
(2000) 02 PAT CK 0146
In the Patna High Court
Case No : C.W.J.C. No. 329 of 1998

Jibachh Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-02-2000

Acts Referred:

Citation : (2000) 2 PLJR 171

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Chandra Mohan Jha and Shailendra Kumar Jha, for the Appellant;
Jawahar Dhari Singh, Sanjay Prakash Verma for State and Harshwardhan Sahay,
for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard the parties.

2. The Petitioner, who is a Peon in the Public Health Engineering Department, Mechanical Sub-divisional Office, Madhubani, has prayed for quashing of memo No. 97 dated 22.2.1993 issued from the office of Superintending Engineer, Respondent No. 3, as contained in Annexure-9 and also the office order No. 84 dated 19.3.1993 contained in memo No. 246 dated 19.3.1993 issued from the office of Executive Engineer, Respondent No. 4, as contained in Annexure-10. The effect of Annexures 9 and 10 is to deny to the Petitioner his earlier seniority over Respondent No. 5, Sri Baidya Nath Jha, a class IV employee of Public Health Engineering Department, Mechanical Sub-division, Darbhanga which he had enjoyed for more than 25 years. The impugned orders also affect Petitioner's entitlement to supertime scale only as a consequence of aforesaid deprivation of seniority vis-a-vis Respondent No. 5.

3. It is an admitted fact that the Petitioner was appointed on a class IV post in Public Health Division, Patna East on 28.1.1963 but with effect from 1.12.1962. Thereafter, by order dated 10.12.1964 (Annexure-2) he was transferred to Public

Health Division, Muzaffarpur for which he was not paid any T.A. because it was a mutual transfer. Again by an order dated 24.4.1965 (Annexure-4) mutual transfer was allowed and Petitioner was transferred to Public Health Division, Mechanical Wing, Madhubani where he was working when the impugned orders were passed. In the meantime, the Petitioner was confirmed as a class IV employee under the Mechanical Division, Muzaffarpur by Annexure-6 dated 19.10.1969 with effect from 1.3.1968 and was promoted to selection grade and also to supertime selection grade together with or prior to Respondent No. 5 who was admittedly appointed in Public Health Mechanical Division, Muzaffarpur on 8.1.1965. By impugned orders the Petitioner, who has throughout enjoyed benefits of seniority over Respondent No. 5 by way of earlier confirmation promotion to higher scales, has been deprived of such promotion on the ground that by way of transfer he joined under Mechanical Division, Muzaffarpur on 27.4.1965 i.e. after Respondent No. 5 had been appointed under the said Division on 8.1.1965.

4. The submissions advanced on behalf of the Petitioner is that by Annexure 2 and 4 the authorities concerned had allowed his prayer for mutual transfer and merely deprived him of T.A. etc. but not of his seniority which must be reckoned on the basis of actual length of service more so when he had rendered service in the same department of Government of Bihar. According to the Petitioner, at the relevant time the mechanical Division did not have a separate cadre of its class IV employees and in any case once request for transfer was allowed without any condition as to loss of seniority then the Petitioner cannot be deprived of his seniority and that also after more than 25 years of service in the transferred division.

5. The stand of the Respondent No. 5 is to the effect that two wings of Public Health Engineering Department, namely, Civil and Mechanical, are separate and there cannot be any transfer from one wing to another and that Mechanical wing has a separate cadre at divisional level and hence, although he was appointed later to the Petitioner but since he was appointed in the Mechanical wing to which the Petitioner was transferred later hence, he must rank senior to the Petitioner. It has further been stated that subsequently Respondent No. 5 was also confirmed on 17.4.1979 (Annexure-B/5) with effect from 1.3.1968 and he has also been promoted to higher grades. A seniority list of 1997 has been annexed as Annexure-C/5 to show "that the Petitioner is junior to Respondent No. 5. But this Annexure has been obviously prepared after the impugned orders and merely shows the effect of the impugned orders.

6. The stand of the State is same as is mentioned in the impugned order. From Annexure-C to the counter affidavit on behalf of the State, it appears that on some date after 3.8.1993 Respondent No. 5 objected to his being shown junior to the Petitioner on the ground already noticed above and that led to the impugned orders.

7. Since the Petitioner in his rejoinder challenged the stand of the Respondents

and asserted that at the relevant time there was no separate wing in the department nor any separate cadre, on an earlier date two weeks" time was allowed to the Respondents to file supplementary counter affidavit but the same was not filed and hence, the facts regarding the creation/bifurcation of a Mechanical wing in the department are not clear. However, without going into that controversy, from a bare reading of Annexure-4, it is clear that Petitioner's transfer from Public Health Division, Muzaffarpur to Public Health Division Mechanical wing, Madhubani was done without any order or stipulation regarding loss of his seniority at the transferred place. No law has been shown that at the relevant time such transfer was bound to cause loss of seniority and in fact for more than 25 years the Petitioner was never treated as junior to Respondent No. 5 and was never informed that his transfer in 1965 would cause or it caused any loss of seniority to him. In absence of any rules to the contrary, the actual length of service must be reckoned for the purposes of seniority and for all the aforesaid reasons, the Petitioner must be treated as senior to Respondent No. 5.

8. An objection was taken on behalf of the Respondent No. 5 that the impugned orders contained in Annexures 9 and 10 were passed in 1993 and the writ application was filed in January 1998 hence, the same should be dismissed on ground of delay and laches. But on a careful consideration of all the facts I am not persuaded to dismiss the writ petition on account of delay. Petitioner has mentioned that when he filed a representation against Annexure-9 before the Chief Engineer then by his letter dated 3.8.1993 (Annexure-11) the Chief Engineer accepted the Petitioner's representation and directed the Superintending Engineer not to treat the Petitioner junior to Respondent No. 5 and by Annexure-12 dated 7.2.1996 the Superintending Engineer directed the Executive Engineer to note that Annexure-9 had been corrected in the light of Chief Engineer's order contained in Annexure-11. However, by a letter dated 3.3.1997 (Annexure-14), the Special Officer, Public Health Engineering Department, Patna intervened in the matter and directed the Superintending Engineer not to make any corrections in the impugned orders. When the Petitioner came to know of Annexure-14 he made a representation on 7.7.1997 and when no relief was given to him he soon filed this case in January 1998. In such circumstances, this writ application cannot be dismissed on ground of delay.

9. For the reasons already indicated above, this writ application is allowed and the impugned orders contained in Annexure 9 and 10 are quashed. The Petitioner should be granted the consequential reliefs regarding appropriate grades/scales of pay, if due, at the earliest and in any case within three months from the date of production/communication of a copy of this order before the Executive Engineer, Respondent No. 4. In the facts of the case, there shall be no order as to costs.