

(2006) 09 PAT CK 0045
In the Patna High Court
Case No : MJC No. 1288 of 2005

Kapildeo Singh and Others

APPELLANT

Vs

The Rajendra Agricultural University, Bihar and Others

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Citation : (2006) 4 PLJR 420

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Anand Kumar Ojha, for the Appellant; Shashi Bhushan Kumar and Kumari Vijaya, Y.V. Giri, Ajit Kumar and Raju Giri, for the Respondent

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for initiating a proceeding for contempt against the opposite party for non-compliance of the order dated 11.1.2005, passed in C.W.J.C. 7543 of 2004 (Kapildeo Singh & Ors. vs. Rajendra Agricultural University and Ors.). Claim of the petitioner in the said case was for grant of junior selection grade from the due date. This Court disposed of the writ application giving liberty to the petitioners to represent before the Vice-Chancellor of the Rajendra Agricultural University for the redressal of their grievance and the later in turn was directed to take decision in accordance with law within a stipulated time.

2. In the light of the order of this Court, petitioners filed representation and the Rajendra Agricultural University examined the claim of the petitioners and found them fit for grant of junior selection grade. However, it did not pass order granting selection grade awaiting roster clearance and approval of the State Government. Petitioners, however, took plea that grant of junior selection grade is not promotion, hence reservation will not apply and natural corollary of the same is that no roster clearance is required from the State Government. Taking note of the aforesaid stand of the Rajendra Agricultural University and the petitioners by order dated 2.5.2006, I called upon the Department of Agriculture to file affidavit as to whether roster clearance is required for grant of junior

selection grade.

3. In the light of the aforesaid order, supplementary show cause has been filed by Under Secretary in the Department of Personnel and Administrative Reforms and in paragraph 4 thereof it had been stated that "selection grade promotion is treated as regular promotion". So at the time of promotion roster clearance is required and in support of the said stand resolution of the Finance Department dated 30th of December, 1981 (Annexure C) has been pressed into service.

4. Mr. Anand Kumar Ojha, appearing on behalf of the petitioners submits that grant of junior selection grade is not promotion and, therefore, the question of reservation and roster clearance does not arise at all. He submits that the plea taken by the Rajendra Agricultural University and supported by the State Government is absolutely illegal.

5. In support of the submission, he has placed reliance on a Division Bench judgment of this Court in the case of Lal Mani Prasad vs. The Chairman, Bihar Public Service Commission & Ors. [1998(2) PLJR 200], wherein this Court has held as follows:

It is now well settled law that the promotion in the Selection Grade Scale is not at all a promotion in the eye of law. The word "promotion" is practically redundant for all purposes. Grant of Selection Grade Scale is grant of higher grade in the same cadre and not in any higher rank and/or cadre. No person is provided any higher status. Such being the position, according to this Court. provision of reservation is not at all applicable in the matter of grant of Selection Grade scale."

(Underlining mine)

6. Another decision on which Mr. Ojha has placed reliance is a Full Bench judgment of this Court, in the case of Maheshwar Prasad Singh and Others Vs. The State of Bihar and Others, and my attention has been drawn to the following passage from paragraph 10 of the judgment, same reads as follows:

At this stage, I would like to point out the distinction between promotion to higher posts and promotion to selection grade. "Promotion" normally implies promotion to the higher posts with a higher pay. The concept of "selection grade" was evolved by the Central Pay Commission "with the object of providing incentive to employees who have no outlets or very limited outlets for promotion to higher posts, carrying a "somewhat" higher scale to pay without change in the duties. Such posts which were normally not to exceed 10% of the total posts were described as "selection grades" as distinct from higher posts in the hierarchy. After noticing the recommendation of the Central Pay Commission the Supreme Court in the case of Lalit Mohan Deb vs. Union of India (supra) observed. "It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of

promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency".

7. Yet another decision on which reliance has been placed is a decision of the Supreme Court in the case of State of Punjab Vs. Surjit Singh, , and my attention has been drawn to the following passage from paragraph 3 of the judgment, same reads as follows:

It implies that when an employee has reached the maximum of his scale or he continues to work in the same scale for a number of years, he may lose interest on account of stagnation. Therefore, the Government has evolved the system of giving incentives for such an employee by providing for selection grade. This is quite different from promotion to a higher post and there is no question of any reservation in granting a selection grade since that will run counter to the very purpose of providing selection grade."

(Underlining mine)

8. Standing Counsel No. XVI, however, appearing on behalf of the State submits that grant of selection grade is in substance regular promotion and for that policy of reservation has to be applied and, accordingly, roster clearance is necessary. He points out that this would be evident from paragraph 10(iv) of the resolution of the State Government in the Finance Department dated 30.12.1981.

9. Having appreciated the rival submission, I find substance in the submission of Mr. Ojha and is supported by plethora of decisions of the Supreme Court and this Court.

10. It is well settled that when an employee reaches the maximum of his scale or he continues to work in the same scale for a number of years, he loses interest on account of stagnation. Taking into account the same, the Government had evolved the system of giving incentive for such an employee providing for selection grade. Promotion in the selection grade is not at all a promotion in the eye of law. In fact grant of selection grade is nothing, but grant of higher grade in the same cadre and not in any higher rank. The reliance of the State on the resolution of the Finance Department is absolutely misconceived. Said resolution, nowhere provides that grant of selection grade is promotion and for that reservation policy has to be applied and resultantly roster clearance is necessary.

11. In view of the stand of the State that roster clearance is necessary, the action of the Rajendra Agricultural University is not passing the order shall not amount to willful disobedience of the order of this Court and, as such, I am not inclined to proceed against it in the present contempt proceeding.

12. Standing Counsel No. XVI further submits that the State of Bihar was neither a party in the writ application nor any direction was given to it. Hence it cannot be held guilty for contempt. This contention is absolutely misconceived. Any body, who willfully creates impediment in implementing the order of the Court

after being aware of it may be proceeded against for contempt. In the facts of the present case. I am not inclined to charter this course.

13. However, in view of unfair stand taken by the State, despite the law having already been settled by the judgments of Supreme Court, Full Bench and Division Bench a this Court referred to above, I award cost against it.

14. Let the State of Bihar in the Department of Personnel, whose under Secretary had filed the affidavit, pay to the petitioners a sum of Rs. 10,000/- as cost of this litigation.

15. The Rajendra Agricultural University is directed to proceed in the matter and pass appropriate order within six weeks, bearing in mind the observation aforesaid. Application stands disposed-off accordingly.