

(1995) 03 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1459 of 1990 (R)

Nandji Upadhaya

APPELLANT

Vs

Bihar State Mineral Development Corporation Ltd. and Others

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Citation : (1995) 1 BLJR 650

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Judgement

R.N. Sahay, J.—The main grievance of the petitioner is that he was entitled to be designated as Chemist w.e.f. 8.2.1985 and that Respondent Nos. 5 and 6 were illegally designated as Chemist by superseding the claim of the petitioner.

2. The short facts for the disposal of this application are as follows:--

The petitioner was initially appointed as Lower Division Clerk and subsequently he was appointed as Mining Mate since he possesses a certificate in mining. It appears that respondent-Corporation made an offer to the petitioner and two others to undertake training as Chemist. The petitioner and two others, namely, Deobarat Mahto and Sushil Kumar Singh, were sent for training as Chemist. This was done in view of the fact that the respondents had decided to establish laboratory for testing sample. The petitioner having obtained necessary training was posted as Laboratory In-charge, Pathratu vide Annexure-3 dated 4.2.1985. The petitioner was relieved vide Annexure-4 as sequel to the Annexure-3. The petitioner on 5.2.1986 sent a representation to the Managing Director to designate him as Chemist. He also sent several reminders but to no effect.

3. It is not in dispute that although he was not designated as Chemist he was working as Laboratory In-charge.

4. It appears that Respondent No.5 for the first time engaged as Junior Chemist for six months only on ad-hoc basis at a fixed remuneration of Rs. 500/-.

Respondent No.5 was so engaged vide Annexure-5 dated 21.4.1986. Similarly, 6th Respondent Daya Shankar Singh was appointed on ad-hoc basis for six months some time in 1987. These respondents were designated as Chemist and on an up-graded scale by Annexure-8.

5. It is to be stated that their ad-hoc appointments were also extended from time to time. The petitioner makes no grievance of the fact that if Respondent Nos. 5 and 6 were designated as Chemist the petitioner continued to act as Laboratory Incharge. Annexure-9 to the writ application which is dated 24.3.1990 shows that petitioner was working as Laboratory Incharge. The 5th respondent, Amar Nath Singh, was considered to be suitable person to be appointed as Laboratory Incharge. By order dated 25th April 1990 contained in Annexure-10 to the Writ application, the said respondent was made Laboratory Incharge, Pathratu in place of the petitioner. That was a great surprise to the petitioner since the petitioner had been working as Laboratory Incharge since long and as claimed by the petitioner Respondent No.5 had been working under him. Petitioner's application for designating him as Chemist was not decided and all of a sudden 5th Respondent was appointed Laboratory Incharge. The petitioner filed several representations (Annexures-11 and 12) making, serious allegation against the then Managing Director that the appointment of Respondent No.5 as Laboratory Incharge was an outcome of gross favouritism since Respondent No.5 alleged to be related to the then Managing Director. The petitioner was transferred vide Annexure-13 to Sirboi as Laboratory boy although no laboratory has been established on that place. The petitioner was given job of collecting samples. This order was, however, stayed by this Court and the application was admitted for hearing.

6. The petitioner's case is that he was made to suffer in order to accommodate Respondent No.5 who is said to be related to the then Managing Director. This plea supported by the fact that one Deobarat Mahto who had also undergone training with the petitioner in 1985 and had been appointed as Incharge Laboratory, has been promoted as Senior Chemist vide Annexure-17 to the writ application.

7. Mr. P.K. Prasad, learned Counsel for the petitioner strongly pleaded the case of the petitioner. Petitioner's case for being appointed as Senior Chemist was on same footing as that of Deobarat Mahto who had since been promoted. In other words, case of the petitioner is that at par with Deobarat Mahto and no reason had been disclosed in the counter-affidavit to justify this discrimination. Deobarat admittedly, senior to Respondent Nos. 5 and 6. This is established from Annexure-24 in which Deobarat Mahto has been shown senior to Respondent Nos. 5 and 6.

8. The narrative of facts, in my opinion, case of discrimination is writ large particularly when respondents have not justified reason for appointing Deobarat Mahto Senior Chemist without deciding the claim of the petitioner who stands absolutely on similar footing. It has not been explained that when Deobarat

Mahto has been declared to be senior to Respondent Nos. 5 and 6 then why the petitioner was deprived of the post of Laboratory Incharge. The petitioner, therefore, has made out a strong case for interference. The petitioner however, is not interested to get the appointments of Respondent Nos. 5 and 6 quashed provided his seniority is not affected. It is not proper to express any conclusive opinion to the question raised in this Writ application since representation filed by the Petitioner is still pending concerned Respondent is bound to consider and dispose of the representation. In view of the salient facts and circumstance of the case I direct Managing Director to consider and dispose of the representation filed by the petitioner by a speaking order within three months from the date of production of this order. Before him the petitioner is directed to produce the certified copy of this order within three weeks after copy is supplied to him.

9. It may be stated that the Corporation has supported the case of the petitioner in one of the counter affidavits. Liberty is also given to the petitioner to file afresh representation before the Managing Director annexing his previous representation.

10. The interim order dated 29.8.1990 passed by this Court shall continue till the representation of the petitioner is disposed of.

11. This application is disposed of with the aforementioned observations and directions.