

(2005) 03 PAT CK 0110
In the Patna High Court
Case No : CWJC No. 814 of 2000

Jagdeo Ram

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Citation : (2005) 2 PLJR 436

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Nawal Kishore Singh and Kumar Chandrashekhar, for the Appellant;
S.D. Yadav and N.K. Prasad, for the Respondent

Judgement

Barin Ghosh, J.—Heard Learned Counsel for the parties. There are two types of Clerks in the permanent Establishment of the Government. One of them are Temporary Clerks and the other Permanent Clerks. The Permanent Clerks carry a better scale of pay than the Temporary Clerks. Normally Temporary Clerks are appointed through a selection process to the vacant posts of Temporary Clerks. When a vacancy arises in the post of Permanent Clerks, the same is filled in by Temporary Clerks on the basis of selection. One Birendra Kumar and the petitioner were Temporary Clerks. Their names were sent to the Selection Committee in order to ascertain as to whether they are suitable for being appointed to the posts of Permanent Clerks, The Selection Committee found Birendra Kumar more suitable than the petitioner and accordingly posted the name of Birendra Kumar at SI. No. 1 and the name of the petitioner at SI. No. 2. Surprisingly, however, the petitioner was made Permanent Clerk. Birendra Kumar then approached this Court and the Division Bench of this Court by its judgment dated 20th August, 1990 reversed the choice exercised in favour of the petitioner for giving him the post of Permanent Clerk denying the same to Birendra Kumar, although Birendra Kumar was found better suited than the petitioner. While disposing of the matter it was recorded by the Division Bench that there is a permanent post available in which the petitioner should be considered for

appointment. The petitioner was given appointment on the post of Permanent Clerk on 27th January, 1998.

2. In this writ Petition it is the case of the petitioner that before the Division Bench on 20th August, 1990 it was reported that a vacancy was available. It is also the case of the petitioner that the Division Bench directed that Birendra Kumar be appointed against the permanent post of Clerk with due date and the petitioner be continued against temporary post, if in the meantime, any permanent post is not available. It was submitted thus that ultimately the Division Bench held that reversion can be affected to the petitioner only if there was non-availability of a post of Permanent Clerk. It is the specific case of the petitioner in the petition that there were many vacant posts available and accordingly in order to comply with the order of the Division Bench, it was not necessary to revert the petitioner but to appoint Birendra Kumar to another vacant post.

3. Having regard to such contention, on 9th February, 2005 I directed the respondents to file a supplementary counter affidavit stating what was the status of the petitioner as on the date of the judgment dated 20th August, 1990 delivered by the Division Bench and after that judgment was delivered when and how the status of the petitioner was altered and how many posts of Permanent Clerk were lying vacant as on 20th August, 1990 and how the same had been filled in.

4. Although a supplementary counter affidavit has been filed but therein these information's have not been given in precise terms. However, the Learned Counsel for the respondents submitted that as on the date of the judgment of the Division Bench the petitioner was holding the post of Permanent Clerk by reason of exercise of a wrong choice in his favour instead of Birendra Kumar and that the judgment of the Division Bench was given effect to on 7th January, 1994, when the petitioner was reverted but at the same time he submitted that as on 20th August, 1990 there were posts of Permanent Clerk lying vacant where the petitioner could be accommodated.

5. The last sentence of the judgment of the Division Bench is as follows:

"We are informed that a permanent post has since become available against which the case of the Respondent No. 4 (the petitioner herein) should be considered."

6. By reason of the said judgment and order of the Division Bench, the petitioner acquired a right to be considered against that post of Permanent Clerk which was then lying vacant. It is not the case either in the counter affidavit or in the supplementary counter affidavit that the case of the petitioner was considered against that vacancy and the petitioner was found not suitable. On the contrary it has been stated that from time to time cases of various persons had been considered and those persons were promoted and ultimately the case of the petitioner was taken up which resulted in appointment of the petitioner in the

permanent post of Clerk on 27th January, 1998. In other words, the counter affidavit as well as the supplementary counter affidavit clearly depict that in the event in compliance with the order of the Division Bench the case of the petitioner had been considered against the then available vacancy, the petitioner would have had been appointed within a reasonable time after the order of the Division Bench had been passed and would not have had to wait till 27th January, 1998.

7. In such view of the matter, this writ petition is allowed with a direction upon the respondents that the appointment given to the petitioner to the post of Permanent Clerk on 27th January, 1998 shall relate back to 20th September, 1990 inasmuch as one month's time in the facts and circumstances was reasonable time to consider and decide the case of the petitioner in terms of the Division Bench judgment.

8. The petitioner shall be entitled to full financial benefits of his promotion with effect from the date, as above, and the arrears on that account should be paid to the petitioner within 16 weeks from the date of service of a copy of this order upon the appropriate respondents. In default, the same shall carry penal interest at the rate of 10% per annum. Learned Counsel for the State submits that the petitioner should not be paid the financial benefits with effect from 20th September, 1990 for the petitioner did not work as a Permanent Clerk since then. The petitioner did discharge Government duties in his capacity as a Temporary Clerk and he was prevented from discharging his duties in the capacity of Permanent Clerk by the sheer inaction on the part of the Respondents in not discharging their duties and obligations in terms of the Division Bench judgment and accordingly the submissions of the Learned Counsel for the Respondents-State is rejected. The writ petition stands disposed of. There shall be no order as to costs.