
(2010) 09 PAT CK 0105
In the Patna High Court
Case No : CWJC No. 16299 of 2004

Jai Nandan Prasad Verma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Bihar Service Code, 1952 — Rule 103

Citation : (2011) 129 FLR 499 : (2011) 1 PLJR 98

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Judgement

Ajay Kr. Tripathi, J.—Heard learned Counsel for the Petitioners and learned Counsel for the State.

2. Petitioners came to be appointed in the subordinate education service on various point of time and they even climbed the ladder depending upon structuring of the post and position effected by the State of Bihar.

3. The fact is that they continued to be the officers of subordinate education service (U.D). when due to exigency of service, by a set of notifications, they were asked to shoulder higher responsibility of Class-II and Class-I posts in the Education Department. This fact is not disputed but those notifications also indicate that the posting of the Petitioners in the exigency of service will also not entitle them to the privilege of pay scale and post on which they were posted. The notifications are very emphatic that they will continue to draw their salary on the substantive post.

4. All the Petitioners are now retired but have filed the writ application with a claim that since they were made to work on Class-II and Class-I posts they have a right of promotion and to claim -benefit of pay scale of the posts they were holding, as well as other benefits which can flow from the working on the posts in question.

5. Learned Counsel for the Petitioners fairly however concedes that appointment

on Class-II and Class-I posts in the Education Department is not the normal channel of promotion available to them as a matter of right based on the seniority. In fact, it may be out of reach for all these Petitioners in the normal course of things but it is also a fact that the work had been done by them due to shortage of manpower. The posts had to be filled up at the appropriate time by the State authority by the eligible candidates who could be appointed but as it could not be done so stop gap arrangement. It is a fact that eligibility of the Petitioners were not such that they could be appointed in the substantive capacity on those posts merely because they were asked to work on those posts. Officiation is one thing and acquiring right of promotion is another issue. There is big gap between the two which cannot be bridged by the Petitioners by claiming that they have been asked to perform duty on the post and that they have acquired a right. Such principles are not a thumb rule. It depends on the service rules and conditions for such promotion which apply in such case in substantive capacity.

6. This Court however is in agreement on one aspect of the matter. If the Petitioners were asked to shoulder the higher responsibility then they can claim benefit under Rule 103 of the Bihar Service Code. So far as the substantive promotion is concerned, this Court does not find the material and legal right of these Petitioners to be promoted in the background under which they were asked to officiate.

7. If the Petitioners so desire they can lodge their claim upon the Respondents for higher pay of 20% of the basic for shouldering the higher responsibility under Rule 103 of the Bihar Service Code and no other relief can be extended to them on the principles urged at the bar. If the Petitioners make representation under Rule 103 of the Bihar Service Code for the period they had worked before the concerned authority, they shall consider their claim and communicate the outcome thereof within a set time frame.

8. This writ application is disposed of with the above direction.