
(2007) 03 PAT CK 0158
In the Patna High Court
Case No : CWJC No. 13060 of 2006

Md. Daud and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Citation : (2007) 3 PLJR 90

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Gajanan Arun, Md. Nurul Hoda and D.N. Mishra, for the Appellant;
Rajani Kant Mishra, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh, J.—Heard both the parties. Petitioner Nos. 1 and 2 were promoted to the posts of Horticulture Inspector by Office Order dated 19th August, 1980, whereas petitioner No. 3 was promoted to the post of Horticulture Inspector on 16th March, 1982. Since then the petitioners were working in the Horticulture Department of the State. In terms of a decision of the Promotion Committee taken on 24th April, 1999, the petitioners alongwith others were promoted to the posts of Horticulture Officer/Sub-Divisional Horticulture Officer on 14th October, 1999. The promotion as was effected on 14th October, 1999 was cancelled by an order dated 21st September, 2006. The validity of the said cancellation order is under challenge in the instant writ petition.

2. In the order dated 21st September, 2006, it had not been indicated as to why the promotions of the petitioners are being cancelled. In the counter affidavit, it has been stated that there are four reasons for cancellation of the promotions of the petitioners. The first of them is non-obtaining of roster clearance. Admittedly, petitioners were at roster points 116, 121 and 153 respectively, whereas posts that were being filled up were in roster points 111 to 157. Having regard to the fact that the petitioners were at the roster points, as mentioned above, they could be appointed to the posts, as were available and which were being filled in

at the relevant time. While in 1993, the State Government introduced 100 point roster for appointments, it made clear that the 50 point roster prescribed in 1975 shall apply in relation to promotions. That is the situation even now. In view of the said decision taken by the State Government and notified in 1993, the roster points were all known and on the basis of the said decision of the Government, if appointments have been given, it cannot be said that the appointments were contrary to the directions contained in the roster. Mere non-obtaining of clearance, even if that is true, does not, therefore, affect the promotions in question.

3. The Second contention in the counter affidavit is that the petitioners did not complete five years of working in the Horticulture Department. This contention is contrary to record. Petitioners for the reasons indicated above, did complete more than five years working in the Horticulture Department before their case for promotion was considered.

4. The third contention is that the Promotion Committee was not duly constituted who recommended the promotions. The fact remains that in the counter affidavit, no attempt has been made to indicate how the Promotion Committee was not duly constituted. It has not been indicated that who were entitled to be members of the Promotion Committee and which of such member was not a part of the Promotion Committee. Therefore, the allegation that the Promotion Committee was not duly constituted is a mere allegation and cannot be looked upon at all for no attempt has been made to substantiate the same. According to the directions of the Government, the Promotion Committee is to be constituted by the Agriculture Director, Director Administration, Agricultural Department and a person belonging to SC and ST to be nominated by the Personnel and Administrative Reforms Department. Admittedly, Agriculture Director as well as the Director Administration, Agriculture Department were members of the Promotion Committee, which decided the fate of the petitioners on 24th April, 1999. In addition to them, Deputy Agricultural Director was also a member of the said Committee. Despite knowledge of the fact that the Committee was, thus, comprised of it has not been indicated in the counter affidavit that the Deputy Agricultural Director, who was a member of the said Committee was either not a Scheduled Caste or a Scheduled Tribe or that he had not been nominated by the Personnel and Administrative Reforms Department of the State Government.

5. The fourth contention in the counter affidavit is that the Director Horticulture was not competent to appoint and promote to the post of Horticulture Officer and its equivalent posts. Admittedly, such competence vested in a Promotion Committee. Admittedly, a Promotion Committee was constituted and the said Promotion Committee made recommendations for promotions and accordingly, the promotions were granted by that Committee. Mere communication of the decision of the Promotion Committee by the Director Horticulture did not affect the matter at all. In any event, no attempt has been made by the State to bring on record any decision of the Government that after the Promotion Committee

has decided the matters pertaining to promotion, the promotion order must be signed by a person or an authority named by the State.

6. In those circumstances, there appears to be no just reason for cancellation of the promotions of the petitioners and accordingly, the writ petition is allowed. The order impugned cancelling the promotion of the petitioners is quashed. This disposes of the writ petition.