

(2003) 12 PAT CK 0011

In the Patna High Court

Case No : L.P.A. No"s. 685, 688 and 692 of 1997

Manoj Kumar Singh, Rabindra Kumar Tiwary and Ajay
Shankar Choudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-12-2003

Acts Referred:

Citation : (2004) 2 PLJR 61

Hon'ble Judges : Ravi S. Dhavan, C.J.;Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Ganesh Pd. Singh, Shivendra Kishore, Sadanand Jha, Chakrapani and Rajni Kant Jha, for the Appellant; Rajeshwar Pd. and Jagdhar Pd. for State, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J. and Shashank Kr. Singh, J.—These three Letters Patent Appeals have been preferred against a common judgment/order of a learned Single Judge dated 28.4.1997 in C.W.J.C. No. 967 of 1997 Manoj Kumar Singh v. The State of Bihar and Ors. C.W.J.C. No. 798 of 1997 Ajay Shankar Choudhary v. The State of Bihar and Ors. and C.W.J.C. No. 955 of 1997 Rabindra Kumar Tiwari v. The State of Bihar and Ors. All the three appeals have been heard together and as common points have arisen in the same, with the consent of the parties the same are being disposed of by this common judgment.

2. All the three Appellants had applied for compassionate appointments due to death of their respective fathers, who had died in harness.

3. The case of Appellant Ajay Shankar Choudhary was considered by the Divisional Compassionate Appointment Committee. On 29.5.1990, the Committee approved the proposal for his appointment and directed the appointing authority to issue order of appointment. The Regional Deputy Director of Education (R.D.D.E.) Bhagalpur Division, Bhagalpur vide his memo No. 370-76

dated 23.6.1990 issued order of appointing the Petitioner as a clerk in the Nationalised High School Nawada Nagar (Rajaun). The Petitioner did not join the post instead made a representation for appointment in a government school on the ground that as his father was working in a government school he ought to have been appointed in any government school. The R.R.D.E., after taking instruction from the Regional Development Officer, Bhagalpur issued a fresh appointment letter on 18.4.1991 by which the Petitioner was appointed as a clerk in Area Education Office, Banka. Appellant Ajay Shankar Chaudhaiy joined the aforesaid post. Subsequently, by the impugned order dated 10.1.1997 the aforesaid order had been recalled, as such the writ petition was filed.

4. As far as the other two Appellants are concerned, they were also selected in a similar manner and appointed in different schools in the district cadre. They joined pursuant to the appointment letters issued in their favour, but protested that as their respective fathers were employees in the divisional cadre in the service of the State government where they died in harness they should have been also appointed in school coming under the divisional cadre. On 26.6.1991, the District Education Officer recommended their cases pointing out that they have been appointed in a different cadre than in which their respective fathers served at the time of their death. On 31.12.1993 R.D.D.E. issued orders for their appointment, in the Divisional cadre. However, by order dated 10.1.1997, the order transferring both the Appellants to the divisional cadre was cancelled and their services were placed at the disposal of the District Education Officer, Bhagalpur for their adjustment on any class MI posts. Being aggrieved by the aforesaid order of cancellation they had preferred the writ applications.

5. The contention on behalf of the Appellants is that the Compassionate Appointment Committees have been constituted both at the District level and the Divisional level where compassionate appointments are made pursuant to recommendation of the Divisional Compassionate Appointment Committee and the same can be made only against a post in the divisional cadre. As such, it has been contended that the initial appointment letters which were issued in favour of the Petitioner Appellants appointing them in the District cadre were bad and as such rightly corrected/recalled by the authorities themselves and as a correction has already been made the same cannot be said to be a change of cadre or promotion to a different cadre which is otherwise barred. It has further been argued that as a wrong has been corrected, the same under no stretch of imagination can be said to be a fresh appointment on compassionate ground.

6. The learned writ Court taking into consideration that the subsequent appointments of the Appellants were fresh appointments and as earlier the Appellants had already been appointed on compassionate grounds in a district cadre they should not have been again appointed in the divisional cadre and as such cancellation of their subsequent appointments has been held to be valid.

7. Learned Counsel for the Appellants has further contended that there is no denial of the fact that Divisional Compassionate Appointment Committee and the

District Compassionate Appointment Committee are not identical, rather the district cadre and divisional cadre are different and appointment made by different committees. It is also not in dispute that the father of the Appellants who died in harness belonged to the divisional cadre. The cases of the Appellants were considered for compassionate appointment by the Divisional Compassionate Appointment Committee. One of the Appellants even did not join pursuant to his earlier appointment and had protested at the very outset when such appointment letters were issued, though others in view of their financial position had joined the post but had immediately protested bringing the aforesaid facts to the notice of the authorities. A correction was made after taking instruction of the higher authorities. As such, according to learned Counsel for the Appellants the subsequent recalling of the aforesaid order was not at all justified and the aforesaid order being bad be quashed by this Court.

8. Learned State counsel, on the other hand, has contended that the Regional Deputy Director of Education was qualified to make appointment on a post in a divisional cadre on Class III and Class IV posts for which power has already been delegated to him, in cases of immediate emergency like temporary appointments or otherwise. A fact which he also does not dispute is that in view of the appointments of the Petitioner Appellants in the divisional cadre in 1991-93 in view of the interim order granted by this Court till date they are still discharging their duties in the divisional cadre. The other fact which is also not in dispute is that as far as salary is concerned, whereas in the divisional cadre it is being paid on month to month basis but, so far as the district cadre is concerned the same is not disbursed on month to month basis and some times it takes more than a year is getting the aforesaid salary disbursed. A further fact which is acknowledged is that the promotional avenue in the divisional cadre is more than that in the district cadre. These arguments have been made to show that the Appellants shall be in disadvantage if they are directed to go to the district cadre.

9. This Court taking all these aspects into consideration is of the considered view that in view of the appointment of the Petitioner Appellants by the Divisional Committee and as they are in the divisional cadre where they are continuously discharging their duties since either 1991 or 1993 at this stage they need not be disturbed and should be allowed to continue in the aforesaid cadre from the date they are working in the said cadre. The subsequent order dated 10.1.1997, contained in Annexure 7 to C.W.J.C. No. 967 of 1997, Annexure 7 to C.W.J.C. No. 955 of 1997 and Annexure 5 to C.W.J.C. "No. 798 of 1997 is hereby quashed. The present order has been passed in the facts and circumstances of the present case and it shall not be treated as a precedent.

10. In the result, all the three appeals succeed and are allowed to the extent indicated above. There shall, however, be no order as to costs.