
(1984) 08 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 1760 of 1979

Purushottam Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-08-1984

Acts Referred:

Citation : (1985) 33 BLJR 286 : (1985) PLJR 1148

Hon'ble Judges : M.P. Verma, J;H.L. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.P. Verma, J.—The writ applicants have initially challenged the validity of the notification kept at annexure "1" and 1A, by which respondents 5 to 19 have been promoted as Executive Engineers in the Department of Irrigation, Government of Bihar. Petitioner No. 1 got his promotion in the years 1972 with effect from 20.6.72 and the other three petitioners with effect from 9.8.1973.

2. Subsequently the applicants moved for amendment of the writ application relation to retrospective confirmation of the respondents concerned as Asst. Engineers with effect from different dates (details of which are noted in annexures "6" and "6A"). Respondents 5 to 8 were promoted as Asst. Engineers under letter No. 10196 dated 8.4.75 (Vide annexure "6") and respondent Nos. 14 to 19 vide Government notification No. 2388 dated 27.10.75 (vide annexure "6A"). The prayer for amendment was allowed on 3.1.1980. The petitioners prayed for quashing of the orders contained in these two annexures "6" and 6A".

3. The case of the aforementioned applicants is that they were appointed as overseer; in the Bihar Subordinate Engineering Service in the Department of River Valley Project on different dates in the year 1958. Applicant No. 1 was confirmed as Asst. Engineer on 1.1.1956. Applicant No. 1 was promoted to the rank of Asst. Engineer in the said Department on 20.6.1972 and others on 9.8.1973.

4. Respondents 5 to 8 and 14 to 19 were also initially appointed as overseers and were subsequently promoted to the post of Asst. Engineer under notification No. 2058/2059/2071/2063 dated 9.2.1974 and 505 dated 18.2.78. Respondent 9 to 13 are direct recruits as Asst. Engineer in the River Valley Project Department in 1965. As stated above, the Respondents got their confirmation as per notification contained in annexures 6 and 6A.

5. It is further stated that the respondents-state published a gradation list as annexure 1 and 2 placing the petitioners much below respondents 5 to 19. This annexure "2" is also under attack on the ground that the same has been prepared without adhering to any principle. By another Notification No. 1592 dated 31. 5. 1979 and 1612 dated 2. 6 1979 respondents 5 to 19 were promoted to the post of Executive Engineer, Irrigation Department as aforementioned in annexure "1" and 1A", the validity of which is under challenge in this writ application.

6. The services of the Engineers are regulated under the rules known as "Rules to regulate the method of recruitment to the Bihar Engineer Service Class I and Class II for Public Works Department (Buildings and Roads) Irrigation Department and the vacancies are filled up in accordance with the said rules and either by direct recruitment or by promotion

7. The claim of the petitioners is that they were appointed as Asst. Engineer much earlier than the respondents 5 to 8 and also 14 to 19. The petitioners therefore, claimed seniority over them. It has been submitted that the respondent State ignoring their case, in mala fide exercise of powers promoted the respondents 5 to 8 and 14 to 19 to the post of Asst Engineer retrospectively under letter No. 10196 dated 8.4.1975 (vide annexure "6") and Government notification No 2388 dated 27.10.1975 (vide annexure "6"). As pointed out above, the petitioner subsequently amended the prayer in the main writ application and asked for quashing of the orders contained in annexures 6 and 6A also.

8. It has also been argued that the promotion of the deputationists respondents aforesaid (respondents 5 to 7) and 15 to 19 with retrospective effect from the years 1964 and 1965 respectively, when they were not even born in the cadre of the Department of the River Valley Project, was a clear abuse and at the same time against the quota of the River Valley Project Department, which according to the petitioners the Government under Rule 2 had taken a decision that 25% of the cadre post in the service both temporary and permanent were to be reserved for being filled up by promotion from the members of the Bihar Subordinate Engineering Service. In pursuance of the said decision the petitioners, individually and also association filed representation to promote them, but they got a hostile treatment at the hands of the authorities the State-respondent. It is alleged that the State respondent circulated a tentative gradation list of Asst. Engineer of Irrigation Department in which the petitioners have been shown below in serial number to respondent 5 to 19 and that according to the

petitioners this has been so done without any rational or intelligible criteria for fixation of inter-se-seniority. Promotion of the respondents to the post of Executive Engineer in annexures 1 and 1A, according to the petitioners is a hostile discrimination adversely affecting the right of the petitioners to the post.

9. Counter affidavit on behalf of the respondents has been filed. As pointed out above, respondents 5 to 8 and 14 to 19 were appointed as Overseers and confirmation to the post was made under Notification No. 10196 dated 8. 7. 1975 and No. 2388 dated 27. 10. 1975 ("vide annexures 6 and 6A). Specific dates have also been noted therein, from which they were promoted as Asst. Engineers. Perusal of these two documents show that the dates of promotion of the Respondents are much before the date of the promotion of the petitioners. It also appears as has been asserted on this behalf and rightly, that they were senior to petitioners 2 to 4 in the cadre of Overseer where they were appointed and confirmed. The case of the respondents is that they were appointed as Overseers S.D.O. long before the petitioners were promoted as Asst. Engineer. They have further submitted that under Rules 49 and 50 read with note 3 of rule 7 of the Public Works Department Code Vol I, the post of an overseer S.D.O is equivalent to the post of Asst. Engineer. A denial has also been made in the counter affidavit with regard to the quota rule. There is no quota rule to promote the officer from a back date on a post on which he was not working. It is stated that the principle has been clearly laid down in the case of Sri Akhauri Sachida Handy. The State of Bihar C.W.J.C. No. 756/77, disposed of on 29-7-77.

10. From annexures G and G/1, I find that a combined gradation list of overseer Junior cadre was published on 29.7.1977 in pursuance of the direction issued by this Court while disposing of the writ application. This gradation list consisted amalgamated cadres of both River Valley Projects Department and the Irrigation Department and it is found that the respondents are senior to the petitioners. A tentative gradation list was circulated and a committee headed by senior most Engineer in-chief cum Special Secretary was constituted to examine the claim and objections invited in preparation of the final gradation list and it cannot be denied that the case of the petitioners would also be disposed of by the said committee. It also transpires that any promotion made on the basis of the present provisional list would be subject to the revision and realization of the gradation list after disposing of the objections invited. I further find that petitioner No. 1 was promoted to the rank of Asst. Engineer on 29. 6. 1971, No. 2 on 19. 2. 1972, No. 3 on 31. 7. 1972 and No. 4 on 31.12.1972, whereas respondent Nos. 5, 6 and 7 were taken in the said rank in 1964 and respondent No. 8 in 1965 and other respondents 14 to 19 in the year 1966.

11. All the three Departments, i.e. Kosi Wing, Gandak wing and Tenughat wing were brought under a joint and common cadre with effect from 16th July, 1968, vide order No. 5480 dated 26/28th July, 1968. River Valley Project Department was also created for execution of big project under notification No. 2472 dated 5.11.1969 vide annexure "B" to the counter affidavit. But no separate cadre was

expressly created nor any rule regarding recruitment was framed. The work of Gandak Department and of code Project was put under the administrative control of the River Valley Project. Officers were drawn from diverse sources and it was then obligatory for the River Valley Project Department to provide promotional avenues and opportunity to all concerned and respondents 5 to 7 were promoted to hold charge of different subdivisions which is a post equivalent to Asst. Engineer. These respondents got the charge of the subdivision in the year 1964, respondent No. 8 in 1965 and respondents 14 to 1965 as pointed out above, under notification Nos. 2058, 2059, 2071, 2056 and 2063 dated 9. 2. 1979 and under notification No. 605 dated 18.2.1975.

12. The petitioners however, were not similarly situated. They were employed in Kosi Project Department which did not merge with the River Valley Project till 1968. Their claim that they were entitled to be promoted to the post of Asst. Engineer according to the quota rule does not appear to be tenable. It cannot be disputed that respondents to 5 8 and also 14 to 19 were performing duties of the Asst. Engineer from before the petitioner's promotion to the post of Asst. Engineer. It is also not in dispute that the said respondents were confirmed as Asst. Engineer with effect from the dates earlier than the dates of promotion of the petitioners as Asst. Engineers. The petitioners have challenged the retrospective confirmation of the concerned respondents at a belated stage i.e. 1980. If the petitioners had seriously disputed that by occupying the post of S. D. Os. respondents would be validly said to be working to the post of the status of Asst. Engineers which would justify the retrospective appointment. From the documents marked annexures 9, 12 and 13 it appears it that was in the year 1955 that the Kosi Project Department was constituted. In 1960 the River Valley Department was created by bringing together the Gandak and the Sone Project Department was operated by bringing together the Gandak and the Sone Project Department including some posts of Irrigation Department on execution of River Valley work. It was in this River Valley Project Department that the respondents were promoted temporarily as a overseer S. D. Os. holding independent charge. In 1968 the Kosi Department was also included and on 9. 1. 1969 the cadre of Asst. Engineer of River Valley Project and of Irrigation Department were amalgamated. In this context it has been rightly contended on behalf of the respondent that the post of overseer S. D. Os. being equivalent to the post of Asst. Engineers, the retrospective confirmation of the respondents as Asst. Engineers is valid and the petitioner's claim to earlier promotion on the supposition that they were entitled to the so called quota promotion in the River Valley Project Department is not maintainable, more so, in of the fact that is has been held in M.G. Sharan and Others Vs. State of Bihar and Others, , that River Valley Project Department was not under a separate cadre in the year 1964, 65 and 66 and 66, Alternatively it was also argued, and in my opinion rightly, that respondents were senior to the petition as overseer S.D.O. and that they as such continue to be senior to the petitioners in the promoted cadre of Asst. Engineers too.

13. The petitioners, who have been appointed at different times were entitled to seniority in accordance with 1934 and 1944 seniority Rules and the respondents, having been confirmed earlier than the petitioners as Asst. Engineers, cannot go down to the petitioners in the rank and the respondents retained their seniority as Asst. Engineers. Thus, promotion in annexures 1 and 14 appears to be a valid order.

14. The petitioners cannot be permitted to challenge the validity of the impugned annexure in the year 1980 when the orders in question have been passed in 1975. Also at the same time the appointment of the respondents concerned at annexures 1 and 1A being only ad hoc, the petitioners do not seem to have a case of action to reasonably question the same.

15. In conclusion of the episode of promotion or retention of seniority I say that there is no violation of the statutory rules or any constitutional provisions. The writ application, therefore, must fail and it is dismissed.

Hari Lal Agrawal, J

16. I agree that the application should be dismissed.