
(2004) 05 PAT CK 0033
In the Patna High Court
Case No : CWJC No. 13668 of 2000

Nand Kishore Jha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-05-2004

Acts Referred:

Citation : (2004) 2 BLJR 1308 : (2004) 3 PLJR 478

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Shashidhar Jha, for the Appellant; A.K. Dubey, JC to SC 4, for the Respondent

Judgement

Narayan Roy, J.—Heard counsel for the parties.

2. The petitioner has prayed for issuance of direction upon the respondents to promote him on the post of Assistant Sub-Inspector of Excise.

3. It is submitted by learned counsel for the petitioner that the petitioner is a Excise Constable and he is eligible for promotion to the post of Assistant Sub-Inspector of Excise. It is further submitted that as per Clause 45 of the instruction of the Board of Revenue, permanent appointment of Assistant Sub-Inspector of Excise is required to be made by the Excise Commissioner in April each year either by direct recruitment or by promotion of selected Excise Constables below the age of 50 years, but the cases of the petitioner and similarly situated persons have not been considered after 1995. It is further submitted that the petitioner made representation before the competent authority in 1998 to consider him for the post of Assistant Sub-Inspector of Excise, but till date nothing has been done in this regard.

4. A counter affidavit has been filed on behalf of the respondents stating therein that after 1995 no vacancy in the cadre of Assistant Sub-Inspector of Excise, has been filled up except under the orders of this Court.

5. Nowhere in the counter affidavit, it is stated that there is vacancy for the post of Assistant Sub-Inspector of Excise and the petitioner is not eligible for consideration.

6. As per the requirement of Clause 45 of the instruction aforesaid, issued by the Member, Board of Revenue, the vacancies are required to be identified each year and eligible persons are required to be considered either for direct recruitment to the post of Assistant Sub-Inspector of Excise or to fill up the post by way of promotion.

7. Admittedly, the cases of the petitioner vis-a-vis other eligible persons have not been considered irrespective of the vacancies in the cadre.

8. From the statement made in paragraph 10 of the counter affidavit, however, it appears that certain vacancies of Sub-Inspector of Excise have been filled up by virtue of direction of this Court. If this was the situation, then the authorities were required under Clause 45 of the instruction aforesaid to consider the cases of the eligible persons also and the questions of appointment should not be left to be decided by this Court when it is to be done by the Department itself.

9. From the pleadings of the parties, it does not appear to be a case that the petitioner is not eligible to be considered for promotion to the post of Assistant Sub-Inspector of Excise.

10. Under the circumstances, the respondent authorities were duty bound to consider the cases of eligible persons each year to fill up the vacant posts of Assistant Sub-Inspector of Excise.

11. Considering the facts and circumstances of the case, the respondent authorities are directed to consider the case of the petitioner for promotion to the post of Assistant Sub-Inspector of Excise in case, he is found eligible and within the zone of consideration for promotion. This exercise, however, must be completed within three months from the date of receipt/production of a copy of this order and the decision, if any, taken by the authorities must be speaking one.

12. With the direction/observation aforesaid, this application is disposed of.