
(2003) 07 PAT CK 0104

In the Patna High Court

Case No : Letters Patent Appeal No. 283 of 1997

Pradeep Kumar Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Bihar Private Engineering Colleges (Control) Act, 1990 — Section 5(3)

Citation : (2003) 4 PLJR 114

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Subodh Kumar Jha and Amar Nath Banerjee, for the Appellant;
Satish Chandra Jha and Alamdar Hussain, for State, for the Respondent

Final Decision : Allowed

Judgement

Shashank Kr. Singh, J.—The present appeal has been preferred against the judgment of the learned single judge dated 8 December, 1994 passed in C.W.J.C. No. 1715 of 1991, by which notification dated 31.1.1991 issued by the State Government absorbing the services of the Appellant and others, has been quashed.

2. The Appellant was Respondent No. 8 in the writ application. After going through the process of selection through advertisement he was appointed along with the writ Petitioner and other as assistant in Jagarnath Mishra Institute of Technology, Darbhanga. The aforesaid appointment is dated 18.7.1981. Petitioner, who was also appointed on the same day joined the aforesaid post on 24 July, 1981 whereas the Appellant had joined the aforesaid post on 22 July, 1981, i.e. two days before the writ Petitioner.

3. Subsequently, the State Government took over the institute under the Bihar Private Engineering Colleges (Control) Ordinance, 1986, replaced by an enactment being Private Engineering Colleges (Control) Act, 1990.

4. A screening committee was constituted, by the State government to consider

base of absorption of the employees of colleges, after take over, after considering their suitability for the post they held in their colleges, including the mode of their appointment and as to whether the posts were sanctioned. The screening committee submitted its report to the State Government. Pursuant thereto, by a notification dated 31.1.1991 the Appellant and one Shyam Thakur were also recommended to be absorbed. The writ Petitioner Suresh Chandra Jha being aggrieved by the same moved this Court challenging the aforesaid notification, as according to him though he and the Appellant were appointed on the same date and he admittedly joined two days subsequent to joining of the Appellant, but according to him as he was having a higher educational qualification and his date of birth was earlier to that of the Appellant, as such, he should be treated as senior to the Appellant, and his services should have been absorbed.

5. The only fact which is required to be decided in the present appeal is to who should be treated to have joined the college earlier as admittedly, both were appointed on 18.7.81. The writ Petitioner joined on 24.7.81. The Appellant joined on 22.7.81. If date of joining is to be considered as the relevant factor, the present Appellant joined two days earlier. If date of birth is the consideration, taking the date of letter of appointment as same, the writ Petitioner has to be reckoned as senior.

6. It is not in dispute that the State Government had adopted the principle of "last come first go" and as per the provision u/s 5(3) of the Ordinance as admittedly the writ Petitioner had joined subsequent to the Appellant he was the last to join and his services could not be absorbed earlier to that of the Appellant and as such, a decision was taken by the screening committee to declare the writ Petitioner surplus and subsequently by the impugned notification to the writ petition, the Appellant's services was directed to be regularised, and the writ Petitioner, declared surplus.

7. The counsel for Respondent No. 8, the writ Petitioner, contests the aforesaid decision of the State government and contends that though he joined the college later, a fact which is not controverted, but still, as the letter of appointment was of the same date and he being elder in age he should have been treated as such, and as the State Government erred in appreciating the aforesaid fact and by its notification dated 31.1.1991 directed for the absorption of the services of the Appellant, the writ Court rightly quashed the same and directed for the writ Petitioner's absorption.

8. This Court by plain reading of Section 5(3) of the Ordinance and the principle laid down by the State Government for the aforesaid purpose that "last come first go" was to be accepted and in view of the discussions as made above, is of the considered view that as the writ Petitioner had joined the post, subsequently he was rightly reckoned junior to the Appellant, as such, the notification dated 31.1.1991 as contained in Annexure-6 to the writ application did not suffer from any lapses.

9. The present Letters Patent Appeal is allowed. The judgment dated 8 December, 1994 passed in C.W.J.C. No. 1715 of 1991 is in error and is, thus, set aside. The Respondents to proceed in giving effect to its notification dated 31.1.91. No order as to cost.