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**(2013) 01 PAT CK 0017**

**In the Patna High Court**

**Case No :** CWJC No. 13843 of 2004 and Interlocutory Application No. 230 of 2013

Lalan Kumar Lal Das

APPELLANT

Vs

The Chief Executive Officer, Khadi and Village Industries  
Commission and Others

RESPONDENT

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**Date of Decision :** 14-01-2013

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (2013) 1 PLJR 897

**Hon'ble Judges :** Birendra Pd. Verma, J

**Bench :** Single Bench

**Advocate :** Rajesh Kumar Singh and Pankaj Kr. Das, for the Appellant;  
Dhanendra Choubey for the Respondent No. 1 to 4, for the Respondent

**Final Decision :** Allowed

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## Judgement

Birendra Pd. Verma, J.—The present interlocutory application has been filed on behalf of the petitioner with a prayer to permit him to challenge the validity and correctness of final seniority list dated 28.12.2012 (Annexure-7 to the present interlocutory application) of Upper Division Clerks as on 31.3.2012 of Joint Cadre of Bihar and Jharkhand issued by the respondent Director of Khadi and Village Industries Commission, Patna, whereby the petitioner has been shown junior to respondent nos. 5 and 6.

Learned counsel appearing on behalf of the petitioner submits that during the pendency of the main writ petition, the respondent Director, Khadi and Village Industries Commission, Patna vide his letter dated 17.4.2012 (Annexure-6 to the supplementary affidavit) published a tentative seniority list as on 31.3.2012 of Upper Division Clerks of Bihar Cadre comprising the State of Bihar and the State of Jharkhand, showing the petitioner senior to respondent Nos. 5 and 6, whereafter by an order dated 24.9.2012 passed by a Bench of this Court a direction was issued to the official respondents to examine the objections filed by

the employees concerned, and take a final decision about the inter se seniority of Upper Division Clerks of Joint Bihar Cadre. It is contended that in compliance of the aforesaid order dated 24.9.2012, a final seniority list as on 31.3.2012 of Upper Division Clerks of Joint Bihar Cadre has been published by the aforesaid circular/notification dated 28.12.2012 (Annexure-7), wherein again the petitioner has been shown junior to the respondents 5 and 6. Therefore, it is pleaded that the petitioner may be permitted to challenge the validity and correctness of the said circular/notification dated 28.12.2012 (Annexure-7) as well.

After having heard the parties, and in the given facts of the case, this interlocutory application is allowed. The petitioner is permitted to assail the validity and correctness of the notification/circular dated 28.12.2012 (Annexure-7), whereby the petitioner as on 31.3.2012 has been shown junior to respondents 5 and 6 in the final seniority list of Upper Division Clerks of Joint Bihar Cadre (comprising Bihar and Jharkhand). The interlocutory application stands disposed of.

Re: C.W.J.C. No. 13843 of 2004:

The present writ petition was filed as far back as on 4.11.2004 i.e. more than 8 years ago. By an order 13.7.2007, notice was issued to respondents 5 and 6 with a view to final disposal of the writ petition at the stage of admission itself. Unfortunately, despite valid service of notice, respondents 5 and 6, the contesting parties, have chosen not to appear and contest the claims made on behalf of the petitioner raising the issue of inter se seniority between the petitioner and respondents 5 and 6. However, on the request of official respondents, the matter was adjourned on different dates.

On behalf of the respondents 1 to 4, counter affidavit was filed as far back as on 8.7.2005 and, thereafter, supplementary counter affidavit was filed on their behalf on 19.9.2012, and, again second supplementary counter affidavit was filed on their behalf on 7.1.2013. In the meantime, the petitioner has also filed his supplementary affidavit on 2.5.2012. Thus, the pleadings from both sides are complete.

2. With the consent of parties, the matter has been taken up for its final disposal.

3. The petitioner has filed the present writ petition under Article 226 of the Constitution of India originally with a prayer for setting aside the Memo dated 10.9.2004 (Annexure-4) issued by the respondent State Director, Khadi and Village Industries Commission, Patna, (hereinafter referred to as the "respondent Commission"), whereby his representation for declaring him to be senior to respondents 5 and 6 has been rejected. The petitioner has also prayed that he may be declared senior to respondents 5 and 6. In view of the order passed in the Interlocutory Application No. 230 of 2013, he has been permitted to challenge the validity and correctness of the final seniority list dated 28.12.2012 (Annexure-7) of Upper Division Clerks of Bihar Cadre, comprising Bihar and Jharkhand, whereby the petitioner has been shown junior to the respondent nos.

5 and 6.

4. In order to decide the dispute of inter se seniority between the petitioner and respondents 5 and 6, certain facts, as per the pleadings of the parties, are required to be noted. The petitioner was appointed as Lower Division Clerk by the competent authority of the respondent Commission and he joined the post on 12.2.1973. Respondent No. 5 joined the post of Lower Division Clerk on 4.4.1990, whereas respondent no. 6 joined the post of Lower Division Clerk on 8.1.1981. Admittedly, the petitioner came in service of the respondent Commission on the post of Lower Division Clerk about 17 years earlier than that of respondent 5 and about 8 years earlier than the respondent no. 6, and he was admittedly senior amongst all the three, so far on the post of Lower Division Clerk is concerned. At this stage, learned counsel appearing on behalf of the petitioner has invited attention of this Court towards the seniority list of Non-Gazetted Staff working under Bihar State Cadre as on 31.12.1990 under the respondent Commission. Aforesaid seniority list of Non-Gazetted Staff under Bihar State Cadre as on 31.12.1990 has been brought on record as Annexure-1, wherein so far Lower Division Clerks were concerned, name of petitioner was at Serial No. 4 whereas name of respondent no. 6 was at Serial No. 15 and that of respondent no. 5 was at Serial No. 23. In the aforesaid seniority list, their date of birth and date of initial entry in service have been also indicated, and the petitioner has been shown senior to them.

5. It is the case of the petitioner that he was granted promotion as Upper Division Clerk on 24.11.1995 and respondent no. 5 was granted promotion as Upper Division Clerk on 27.11.1995. However, so far respondent no. 6 is concerned, he joined the post of Upper Division Clerk by selection process on 28.5.1996. Though, dates of promotion/selection of the petitioner as also the respondent nos. 5 and 6 on the post of Upper Division Clerks are not under dispute, but subsequently the dispute regarding inter se seniority amongst the petitioner and respondents 5 and 6 arose. It appears that subsequently, respondents 5 and 6 were shown senior to the petitioner on the basis of Standing Order No. 1502 dated 26.4.1993 (Annexure-5) issued by the respondent Commission. A tentative seniority list of Non-Gazetted Ministerial Staff working under the Bihar State Cadre drawn as on 31.12.2003 was published under the signature of respondent no. 4. The aforesaid tentative seniority list has been brought on record as Annexure-2 to the writ petition. In that tentative seniority list, altogether six persons have been shown to be working as Upper Division Clerks in the Bihar State Cadre by the respondent Commission. In that tentative seniority list the name of respondent no. 5 was at serial no. 1 and that of respondent no. 6 was at serial no. 2 and the name of petitioner has been placed at serial no. 3. Besides them, three others are also there in the aforesaid tentative seniority list, who have been shown to be juniors to them. The petitioner, being aggrieved by the aforesaid tentative seniority list (Annexure-2), submitted a representation (Annexure-3) before respondent no. 4 raising a claim that he should be shown to be senior to respondents 5 and 6, since he came in

service much earlier than that of respondents 5 and 6. It was also claimed that the petitioner joined the post of Upper Division Clerk earlier than respondents 5 and 6. The aforesaid representation dated 20.8.2004 (Annexure-3) filed on behalf of the petitioner was rejected by the impugned original order dated 10.9.2004 (Annexure-4) giving cause of action to the petitioner to approach this Court challenging his inter se seniority with that of respondents 5 and 6. As stated above, during the pendency of the present proceeding itself, as per direction issued by a Bench of this Court, final seniority list as on 31.3.2012 of Bihar Cadre (comprising Bihar and Jharkhand) was published by the impugned circular/notification dated 28.12.2012 (Annexure-7), wherein again the petitioner has been shown to be junior to respondents 5 and 6.

6. Learned counsel appearing on behalf of the petitioner submits that Standing Order No. 1502 dated 26.4.1993 (Annexure-5) introducing the policy of grant of promotion on the basis of cycle of promotion, selection, promotion, direct recruitment (PSPD) is wholly arbitrary and contrary to the mandate of Articles 14 and 16 of the Constitution of India. He submits that the respondent nos. 5 and 6, who were not even born in the cadre of Upper Division Clerk on 24.11.1995 cannot be shown to be senior to the petitioner. It is contended that admittedly, the respondent Commission has fixed the date of 24.11.1995 as the date for determination of inter se seniority amongst the Upper Division Clerks. According to him, on 24.11.1995 only the petitioner had joined as Upper Division Clerk. Neither respondent no. 5 nor respondent no. 6 on the relevant date had joined on the post of Upper Division Clerk. It is pleaded that admittedly respondent no. 5 joined the post of Upper Division Clerk on 27.11.1995 and respondent no. 6 joined as Upper Division Clerk by way of selection on 28.5.1996. Thus, it is submitted that neither respondent no. 5 nor respondent no. 6 was even born in the cadre of Upper Division Clerks on 24.11.1995. Therefore, according to the learned counsel, the decision of the respondent authorities declaring the respondent Nos. 5 and 6 senior to the petitioner is violative of Articles 14 and 16 of the Constitution of India. It is highlighted that seniority of the employees is required to be counted from the date of their entry in a particular cadre. In support of his above contention, he has placed reliance on a Constitution Bench judgment of the Hon''ble Apex Court in the case of *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, , and State of Bihar and others Vs. Sri Akhouri Sachindra Nath and others, .*

7. Learned counsel appearing on behalf of the respondents 1 to 4 has contested the claim of the petitioner, and has supported the impugned action of the respondent authorities. He submits that seniority of the employees under the respondent Commission is required to be determined as per Standing Order dated 26.4.1993 (Annexure-5). He has heavily placed reliance on Clause (1) of Para 1 and again on Clause (1) Para 2 of the aforesaid Standing Order. By referring to Para 2(1) of the aforesaid Standing Order, it is submitted that if the appointment has been made to a particular point under the PSPD cycle, within

one year from the date of appointment against the subsequent point, the person concerned will get seniority as per the roster. According to the learned counsel, so far respondent no. 5 is concerned, he belongs to Scheduled Caste category and respondent no. 6 belongs to unreserved category, but he came by selection process on the post of Upper Division Clerk. Though, respondent no. 6 came subsequently in service on the post of Upper Division Clerk on 28.5.1996, but under the PSPD cycle his seniority will be counted with effect from 24.11.1995 itself when the petitioner was already promoted on the post of Upper Division Clerk. It is contended that respondent authorities are bound by their own Standing Order and, therefore, respondents 5 and 6 have been shown to be senior to the petitioner. In support of his above contention, he has placed reliance on the judgments of the Hon''ble Apex Court in the case of S.S. Grewal Vs. State of Punjab and others, and Ajit Singh and Others Vs. The State of Punjab and Others, .

8. After having heard the parties, and taking into consideration the factual background, as also the judicial pronouncements made by the Hon''ble Apex Court, particularly by the Constitution Bench of the Apex Court in the case of The Direct Recruit Class-II Engineering Officers'' Association (supra), this Court is of the opinion that Standing Order dated 26.4.1993 (Annexure-5) issued by the respondent Commission is arbitrary, violative of the mandate of Articles 14 and 16 of the Constitution of India as also contrary to the judicial pronouncements made by the Hon''ble Apex Court. The determination of inter se seniority of the employees of the respondent Commission, in the manner as indicated in Standing Order, if permitted to be done, would result in gross injustice and would violate the mandate of Articles 14 and 16 of the Constitution of India. The persons who were not even born in the Cadre of particular class of employees cannot be permitted to be shown senior to the persons who were already there in that Cadre. Admittedly, when seniority of Upper Division Clerks of Bihar Cadre under respondent Commission was being determined on 24.11.1995, respondents 5 and 6 were not born in the Cadre of Upper Division Clerk. On that date only petitioner was there in the Cadre of Upper Division Clerk besides others. That being the position, the impugned order as contained in Memo dated 10.9.2004 (Annexure-4), and the final seniority list dated 28.12.2012 (Annexure-7) cannot be sustained in the eye of law. The petitioner was senior to the respondents 5 and 6 as on 24.11.1995 and, therefore, he is entitled to be declared senior to the respondent nos. 5 and 6.

9. Hon''ble Apex Court recently in the case of Amarjeet Singh and Others Vs. Devi Ratan and Others, has held that an employee cannot be granted seniority prior to his birth in the cadre, adversely affecting seniority of other employees appointed prior to him. In the words of Supreme Court "the late comers to the regular stream cannot steal a march over the early arrivals in the regular queue."

10. For the reasons recorded above, the impugned order contained in Memo dated 10.9.2004 (Annexure-4), as also the impugned circular/notification dated

28.12.2012 (Annexure-7), publishing the final seniority list of Upper Division Clerks of Bihar Cadre, comprising Bihar and Jharkhand, so far it relates to the petitioner and respondents 5 and 6, are set aside. The petitioner is held to be senior to the respondent Nos. 5 and 6 under the respondent Commission. The respondents 1 to 4 are hereby directed to correct their records and show the petitioner senior to respondents 5 and 6. In the result, the application stands allowed. However, the parties are left to bear their own costs.