

(1991) 07 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 5352 of 1987

Kepildeo Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-07-1991

Acts Referred:

Citation : (1991) 07 PAT CK 0012

Judgement

U.P. Singh, J.—In this writ application the petitioners have challenged the validity of only one part of the Rule contained in Annexure-1 and in particular Schedule IV, whereby, in the list of officers in Subordinate Service, who shall be eligible for promotion to the post of Manager/Assistant Director and other similar posts in the scale of Rs. 1000-1820, the Industrial Extension Officers and Economic Investigations/Statistical Assistant/Supervisors drawing the pay scale of Rs. 940-1660; Rs. 850-1360 and Rs. 880-1510 have been included.

2. This Annexure-1 is a notification of the Government of Bihar in the Industries Department framing rules to regulate the method of recruitment and conditions of service of the persons appointed to the Bihar Industries Service, in exercise of the powers conferred by the proviso to Article 309 of the Constitution. At the very out set Dr. Jha, learned Counsel appearing for the petitioners frankly contended that the challenge to this rule is confide to the inclusion of the categories of officers mentioned above. It is contended that these Industrial Extension Officers drawing the above scale of pay are in the non-gazetted categories and unless they are first promoted to the gazetted categories, they cannot be included in the list of officers in Subordinate service and shall not be eligible for promotion to the post of Manager/Assistant Director and other similar posts in the scale of Rs. 1000-1820.

3. There is no dispute on facts and from the facts so emerging from Annexure-B, a letter issued by the Government to the Accountant General Bihar, it is demonstrated that these Industrial Extension Officers were provided higher salary but in the same cadre of non-gazetted and in view of a Bench decision of

this Court at Ranchi they were granted selection grade and senior selection grade. It further appears from the interveners application, supporting the case of the petitioner, at Annexure-4 read with Annexure-C and Annexure-2 that two such persons, who were Industrial Extension Officers, at serial Nos. 32 and 35, were first promoted to the gazetted category in the scale of pay of Rs 880-1510 and thereafter, they were included in Schedule IV of the above Rules" being eligible for promotion to the post of Manager/Assistant Director and other similar post in the scale Rs. 1000-1820. The fact further emerging from the interveners respondents application is that these Industrial Extension officers were holding non-gazetted post. Therefore, the contention of Dr. Jha learned Counsel appearing for the petitioner, has to be up held that the Industrial Extension Officers and others categorised at serial 5B and C of Schedule IV of the Rule were not eligible for promotion to the post of Manager/Assistant Director and other similar posts in the scale of pay of Rs. 1000-1820 Learned Counsel appearing for the State could not point out the rationality behind the inclusion of these categories of persons at serial No. 5-B and C of Schedule IV of the Rules. On the other hand, it appears to be based on no rationality and is also opposed to Article 14 of the Constitution.

4. In the case of Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others, , it was held that:

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. The provision of selection grade in same category of Posts is not a new thing. 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 election grade to prevent stagnation on the maximum of the scale Selection grades are, therefore, created in the interest of greater efficiency.

In the case of Dayaram Asanand Gursahani Vs. State of Maharashtra and Others, , it was held that:

The selection grade post is not a post to which promotion has to be made nor is there any efficiency bar rule attached to it.

Therefore, in the facts of the present case it cannot be held that grant of selection grade and senior selection grade to the Industrial Extension Officers will by itself make them eligible for promotion to the post of Manager/Assistant Director and other similar posts in the scale of Rs. 1000-1820 They remained in the non-gazetted category and before they become eligible for promotion to those posts they were first to be promoted to the gazetted category posts Therefore, the inclusion of these categories of officers at serial 5-B and C of Schedule IV to the Rules must be held to be irrational, and to that extent it is declared ultra vires.

5. It was next contended that these Industrial Extension Officers do not possess the necessary qualification and are not eligible for recruitment to the initial rung

(entry point) of the cadre in Bihar Industries service. They are first entering into the Bihar Industries service under schedule I of the Bihar Industries Service Cadre Rules 1987 and, therefore, they must conform to the qualifications enumerated in Schedule II irrespective of the fact whether they are promoters or direct recruits. A mere statement in the counter affidavit filed on behalf of the State that schedule II do not apply to them is not correct, because on a bare reading of schedule II there appears to be no distinction. Schedule II lays down essential qualifications for recruitment to the initial rung (entry point) of the cadre in Bihar Industries service. On this ground also the petitioners' contention is upheld. In the result, this application is allowed but without any cost. It may be pointed out that by an interim order dated 4-2-88 this Court made it clear that pending hearing of the writ application, any such promotion would be subject to the result of this writ application.