
(2011) 01 PAT CK 0108

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5647 of 2002

Lalan Kumar Chaudhary

APPELLANT

Vs

The Bhojpur Rohtas Gramin Bank

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0108

Final Decision : Dismissed

Judgement

R.M. Doshit, C.J.—This petition filed under Article 226 of the Constitution seeks to challenge the seniority list of the Officers in the Middle Management Group of the Respondent Bhojpur Rohtas Gramin Bank (hereinafter referred to as 'the Bank').

2. It is the claim of the Petitioner that he was selected by the Bank for direct recruitment in the Middle Management Group along with several others. In the merit list of the selected candidates the Petitioner was placed at Sl. No. 4. He was, therefore, on appointment, entitled to seniority amongst the 15-2-1985 Batch Officers at Sl. No. 4. However, in the impugned seniority list published on 09-09-1997 the Petitioner has been placed at the bottom of the 15-2-1985 Batch at Sl. No. 129 instead of his rightful placement above one Sri Anjani Kumar Srivastava at Sl. No. 98. As averred in the writ petition, the Petitioner was appointed on probation for a period of two years from 15.02.1985 to 15.02.1987. However, the period of probation was extended on the ground that "performance of the Petitioner was not found satisfactory". He was confirmed in service on 09.03.1988.

3. The Petitioner's placement in the seniority list at the bottom of his batch-mates is in accordance with Regulation 13(3) of the Bhojpur-Rohtas Gramin Bank Staff Service Regulations, 1980 (hereinafter referred to as 'the Regulations'). According to the Petitioner, the said Regulation 13(3) of the Regulations is arbitrary and offends Articles 14, 16(1) and 20(2) of the Constitution of India. It is further averred that the petitioner had made a representation in respect of the

said seniority. According to the petitioner, he has suffered double jeopardy on account of the action of the Bank - first, he had to suffer extended period of probation; and second, he had to lose seniority against his batch-mates.

4. Learned Advocate Mr. Shailendra Kumar Sinha has appeared for the Petitioner. He has submitted that the Petitioner had to take leave on account of sickness. Because of the 23 days" leave taken by the Petitioner, the period of probation was extended by one year. He has submitted that in view of the pending representation made by the Petitioner the Petitioner did not approach this Court earlier. He has further submitted that as the Petitioner seeks his rightful placement in the seniority list, the persons above whom he seeks seniority are neither necessary nor proper party to this petition. The Petitioner can be granted relief in their absence. In support of his argument he has relied upon the judgment of this Court in the matters of Jagdish Prasad Shrivastava Vs. The Bhojpur Rohtas Gramin Bank and Others, , Arun Kumar v. The State of Bihar through the Health Commissioner, Govt. of Bihar, Patna and Ors. (1970 PLJR 490) and of the Supreme Court in the matter of A. Janardhana Vs. Union of India (UOI) and Others, .

5. In the matter of Jagdish Prasad Shrivastava (supra) challenge was to the same Regulation 13(3) of the Regulations by one of the batch-mates of the petitioner. According to the said writ petitioner, while on probation he had proceeded on leave on account of his sickness which led to the extended period of probation and consequent loss of seniority. The Division Bench of this Court, though did not strike off the impugned Regulation 13(3), held that the purpose of extending the period of probation was required to be considered whether it was a circumstance which was involuntary to the petitioner. If the petitioner was on medical leave duly sanctioned and he was suffering from jaundice then the circumstance was involuntary to the petitioner. In view of the said finding the Bank was directed "to consider and evaluate the service of the petitioner during the extended period of probation.

6. In the matter of Arun Kumar (supra) the Division Bench of this Court was considering admission to a Medical College. On the facts of the case the Court held, "It is not possible to hold that the writ Petitioner should have made all the students who had applied for admission to the 1st Year M.B.B.S. Course in Rajendra Medical College, Ranchi party-Respondents or even those who would be entitled to admission in this College under Annexure-2".

7. The matter of A. Janardhana (supra) was once again a case relating to seniority of the Officers in Military Engineering Services. The Court declined to reject the petition on the ground that "the direct recruits were not before the Court".

8. The petition is contested by the Bank. The Bank has filed counter affidavit to deny that the impugned Regulation 13(3) of the Regulations offends Articles 14, 16(1) and 20(2) of the Constitution of India. It is stated that the Regulations

have been framed by the Board of Directors of the Bank in exercise of the power conferred by Section 30 of the Rural Regional Banks Act, 1976; in consultation with the sponsor Punjab National Bank and the Reserve Bank of India; and with the previous sanction of the Government of India. It is further stated that during the period of probation, since 06.09.1985 till 17.09.1985 the Petitioner was absent without leave for which he was reprimanded. It is denied that the Petitioner's service since confirmation was satisfactory. It is stated that on 09.03.1989 he was punished with reduction in pay by two annual increments. Again on 13.03.1989 he had been served with warning for serious irregularities.

9. Regulation 13 of the Regulations provides for seniority. Clause (1)(a) provides for seniority from the date of appointment in a particular grade or scale. Clause (1)(b) provides for inter se seniority amongst the officers of the same length of service with reference to their inter se seniority in the immediately preceding grade or scale or the previous cadre in the Bank. Regulation 13(2) provides for inter se seniority of officers or employees directly recruited in a batch to any grade or scale with reference to the rank allotted to them at the time of such recruitment. Regulation 13(3) of the Regulations provides, "In the case of an officer or employee whose probation has been extended, his seniority shall be reckoned just below all the officers or employees, if any, recruited or promoted in the same batch along with him"

10. It is an admitted fact that in case of the Petitioner the probation had been extended for a period of one year. Hence, his placement in the seniority below his batch-mates is in consonance with Regulation 13(3) of the Regulations. We find a basic fallacy in the argument that on account of provisions contained in Regulation 13(3) of the Regulations, the Petitioner had suffered double jeopardy - first, he had to suffer extended period of probation and; second, the loss of seniority. It may be noted that the action of extending the period of probation is not a punishment which can be said to be a jeopardy suffered by an employee. In fact, it is a benevolent provision to grant one more opportunity to the employee concerned to prove his worth. Second, the loss of seniority by operation of Rule of Law cannot be said to be arbitrary. More particularly in the present case the Petitioner has admitted that the Bank had extended the probation period of the Petitioner on the post of officer by one year on the ground that the performance of the Petitioner was not found satisfactory. Though it is orally submitted before us it is not the plea of the Petitioner that the period of probation was extended on account of his leave on medical ground. Evidently, such a plea is raised orally to avail of the benefit of the observations made in the judgment of Jagdish Prasad Shrivastava (supra). As the Petitioner's probation had to be extended on account of his unsatisfactory conduct, it is not possible to read down Regulation 13(3) of the Regulations as has been done in the case of Jagdish Prasad Shrivastava (supra). Moreover, in our view, the petition is grossly belated. The bald explanation that the petitioner had made a representation is not palatable. The statement is not supported by any evidence.

11. No other contention is raised before us.
12. For the aforesaid reasons, the writ petition is dismissed.
13. The parties will bear their own cost.