

(2005) 10 PAT CK 0016
In the Patna High Court
Case No : CWJC No. 14267 of 2001

Paras Nath Sharma

APPELLANT

Vs

The Bihar Sanskrit Shiksha Board and Others

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Citation : (2005) 4 PLJR 703

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Ashok Kumar Choudhary and Satyavrat Verma, for the Appellant; B.N. Mishra for Respondent No. 3 and Mr. Alok Kumar for the Board, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner, the learned Counsel for the respondent No. 3 and the learned Counsel appearing on behalf of the Bihar Sanskrit Shiksha Board. Learned Counsel for the respondent No. 3 raises a preliminary objection that the petitioner would have an alternative remedy of statutory appeal. The petitioner would submit that the impugned order would have been passed by the Special Director who would be officiating as Chairman of the Board. The Special Director would be the appellate authority. The appeal would therefore be futile. Learned Counsel for the Board submits that till date there would be no regular Chairman. In any view of the matter this Court finds that the short controversy involved in this writ application stands well settled both by this Court as also by the Apex Court. This Court is therefore satisfied that this writ application cannot be rejected simplicitor on the grounds of alternative remedy. The same would be a rule of discretion in the facts of each case.

2. The petitioner and the respondent No. 3 would both have been appointed as Assistant Teacher by the Managing Committee of the School in question by an order dated 30.12.1983. It would not be in dispute that the petitioner's name

would have been higher than respondent No. 3 in the panel. The Board would have approved the panel on 21.8.1984 in which the petitioner would/have remained senior to respondent No. 3. The petitioner's date of birth would be 12.1.1959 while that of respondent No. 3 would be 1.11.1960. The petitioner would hold higher qualification of Acharya, equivalent to MA, on the date of his appointment while respondent would only be Shastri, equivalent to BA, on the said date. He would have acquired qualification of Acharya in 1984. In pursuance of their appointment the petitioner would have been appointed on 23.8.1984. The respondent No. 3 claims to have joined from 22.8.1984. Both of them would have started receiving their salary from 23.8.1984.

3. The short question in the aforesaid facts that arises is as to which of them would rank senior and accordingly be eligible in priority to be considered for the post of Headmaster. Would the fortuitous act of joining in pursuance of a common selection and notwithstanding their respective placement in the panel, qualification, date of birth etc., the person who may have joined a little prior to the other would inevitably rank senior?

4. Learned Counsel for the petitioner assails the order at Annexure 1 holding the respondent No. 3 to be senior on the premise that the respondent No. 3 would have joined in the forenoon of 22.8.1984 while the petitioner would have joined in the afternoon of 23.8.1984. He submitted that in view of the settled law in this regard, the petitioner would necessarily rank senior. He relies on the judgment reported in Sudama Singh Vs. Nath Saran Singh and Others, , Jyoisna Chatterjee Vs. The State of Bihar and Others, and Vijay Kumar Vs. The State of Bihar and Others, .

5. Learned Counsel for the respondent No. 3 would submit that it being an admitted position that respondent No. 3 would have joined on 22.8.1984 while the petitioner would have joined on 23.8.1984, the said fact would be sufficient by itself to hold that the respondent No. 3 was senior to the petitioner irrespective of other considerations. Thus the order at Annexure 1 requires no interference. He further submits that after Annexure 1 dated 10.9.2001 came to be issued the petitioner would have been also appointed as Headmaster.

6. Learned Counsel for the petitioner would rightly place reliance on the judgment of this Court reported in Jyoisna Chatterjee Vs. The State of Bihar and Others, which would hold in paragraph 10 as follows:

"10. It is by now well settled that if two persons are appointed at the same time, in the absence of rule, their inter se seniority is to be fixed on the basis of their respective positions as recorded by the competent authority at the time of their first appointment and in case no such criteria is adopted, then their qualification and the date of birth are the relevant consideration for determining their inter se seniority. The State Government in the Education Department letter No. 2060 dated 15th September, 1981 laid down that if the date of appointment of two teachers is the same, the seniority will be decided on the basis of date of birth."

7. In the judgment reported in *Sudama Singh Vs. Nath Saran Singh and Others*, relied upon by the learned Counsel for the petitioners, the Apex Court would hold that "if two or more teachers were so appointed on the same date seniority shall be determined on the basis of age."

8. Learned Counsel in this context would rightly also place reliance on a Bench decision of this court reported in *Vijay Kumar Vs. The State of Bihar and Others*, , where in paragraph 11, the court would hold:-

"11. Having appreciated the rival submissions, I find substance in the submission of Mr. Prasad. Petitioner as also respondent No. 8 were appointed as Junior Engineer by a common order and they were asked to join within one week from the date of the order. In my opinion, when the joining time is given in the order of appointment, an employee cannot become senior only on the ground that he has joined the service earlier than another person. The date of joining in respect of employees appointed by the same order, if considered relevant, will lead to mad race and seniority shall be determined on fortuitous circumstances. An employee posted at a far away place will certainly take more time to join than a person posted at a nearby place and determining the seniority on the basis of date of joining shall be absolutely illegal. Hence, I am not prepared to hold that the petitioner is senior to respondent No. 8 only on the ground that he joined the service as Junior Engineer few days earlier to respondent No. 8."

9. The Supreme Court in a recent judgment reported in AIR 2004 SC 2767 (*P. Srinivas vs. Radhakrishna Murthy & Ors.*) would be considering the question of seniority of two persons who would have been selected together and would have been required to join the post/duty on or before 12.7.1987. The appellant would have sought extension of time for joining, his request having been acceded to, he would have joined service on 31.7.1987. The Tribunal would have upheld the seniority of the Appellant which came to be upset by a Division Bench of the Andhra Pradesh High Court. The Apex Court on consideration of the matter in the relevant extract of the judgment at paragraph 11 would hold:

"11. ...It is undisputed that both the Appellant and respondent No. 1 were selected in the same selection and the appellant was more meritorious in terms of marks secured by him in the selection process and ranked above the 1st respondent and the inter se ranking and consequent inter se seniority cannot be disturbed and rights flowing from such ranking cannot be denied merely because there was some delay in joining-all the more so when such delay was only 8 days..."

10. This Court upon consideration of the submissions made on behalf of the parties and the materials on record, is satisfied that Annexure I cannot be allowed to stand. The reasonings set out therein to declare respondent No. 3 to be senior would be contrary to the well settled principles laid down by this Court as also the Apex Court noticed above.

11. In that view of the matter, this writ application has to be allowed. The order

dated 10.9.2001 at Annexure 1 is accordingly set aside. The petitioner would rank senior to respondent No. 3. No order as to costs.