
(2000) 08 PAT CK 0107
In the Patna High Court
Case No : C.W.J.C. No. 8431 of 1996

L.N. Sahu and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-08-2000

Acts Referred:

Citation : (2000) 08 PAT CK 0107

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—Two amendment applications, one on 11.9.1996 and the other being I.A. No. 202 of 1996, have been filed by the Petitioners seeking amendment of the writ application. The prayer for amendment in the aforementioned amendment applications have not been contested. Accordingly, having heard learned Counsel for the parties, the prayer for amendments are allowed.

2. In the writ petition the Petitioners have sought for issuance of a writ in the nature of certiorari to quash the proposed gradation list of Assistant Engineers of the Bihar State Housing Board (hereinafter referred to as "the Board"), contained in Annexure 7 and also for issuance of writ of mandamus restraining the Respondents No. 1 to 4 from altering and modifying the seniority list dated 16.1.1996 of Assistant Engineers of the Board prepared in pursuance of the decision of the Apex Court dated 2.2.1995 passed in Civil Appeal No. 4410 of 1985. The Petitioners have also challenged the validity of the gradation list published vide notification dated 10.9.1996, contained in Annexure 9 to the first amendment petition and also the order dated 23.11.1996 reverting Petitioner No. 3 from the post of Executive Engineer, which he was holding since 4th August, 1983, to the post of Assistant Engineer, contained in Annexures 10 and 11 to the second amendment petition.

3. In short, the relevant facts are that the State of Bihar constituted the Board with effect from September 1, 1972. Prior to it, the work was being looked after by the Housing Department of the State of Bihar. A dispute in regard to two sets

of Assistant Engineers working in the Board, namely, the direct recruits vis-a-vis the promotees were taken up to the Apex Court in Civil Appeal No. 4410 of 1985. Respondents No. 3 to 13 of the said Civil Appeal were initially working as Junior Engineers in the Housing Department. Respondents No. 3, 4 and 6 were given the charge of the post of Assistant Engineer in addition to their own duties with effect from January 21, 1972. There was no dispute in the Apex Court that the said Respondents have since then been continuously working as Assistant Engineers. The Departmental Promotion Committee examined the case of the said Respondents No. 3 to 13 and recommended them for promotion of the Bihar Public Service Commission (hereinafter referred to as "the Commission"). The Commission on March 12, 1975 approved their promotion and they took over as such on April, 5 1975. Meanwhile Appellants 1 to 3 were also selected as Assistant Engineers by way of direct recruitment by the Commission and they joined on December, 5 1974, January 14, 1975 and June 16, 1975 respectively. By the order dated July 14, 1983, the Board antedated the appointments of Respondents 3 to 13 making the same effective from October 21, 1974. The direct recruits challenged the order of retrospective appointment and the consequent seniority list in a writ petition and the matter went in special leave against the judgment of the High Court in the said writ petition.

4. The Apex Court, vide order dated February, 2, 1995, passed in Civil Appeal No. 4410 of 1985, contained in Annexure 5, did not find it necessary to go into the question whether, in the facts of the case the Board was justified in antedating the appointment of the Respondents. It was, however, held that it cannot be disputed that the seniority of Assistant Engineers working with the Board had to be determined on the basis of continuous length of service in the cadre of Assistant Engineers. Since Respondents No. 3, 4 and 6 were continuously working since January 21, 1972 and other Respondents with effect from April, 5, 1975, the Apex Court held that they are entitled to their seniority from their respective dates of joining. So far as Appellants are concerned, they are entitled to seniority with effect from December 5, 1974, January 14, 1975 and June 16, 1975 respectively. The Apex Court also decided as to how the inter se seniority should be fixed and laid down that it shall have to be in the following order:

1. Respondent No. 3--Sri Birbhajan Singh
2. Respondent No. 4--Shri Anisun Nabi
3. Respondent No. 6--Shri K.M. Thomas
4. Appellant No. 1--Shri Abhai Krishna Sharma
5. Appellant No. 2--Shri Krishna Kumar Lal
6. Other remaining Respondents
7. Appellant No. 3--Shri Kanta Prasad Singh.

The Apex Court accordingly directed the Board to place the Appellants and the Respondents in the seniority as Assistant Engineers in the above order and give them all consequential benefits arising thereof after setting aside the judgment of the High Court and allowing the appeal in terms of the said order. Thereafter an application seeking clarification regarding seniority of other Assistant Engineers, who were not party before the Supreme Court annexing two sets of gradation list on behalf of the Board was filed before the Apex Court, which was dismissed, vide order dated 29.9.1995 contained in Annexure 6/1.

5. On 16.1.1996, the Respondent Board issued notification refixing inter se seniority of the Appellant vis-a-vis Respondents in the said Civil Appeal, according to the directive of the Apex Court. However, in the meanwhile, four persons, viz. Respondents No. 7, 8, 9 and 10 of the present writ petition filed C.W.J.C. No. 2047 of 1996 challenging the legality and validity of the gradation list dated 16.1.1996. In the said writ petition the present Petitioners were made party Respondents. The Board filed a counter affidavit in the said writ petition and annexed the copy of the proposed change in the gradation list dated 16.1.1996 placing Respondents No. 5 to 11 and Appellants No. 1 and 2 before the Supreme Court above the Petitioners and other five promotee Assistant Engineers.

6. On 14.8.1996 when the said writ petition was taken up for admission, learned Counsel appearing on behalf of the Petitioners of the said writ petition submitted that in view of the statements made in the counter affidavit filed on behalf of the Board before this Court, on 1.7.1996 as well as the documents appended therewith, the application became infructuous and, therefore, sought permission to withdraw the writ petition. Permission was granted vide order, dated 14.8.1996, contained in Annexure 7/1. The present Petitioners apprehending victimization pursuant to the proposed gradation list of Assistant Engineers filed the present writ petition for the reliefs aforementioned. However, after filing of the writ petition, it appears that another gradation list was notified by the Board on 10.9.1996 and the order of reversion of Petitioner No. 3 was issued, which have been impugned by way of two amendment applications.

7. This Court, vide order dated 29.11.1996, issued notice on interlocutory applications and also passed the order for maintaining status quo with regard to Petitioner No. 3 only as existing on 23.11.1996. By subsequent order dated 3.2.1997 this Court found that the post of Technical Advisor to which the said Petitioner was posted has now been upgraded to Executive Engineer and, therefore, his joining shall be accepted as Technical Advisor-cum-Executive Engineer. In view of the said development, the order dated 29.11.1996 was modified and the same was made subject to the final result of the writ petition.

8. In the counter affidavit filed on behalf of the Board it is stated that the list dated 16.1.1996 was only a partial list whereas the list for the rest was also required to be published. As such, consolidated list dated 10.9.1996 has been notified, as contained in Annexure 9. The persons who were not parties before

the Apex Court have been adjusted as per seniority list of 1983 in order to have a consolidated list of inter se seniority of 34 Assistant Engineers.

9. It is contended on behalf of the Petitioners that the effect of the notification dated 14.7.1983 giving retrospective promotion to the Junior Engineers to the post of Assistant Engineers with effect from 21.10.1974 stands disturbed by the principle followed by the Apex Court in the order dated February 2, 1995 passed in Civil Appeal No. 4410 of 1985, contained in Annexure 5, inasmuch as the Apex Court while fixing inter se seniority of the Appellants vis-a-vis Respondents has followed the basis of continuous length of service in the cadre of Assistant Engineers and, accordingly, since Respondents No. 3 to 6 (Respondents 3, 4 and 6) before the Apex Court had been given the charge of Assistant Engineers in addition to their own duty with effect from January 21, 1972 and they had been continuously working as Assistant Engineers since then, placed them above the Appellants and rest of the Respondents who took over charge as such on April 5, 1975. Appellant No. 3 was placed as per his actual entry in the service. Meanwhile, all the present Petitioners got promotion as Executive Engineer with effect from 5th August, 1983 and Petitioner No. 2 has also retired in that capacity. It is contended that vide Annexure 9, the Board arbitrarily gave the benefit of seniority to Respondents No. 5 to 11 over the Petitioners even though they were not party before the Apex Court nor they ever challenged the order, contained in the notification dated 14.7.1983 (Annexure 4) whereby the Petitioners were given appointment as Assistant Engineer with retrospective effect from 21.10.1974.

10. It is submitted by Mr. Singh that in so far as the order contained in Annexure 4, whereby the present Petitioners along with others were "granted promotion as Assistant Engineer with retrospective effect from 21.10.1974 remains undisturbed and the Apex Court also did not go into the question that whether Respondent Board was justified in antedating the appointment. In view of the specific order, of the Apex Court, contained in Annexure , the seniority of the Appellant vis-a-vis Respondents before the Apex Court will have to be re-arranged as per the direction of the Apex Court and thereafter names of the rest of the Respondents are to find place in the seniority list of Assistant Engineers.

11. Mr. Shahi, learned Counsel appearing for the private Respondents has submitted that the effect of the order of the Apex Court, contained in Annexure 5, is that the antedating of the appointments of the Respondents before the Apex Court, including the present Petitioners have not been approved and thus following the principle of continuous length of service in the cadre of Assistant Engineer directed for fixation of seniority of the Appellant vis-a-vis the Respondents in the said appeal. It is submitted that if the Board fixes seniority of rest of the Assistant Engineers only after placement of the Appellant and the Respondents, who were before the Apex Court, then that will amount to adopting two different standards and lead to anomalous position. Once the Apex Court has

decided the principle to be followed in the matter of fixation of seniority of the two sets of Assistant Engineers working in the Board, then the Respondent Board has no authority to adopt two different standards inasmuch as according to him it will amount to revival of illegal seniority list which is not permissible. In this regard he has relied upon the decisions of the Apex Court in the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, and in the case of Bhey Ram Sharma and others Vs. Haryana State Electricity Board and others,

12. Mr. SJrravan Kumar, learned Counsel appearing for the Board has submitted that the Board is in a fix as to how it can adopt two different standards in the matter of fixation of seniority. It is true that the Apex Court on the basis of continuous length of service as Assistant Engineer arranged the seniority of the Appellants vis-a-vis the Respondents before it but after laying down the principle to be followed in their case and has not debarred the Board from re-arranging the seniority of other officials in the same cadre as per the said principle, it is submitted by him that bare reading of the order of the Apex Court would show the the Apex Court has not approved antedating the appointment of the Respondent and has followed continuous length of service in the cadre of Assistant Engineers as the basis for fixing inter s seniority of the parties before it ignoring the order of retrospective appointment c Respondents before the Apex Court, vide notification dated 14.7.1983 (Annexure 4 As such according to the learned Counsel for the Board, the Board was left with n opinion but to refix the seniority of all the cadres in the light of the principle followed by the Apex Court.

13. In reply, learned Counsel, for the Petitioners has submitted that the Respondent Board was not legally justified in following the same principle in the case of the Petitioners vis-a-vis Respondents No. 5 to 11 who were hot party before the Ape Court and the prayer on behalf of the Board seeking clarification regarding seniority of other Assistant Engineer such as Respondents No. 5 to 11, who were, not parties before the Apex Court, to the effect that their names were inserted ? the relevant place in the seniority on their joining as Assistant-Engineer was dismissed by the Apex Court, wife order dated 29.9.1995, contained in Annexure 6/1.

14. This Court does not find any substance in the submission of the learned Counsel for the Petitioners. It is true that the Board had sought for clarification by filing miscellaneous petition in Civil Appeal No. 4410 of 1985 and the same was dismissed by order dated 29.9.199?, contained in Annexure 6/1, but merely because of the dismissal of the said application filed by the Board cannot disentitle other Assistant Engineers, who were not party before the Apex Court in asking the Board for application of the same principle as followed by the Apex Court in the said Civil Appeal in their cases also otherwise, in my opinion, it will lead to an anomalous position. Once the Apex Court decided the principle to be followed in the matter of fixation of seniority of the two sets of Assistant Engineers working in the Board, then application of any other criteria or rule in

the case of some will be wholly arbitrary, discriminatory and in violation of Articles 14 and 16(1) of the Constitution of India. I am quite conscious of the position in law that the judgment inter party binds the parties only as also the fact that the validity of Annexure 4 was tested and not interfered with by this Court, against which Civil Appeal No. 4410 of 1985 was filed but, in my opinion, to avoid anomaly the Board has rightly followed the principle which has been followed by the Apex Court in the case of those Assistant Engineers of the same cadre, who were party before the Apex Court. Learned Counsel for the Petitioner has not disputed the respective dates of joining mentioned in Annexure 2 to the petition filed before the Apex Court (Annexure 6). Under such circumstances, this Court does not find any infirmity in the impugned final gradation list, contained in the notification dated 10.9.1996 (Annexure 9 to the amendment application).

15. The writ application is, thus, dismissed. However, in the facts and circumstances, there shall be no order as to costs.