

**(2009) 04 PAT CK 0039**  
**In the Patna High Court**  
**Case No : CWJC No. 11198 of 2002**

Prayag Sharma and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 01-04-2009

**Acts Referred:**

**Citation :** (2009) 3 PLJR 839

**Hon'ble Judges :** S.K. Katriar, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

S.K. Katriar, J.—Learned counsel for the petitioners is permitted to correct the typographical error on page-59 of the brief (Annexure-8). Heard Mr. Gyanand Roy for the petitioners and Mr. Gyan Prakash Ojha, learned Assistant Counsel to Government Advocate No. 7 for the respondents. This writ petition has been preferred with the prayer to quash the order dated 9.8.2002 (Annexure-1), issued under the signature of respondent No. 6, whereby the five petitioners herein, apart from seven others (not petitioners herein), have been reverted from their post of Assistant Sub-Inspector of Police (Technical) to that of Literate Constable (Technical). The respondents have placed on record their counter affidavit in support of the impugned order and have supported the impugned order. A brief statement of facts essential for the disposal of the writ petition may be indicated. Five petitioners have joined this writ petition. In pursuance of a regular selection process, petitioner Nos. 1 and 2 (apart from others not petitioners herein), were appointed as Literate Constable (Technical) by order dated 19.11.1979 (Annexure-4). Similarly, petitioner Nos. 3 to 5 were appointed as Constable (Technical), by order dated 9.10.1982 (Annexure-5). Petitioner Nos. 1 and 2 passed the Basic Radio Technician Grade-III Course and were declared to have passed the course, vide order dated 6.12.1982 (Annexure-8). Similarly, petitioner Nos. 3 to 5 passed the course vide order dated 28.8.1984 (Annexure-9). The State Government issued Order No. 1793, dated 14.12.1996

(Annexure-14), wherein it was, inter alia, stated as follows:--

In other words, the State Government noticed that there Is no post of Literate Constable (Technical) in the Wireless Department of the Bihar Government and, therefore, the petitioners apart from others had erroneously been appointed to the post of Literate Constable (Technical). They should have really been appointed to the post of Assistant Sub-Inspector of Police (Technical). The error having been detected, the State Government issued the aforesaid order upgrading the posts of Literate Constable (Technical), to that of Assistant Sub-Inspector (Technical). The order covered as many as 63 persons including the five petitioners herein. This order was acted upon and the petitioners, apart from those others mentioned in Annexure-14, were re-designated as Assistant Sub-Inspector (Technical), and also enjoyed the prescribed pay-scales and other benefits. The petitioners have been visited with the impugned order whereby they have been reverted to the previous posts of Literate Constable (Technical) on the ground that there was an error in calculation on the occasion of issuance of the said order dated 14.12.1996 (Annexure-14). Learned counsel for the petitioners has assailed the validity of the impugned order on diverse grounds.

2. Learned Government Counsel has relied on his counter affidavit and has opposed the writ petition.

3. We have perused the materials on record and considered the submissions of learned counsel for the parties. On a perusal of the materials on record, it is evident that the petitioners apart from others were initially appointed on the post of Literate Constable (Technical). The State Government issued the aforesaid order dated 14.12.1996 (Annexure-14), upgrading the posts to that of Assistant Sub-Inspector (Technical), for the reason that the former does not exist in the department of Wireless of the Bihar Government and were given non-existent designations. No fault can be found with the same. However, the impugned order assigns completely different reasons for reverting the petitioners to the posts of Literate Constable (Technical), namely, there was an error in calculating the number of posts of Assistant Sub-Inspector (Technical). The reason is wholly inconsistent with the stand taken in Annexure-14.

4. Similarly circumstanced employees had preferred C.W.J.C. No. 9836 of 1999 (Alauddin Ansari and Another vs. The State of Bihar and Others), and C.W.J.C. No. 7503 of 2000 (Suresh Prasad vs. The State of Bihar and Others), which were allowed by order dated 1.5.2006 (Annexure-34), whereby an identical order of reversion was set aside. The learned Judge observed as follows in paragraphs 6 and 7 of his judgment:--

"6. Having heard the counsel for the parties and having perused the pleadings filed by them, I am of the view that once the authorities upgraded the initial appointment of the petitioners from literate constable to ASI taking into account their special qualification as Diploma holder in Radio/Telecom-munication, from ITI as also passing of the Grade-III examination they ought not to have

disturbed the upgradation by passing subsequent range/office orders dated 17.4.2005/18.4.2005, Annexures-Y/Z, that too without hearing the petitioners and others after about 9 years of the issue of the order dated 13/14.12.1996, Annexures-10/15.

7. In the circumstances this Court has no option but to quash the aforesaid two orders dated 17.4.2005 and 18.4.2005, Annexures-Y and Z which is accordingly quashed and the authorities are directed to consider the case of the petitioners for grant of two promotions in the light of the orders of the Supreme Court, Annexure-4..."

The State Government did not challenge this order and has attained finality. In that view of the matter, we are left with no option but to set aside the impugned order in so far as it concerns the five petitioners herein.

5. It is further relevant to state that recovery of the amount in question ordered for by the impugned order was stayed by this court by order dated 14.11.2002. In view of the position that the impugned order is hereby set aside in so far as it concerns the five petitioners, the order for recovery also automatically falls to the ground.

6. Learned counsel for the petitioners has also prayed that consistent with the judgment of the Supreme Court in AIR 1988 1033 (SC) , the petitioners may be considered for promotion as ordered for by the Supreme Court. He further submits that this Court has passed the consequential orders on 1.5.2006 (Annexure-34). The respondent authorities are hereby directed to consider the cases of the petitioners for promotion in accordance with the direction of the Supreme Court and this Court. In the result, this writ petition is allowed and the impugned order in so far as it concerns the petitioners, is hereby set aside.