
(2000) 05 PAT CK 0068
In the Patna High Court
Case No : C.W.J.C. No. 6141 of 1991

Murari Krishna Prasad Sinha and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Citation : (2000) 4 PLJR 36

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Dhananjay Kumar Dubey, for the Appellant; J.D. Singh, Nityanand Jha and Sanjay Prakash Verma for State, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—All the seven petitioners in this writ application have already been promoted from the post of Sub-inspector of Police or equivalent post to the post of Deputy Superintendent of Police vide order dated 14.8.1985 contained in Annexure-3 but their grievance is that such promotion should have been made available to them with effect from 31.12.1981 instead of 1984 as given by Annexure-3. Learned counsel for the petitioners has submitted that he is not pressing this writ application on behalf of the petitioner no. 1, Murari Krishna Prasad Sinha, for the reason that he has been granted necessary relief by the departmental authorities. So far as other petitioners are concerned, admittedly, all of them have now retired from service from the post of Dy. S.P. and in case their claim is allowed, they would be at best entitled only to monetary benefits. As per facts given in the writ petition promotions considered by the Board in the year 1981 and in the year 1984 were on the basis of a seniority list of Inspectors of Police and other equivalent posts prepared on the basis of continuous officiating on the post of Inspector. On the basis of a judgment of this Court dated 17.1.1986, it has been shown that the said criteria for seniority did not find favour with this Court and accordingly, subsequent seniority list was prepared on the basis of date of confirmation in accordance

with service rules.

2. Petitioners' case is that in the subsequent seniority list prepared on the basis of confirmation as contained in Annexure-4, the petitioners are at higher places than those at serial 259 to 265 who were Sergeant Majors and were confirmed after the petitioners in the year 1981 on different dates. The petitioners' grievance is that persons at serial 259 to 265 were promoted to the post of Dy. S.P. with effect from 31.12.1981 ignoring the claim of the petitioners who were their seniors as per seniority list contained in Annexure-4. By referring to column 5 in Annexure-4, it has been submitted on behalf of the petitioners that even as per dates of their continuous officiating on the post of Inspectors, the petitioners had to be treated senior to those at serial 259 to 265 in Annexure-4. Thus, according to petitioners, they were senior to some of the persons promoted to the post of Dy. S.P. in the year 1981 by application of any of the principles of seniority be it date of continuous officiating or date of confirmation.

3. In the counter affidavit filed on behalf of respondents, a stand has been taken that at the relevant time in 1981 and 1984 the principle of seniority was date of continuous officiation and on that basis, a joint gradation list was prepared in which petitioners' name did not find mention and hence, they were not granted promotion in 1981 but subsequently they were considered by the 1984 Board and were granted promotion. The counter affidavit does not go further into the claim of the petitioners and nothing has been disclosed as to why the petitioners were not included in the joint gradation list when claims of others were considered by the 1981 Board. The counter affidavit does not specifically controvert the claim of the petitioners that by any of the accepted norms they were not senior to those placed at serial 259 to 265 in Annexure-4 nor does it controvert the fact that those persons had been promoted to the post of Dy. S.P. with effect from 31.12.1981.

4. Had this case not been admitted and pending for about 10 years, the objection of the respondents on account of delay in filing of writ application may have been considered in detail but now at this stage it does not appear proper to throw out this writ application on such technical ground more so when learned counsel appearing for the petitioners has given an undertaking that the petitioners if granted benefit of promotion to the post of Dy. S.P. with effect from 31.12.1981 the date on which their juniors were so promoted, would not seek any monetary benefit by way of difference of salary for the staid period and they would be satisfied only with notional promotion in the appropriate scale of pay from 31.12.1981 so that the monetary benefit could be paid to them only by way of retirement benefits and pension which should be worked out on the basis of such notional promotion.

5. In view of such undertaking and keeping in view the in controverter position of facts noticed above, in my view, the claim of the petitioners for promotion to the post of Dy. S.P. with effect from 31.12.1981 requires to be reconsidered by the concerned respondents and accordingly, their claim is remitted back for

consideration by respondent nos. 2 and 3, the Home Secretary, Bihar and the Director General of Police, Bihar, respectively. For this purpose, the petitioners should file a representation along with a copy of this order before respondent nos. 2 and 3 and on receipt of such representation the concerned respondents shall reconsider the claim of the petitioners no. 2 to 7 on the basis of observations made in this order and in accordance with law within a period of three months from the date of filing of such representation. The necessary consequential monetary benefits with regard to retrial benefits and pension only, once the grievance of the petitioners is accepted should be made available to the concerned petitioners within a further period of three months from the date of decision. The writ application with regard to petitioner no. 1 is dismissed as not pressed and with regard to other petitioners; it is allowed to the extent indicated above. In the facts of the case, there shall be no order as to costs.