choudhary also questioned the validity of the order dated 30.3.1991, Annexure-2 whereunder petitioner was promoted on the post of Vaidya by filing C.W.J.C. No. 2882 of 1991, which was entertained by this Court and during the pendency of the said writ application Raghubansh Kishore Prasad Sahi was also promoted on the post of Vaidya under orders dated 3.1.1998 which is contained in Annexure-7. Aforesaid order was also assailed by amending C.W.J.C. No. 2882 of 1991 and impleading Raghubansh Kishore Prasad Sahi as Respondent No. 6 in the said writ application. This court under judgment dated 17.8.2000, Annexure-4 allowed C.W.J.C. No. 2882 of 1991 in part and quashed the promotion of Raghubansh Kishore Prasad Sahi on the post of Vaidya as reflected under orders dated 3.1.1998, Annexure-7 to the said writ application. Perusal of the said judgment further indicates that during the hearing of the said writ application this Court also considered the provisions of Bihar Panchayat Samiti and Zila Parishad (Service Condition) Rules, 1964(hereinafter referred to as "the Rules") and observed that the provisions contained in Sub-rule 5 of Rule 7 of the Rules relates to the ministerial officers and will have no application to the technical officers as they have been put in a separate category in terms of the provisions contained in Rule 6 of the Rules. The aforesaid judgment dated 17.8.2000 was assailed by the private Respondent No. 4, Prakash Choudhary as also by Raghubansh Kishore Prasad Sahi by filing Letters Patent Appeal Nos. 1258 and 1259 of 2000. Both the appeals were heard together and disposed of under judgment dated 12.3.2001, whereunder the appeal filed by private Respondent No. 4, Prakash Choudhary was allowed cancelling the promotion granted to the petitioner on the post of Vaidya. The appeal of Raghubansh Kishore Prasad Sahi was, however, dismissed with observation that as the petitioner herein and Raghubansh Kishore Prasad Sahi have worked on the post of Vaidya, no steps be taken to recover the amount for the period they have actually worked on the post of Vaidya and with further direction to the authorities to consider the matter of promotion on the post of Vaidya afresh in the light of the provisions contained in the aforesaid Rules. Division Bench under orders dated 12.3.2001 did not upset the finding of the learned Single Judge that Sub-rule(5) of Rule 7 provides for promotion of the ministerial officers and not of the technical officers as they are governed by Rule-6

5. In compliance of the directions of the Division Bench of this Court contained in order dated 12.3.2001, Annexure-5 in C.W.J.C. No. 8880 of 2001, Selection

Committee of the Zila Parishad considered the case of the eligible Compounders for promotion on the post of Vaidya on 6.6.2001 and applying the golden Rule of seniority cum merit allowed promotion to private Respondent Nos. 4 and 5 on the post of Vaidya with effect from 6.6.2001 and in the light of the said proceeding, order bearing Memo No. 75 dated 7.6.2001 was issued. The proceeding of the Selection Committee as also the promotion order are contained in Annexures-B and C to the counter affidavit of C.W.J.C. No. 8880 of 2001.

6. Learned Counsel for the petitioner has assailed the promotion granted to private Respondent Nos. 4 and 5 on the ground that in terms of the provisions contained in Sub-rule(5) of Rule 7 of the Rules, the promotion is required to be consider in terms of the merit cum seniority and not seniority cum merit and as the authorities have not given preference to merit over seniority, the entire exercise as reflected in the proceeding dated 6.6.2001 as also the promotion order dated 7.6.2001 is fit to be quashed as violative of the relevant Rules as also provisions contained in Articles 14 and 16 of the Constitution of India/in support of such plea learned Counsel for the petitioner has relied upon the judgment of the Hon"ble Single Judge in the case of Mahesh Chandra Prasad Versus the State of Bihar bearing C.W.J.C. No. 2876 of 1998 disposed of under orders dated 4.4.2000. Perusal of the said judgment indicates that while considering the case of Junior Engineer for promotion on the post of Assistant Engineer which is also a technical post under Rule 6 of the aforesaid Rules, this Court directed with reference to the provisions of Sub-rule(5) of Rule 7 of the Rules observing that the relevant criteria for promotion on the post of Assistant Engineer is merit cum seniority and on that basis affirmed the promotion granted to private Respondent No. 7 of the said case on the post of Assistant Engineer as he had degree in engineering which according to the said judgment was certainly a factor in his favour vis-a-vis the petitioner of the said case who was only a diploma holder.

7. With reference to the aforesaid observations and findings of this Court in the case of Mahesh Chandra Prasad (supra) learned Counsel for the petitioner submitted that the proceeding of the Selection Committee dated 6.6.2001 which has primarily taken into account the seniority of the Compounders for promotion on the post of Vaidya along with order dated 7.6.2001, whereunder private Respondents have been promoted on the post of Vaidya on the basis of the proceedings dated 6.6.2001 be quashed on the ground that while taking the decision to promote the private Respondents, the authorities of Zila Parishad, Sitamarhi did not give preference to merit over seniority as is required under Sub-rule(5) of Rule 7 of the Rules, which is also to be applied in the case of technical officers covered by Rule 6 of the Rules as has been held by this Court in the Case of Mahesh Chandra Prasad (Supra).

8. Learned Counsel for the private Respondents in reply submitted that while considering the case of Mahesh Chandra Prasad (Supra) this Court did not take notice of the provisions contained in Rule 6 of the Rules, which carves out a

separate class of technical officers and further did not take notice of the fact that Rule 7 is only confined to ministerial officers and proviso to Sub-rule (5) of Rule 7 of the Rules will have application only in the case of ministerial officers and shall have no application in the case of technical officers as was held by this Court under judgment dated 17.8.2000 passed in the case of Prakash Choudhary bearing C.W.J.C. No. 2882 of 1991, Annexure-4, which observation was not set aside while cancelling the promotion of the petitioner under judgment dated 12.3.2001 passed in Letters Patent Appeal Nos. 1258 and 1259 of 2000, Annexure-5.

9. Having heard counsel for the parties, I am of the view that petitioner and private Respondents were initially appointed as Compounder which is a technical post in terms of Sub-rule(1)(V) of Rule 6 of the Rules and while considering their promotion on the higher post of Vaidya, proviso to Sub-rule (5) of Rule 7 will have no application as the same has application only in the case of ministerial officers as was held under judgment dated 17.8.2000, Annexure-4 in the case of Prakash Choudhary, which finding was not upset in appeal under judgment dated 12.3.2001, Annexure-5 while cancelling the promotion of the petitioner on the post of Vaidya , as such, in my opinion the authorities while considering the case of the Compounders for promotion on the post of Vaidya under proceeding dated 6.6.2001 as contained in Annexure-B rightly applied the rule of seniority cum merit on the basis of which order promoting private Respondents on the post of Vaidya dated 7.6.2001, Annexure-C was issued and there does not appear to be any illegality in either the proceeding or in the consequential order, in the circumstances, C.W.J.C. No. 8880 of 2001 is dismissed.

10. While cancelling the promotion of the petitioner under judgment dated 12.3.2001, Division Bench made it clear that as petitioner herein Respondent No. 4 in L.P.A. NO. 1258 of 2000 had worked on the post of Vaidya, no steps should be taken to recover the amount for the period they have actually worked. This protection necessarily mean that salary of the post of Vaidya be paid to the petitioner for the period he has actually worked and in this view of the matter while disposing of C.W.J.C. No. 4549 of 2005, it is directed that if the petitioner has worked as Vaidya for the period, July, 1999 to March, 2001 then he be paid salary of the said post of that period as early as possible, in any case, within a period of three months from the date of receipt/production of a copy of this order. C.W.J.C. No. 4549 of 2005 is, accordingly disposed of.