

(1984) 08 PAT CK 0047
In the Patna High Court
Case No : C.W.J.C. No. 878 of 1973

Mohammad Shamimmuddin and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 09-08-1984

Acts Referred:

Citation : (1985) 33 BLJR 293 : (1985) PLJR 117

Hon'ble Judges : S.S. Sandhawalia, C.J.;N.P. Singh, J;H.L. Agrawal, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—An apparent conflict of precedent within this Court pertaining to the impact of the rules governing the Bihar Agricultural Service, with particular reference to Circular Letter No. D/AG 232/ 53-AGRL-149, dated the 13th August, 1953, had originally necessitated this reference to the Full Bench, way buck on the 28th March, 1977.

2. From what follows hereinafter, the issues herein are now rendered somewhat academic and, it is, therefore, unnecessary to delve deeply into the facts. It suffices to mention that the writ petitioner, who, it the year 1973, was posted as the Assistant Research Officer (Soil Testing), had sought to challenge the promotion of Respondents Nos. 4 to 64 to higher posts in the Bihar Agricultural Service on the ground that he was senior to those respondents and his case for consideration had pre-eminence over that of those respondents. In defence the stand of the respondents was that the Bihar Agricultural Service had nine distinct categories and the petitioner belonged to Category III of that Service, whereas the respondents expressly belonged to Category I. Consequently, for promotion to higher posts in Category t, there was no question of considering the case of the petitioner vis-?-vis the respondents.

3. When this case originally came up before a Division Bench, presided over by my learned Brother, Mr. Justice Nagendra Prasad Singh, firm reliance was sought

to be placed on an unreported decision of this Court in Ram Charitra Prasad y. The State of Bihar and Ors. C.W.J.C. No. 1316 of 1968, decided on the 23rd May, 1969. Therein, inter alia, it had been observed as under:

....There was only one cadre, though for the purposes of administration, their services were grouped in nine categories. But when any case of promotion arise, all are entitled to be considered alike.

However, it was noted that in a subsequent decision in Sheo Dayal Sinha and Others Vs. The State of Bihar and Others, , a contrary view had been expessed, as the earlier Bench decision had not been brought to the notice of the Court. Inevitably, the matter was referred to as Full Bench for resolving the controversy by an authoritative decision.

4. It would appear that the passage of time in a way has resolved the controversy. An appeal by certificate was carried to their Lordships of the Supreme Court against the judgment of this Court in Sheodayal Sinha and Ors. v. The State of Bihar and Ors. (supra). The said appeal was allowed for the detailed reasons recorded, vide Sheo Dayal Sinha and others Vs. State of Bihar and others, . It would appear that as a consequence of this judgment, it became necessary for the State of Bihar to validate and regularise the numerous appointments, confirmations and promotions, which had been made in the Bihar Agricultural Service on the basis of its nine distinct categories made vide the Circular Letter dated the 13th of August, 1953, referred to above. To effectuate this purpose, the Bihar Agricultural Service Act, 1982, was enacted and promulgated and its provisions were given retrospectivity with effect from the 12th August, 1953. The relevant provisions thereof, which call for notice are Sections 2, 3 and 4 and may be read:

VARIOUS CATEGORIES OF AGRICULTURE SERVICE-

(a) Notwithstanding anything contained to the contrary in any judgment, decree or order of any Court the posts of Bihar Agricultural Service shall consist of the various categories specified in Schedule I.

(b) The State Government shall have the power to add or alter or delete any post from the category of posts in Schedule I by notification in Official Gazette.

3. APPOINTMENT, CONFIRMATION AND PROMOTION IN EACH CATEGORY-The appointment, confirmation and promotion in each category shall be made separate and distinct and the posts in the different categories shall not be interchangeabe from one category to another.

4. VALIDITY OF APPOINTMENTS, CONFIRMATIONS AND PROMOTIONS-Notwithstanding anything contained to the contrary in any judgment, decree or order of any Court or any rule, all appointments, confirmations and promotions in pursuance of the letter No. D/AG-232/53-AGRI-R-149, dated August 13, 1953, and Memo No. D/AG/032/53-Agriculture 27652, dated 12th and 14th December, 1953, shall be deemed to have been validly made, as if this Act were in foree on

such date or dates.

By a reference to Schedule I, it seems to be plain that now statutory sanction and force has been given to the nine categories of the Bihar Agricultural Service. Further, the appointments in each category have been made separate and distinct and are now no longer interchangeable from one category to another. With the retrospectivity given to the Act, Schedule given to the Act, Section 4 has now validated all appointments and promotions made on the basis of the earlier categorisation vide circular letter of the 13th August, 1953.

5. It seems that with the passage of time, and, in particular by the enactment of the Bihar Agricultural Service Act, 1982, the attack of the writ petitioner now stands totally blunted. Indeed the matter was not strenuously pressed and, even though a half-hearted prayer for amending the writ petition to challenge the vires of the Act was allowed and considerable latitude and time granted therefor, yet no amendment has been made at all. Learned Counsel for the writ petitioner somewhat curiously submitted that he may be allowed to orally assail the constitutionality of the Bihar Agricultural Service Act, 1982, which could hardly be permitted.

6. No meaningful contention to either assail the Act or the impugned action of the respondent State, in the context of the subsequent statutory enactment, could be raised, The writ petition has consequently to be dismissed. There will, however, be no order as to costs.