

(1996) 02 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 2862 of 1993

Rabindra Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-02-1996

Acts Referred:

Bihar Educational Service Class I and Class II Recruitment Rules, 1973 — Rule 39, 40, 41, 46
Constitution of India, 1950 — Article 14, 16(1), 309

Citation : (1997) 2 PLJR 700

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Man Mohan, Mukeshwar Dayal, Rupak Kumar and Ravi Shankar Prasad, No. II, Krishna Murari, for the Appellant; Krishna Murari, J.P Shukla and Ravindra Kumar Shukla, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—The Petitioner in this writ application is aggrieved by the notification dated 10.3.1995, contained in Annexure 1, by which Respondents No. 6 to 8 have been promoted to Bihar Educational Service Class II. Accordingly, he has prayed for quashing of the said notification.

2. It is alleged that although he is senior to Respondents No. 6 to 8 in Bihar Subordinate Educational Service (Upper Division) in Bihar Rashtra Bhasha Parishad (in short "the Parishad"), but they have been promoted by the said notification without considering his case.

3. The case of the Petitioner, in short, is that he was appointed in the aforesaid service of the Parishad on 13.11.1975, vide Annexure 2, where he joined on 1.12.1975. Prior to his joining Parishad, he was working in K.P. Jaiswal Research Institute from the year 1964. The Petitioner was given Selection Grade Scale, vide Order No. 487 dated 1.2.1986 and Senior Selection Grade Scale, vide Order No. 813 dated 1.2.1989, contained in Annexure 2 Series. According to the

Petitioner, Respondents No. 6 to 8 were appointed in the service of the Parishad much after him and his seniority over Respondents No. 6 to 8 in the cadre of Subordinate Educational Service (Upper Division) in the Parishad is undisputed. It is stated that the Petitioner has unblemished record of service and as such he was entitled for being considered for promotion in the Bihar Educational Service Class II along with the said Respondents No. 6 to 8. The seniority of the Petitioner vis-a-vis Respondents No. 6 to 8 was decided on 30.7.1991, vide Annexure 7, wherein the Petitioner was placed at serial No. 1 and Respondents No. 6 to 8 were placed below him at serials No. 2 to 4 respectively.

4. It is alleged that the impugned notification of promotion of Respondents No. 6 to 8 was issued without verifying their past confidential character rolls. The Bihar Public Service Commission also dealt with their cases in hot haste without even looking to the files in order to accommodate them by showing undue favour, in giving them appointment in Bihar Educational Service Class II.

5. The Petitioner claims to have officiated as Research Officer, a post in Bihar Educational Service Class II in the Parishad in addition to his own job vide Order No. 911 dated 20.5.1986. It is stated that there are ten vacant posts in Bihar Educational Service Class II for promotion, out of which only three posts have been filled up by promotion of Respondents No. 6 to 8 and seven posts are still lying vacant.

6. According to the Petitioner, he is already drawing the Selection Grade Scale and as such there shall be no financial burden on the State if he is promoted in Bihar Educational Service Class II. It is also stated by him that there are two sanctioned posts, i.e., (i) Deputy Director (Publication) and (ii) Deputy Director (Research), out of which one was occupied by Shri Duryodhan Singh, Librarian on the basis of his seniority in the cadre and he, being the next man in the cadre, is entitled to be considered for promotion to the other post.

7. It is contended that the promotions to Bihar Educational Service Class II are made on the basis of the seniority in Subordinate Educational Service (Upper Division) according to the mandatory rules framed under Article 309 of the Constitution of India known as Bihar Educational Service Class I and Class II Recruitment Rules, 1973 (in short "the Rules"). But despite the Rules, the case of the Petitioner, who is senior to Respondents No. 6 to 8 in the Bihar Subordinate Educational Service (Upper Division) was not considered and the said Respondents were given promotion to Bihar Educational Service Class II by the impugned notification ignoring his superior claim.

8. On 1.9.1995 notices were issued to Respondents No. 5 to 8 for disposal of the case and the operation of the impugned notification (Annexure 1) was directed to be kept in abeyance till further orders and, to list this matter immediately after appearance of Respondents No. 5 to 8.

9. After service of notice, Respondents No. 6 to 8 appeared and filed a petition for vacating the interim order which was directed to be considered along with

final hearing for admission. A counter affidavit has also been filed on their behalf and reply thereto has been filed on behalf of the Petitioner. However, no counter affidavit has been filed on behalf of the official Respondents.

10. The case of the private Respondents No. 6 to 8 is that there are two branches in the Parishad in which the employees are recruited and have been working. Those branches are (i) Research and (ii) Library. It is stated that the posts of Research Officer are in Class II Bihar Educational Service and the requisite qualification for the said post is M.A. in Hindi or Sanskrit with experience of research. According to the said Respondents no candidate can be promoted or appointed to the said post who does not possess the requisite qualification. It is stated that the Petitioner does not possess the requisite qualification even for the post of Research Assistant and as such there is no substance in his claim for promotion to the post of Research Officer. It is also stated that in the Library wing of the Parishad, there are posts of Cataloguer and "Granthagarika", the nomenclature of which has been changed as Assistant Librarian and all are Class III posts. According to the Respondents, the requisite qualification for the post of Cataloguer is graduate plus diploma in Library Science and the scale of pay for the post of Cataloguer/Assistant Librarian was Rs. 850-1360/- and its revised scale is Rs. 1500-2750/- and the scale for the post of Librarian was Rs. 1000-1820/- and its revised scale is Rs. 2200-4000/-. The old scale for the post of Research Officer was also same as of Librarian.

11. In the said counter affidavit, the said Respondents No. 6 to 8 have attempted to challenge the validity of initial appointment of the Petitioner in the Parishad made in the year 1975 and also his promotions as well as the replacement scale given to him. However, it is admitted that the Petitioner has been getting Rs. 2200-4000/- in Senior Selection Grade. The Respondents claimed that they were initially appointed in the Research wing of the Parishad with the requisite qualification and their cases are due for promotion since long for which necessary steps were taken at the relevant time and finally they got the promotions by the impugned notification after due consideration by the Department and the Bihar Public Service Commission. It is also stated that the Petitioner is not eligible to be considered for promotion in Bihar Educational Service class II, including to the post of Deputy Director as he does not possess even the requisite qualification for the post of Research Assistant or equivalent post.

12. The Petitioner in his reply has stated that no qualification for the post of Research Officer and/or Deputy Director in Bihar Educational Service Class II is prescribed for promotion from Bihar Subordinate Educational Service (Upper Division). It is stated that the officials working in the Parishad in Subordinate Educational Service (Upper Division) have been promoted to the Bihar Educational Service Class II on the basis of their seniority-cum-merit. The Government in the Department of Education, vide its Notification dated 15.3.1975 (Annexure 9) promoted six persons in the Bihar Educational Service; Class II from the subordinate Educational Service (Upper Division) working in the

Parishad and one amongst them is Shri Damodar Prasad Mishra, who also was working as Librarian in the Parishad in Subordinate Educational Service (Upper Division), was a Matriculate. In support of his contention that there is no rule or regulation prescribing qualification for promotion to Bihar Educational Service Class II, a copy of letter No. 647 dated 3.4.9986 written by the Vice-Chairman-Cum-Director of the Parishad has been annexed as Annexure 10.

13. Mr. Manmohan, learned Counsel appearing for the Petitioner submitted that the promotions of Respondents No. 6 to 8 by the impugned notification have been made in utter violation of the Rules framed under Article 309 of the Constitution of India and thus, it is arbitrary and violative of Articles 14 and 16(1) of the Constitution of India, besides Rule 40 of the Rules.

14. Mr. Shukla, learned Counsel appearing for the Respondents No. 6 to 8 on the other hand, contended that for the two separate wings, namely, Research and Library, the qualifications prescribed for appointment are separate. In this regard he referred to an advertisement, contained in Annexure L which relates to the appointment of Research Assistant and Annexure M, which is an extract of the reported of the Pay Revision Committee.

15. I do not find anything in Annexure M to indicate that there is any requisite qualification for promotion to the post of Research Officer. In the advertisement, contained in Annexure L, however, the requisite qualification for Research Assistant is M.A. in Sanskrit or Hindi from an Indian University or its equivalent, besides practical experience, but the said advertisement relates to direct appointment to the post of Research Assistant and not for promotion to Bihar Educational Service Class II for which the Bihar Government has framed the Rules under Article 309 of the Constitution.

16. Part IV of the Rules, deals with promotion of officers already in Government service in the vacancies available from time to time in the Bihar Educational Service Class I and Class II. Rules 39 to 41 of the Rules deal with promotion to Class II of the Bihar Educational Service. Under Rule 46 of the Rules for Promotion to the Bihar Educational Service Class II In respect of the branches mentioned in Appendix "C" cases of all eligible candidates from amongst the members of the subordinate Educational Service (Upper Division) have to be considered. Rule 41 of the Rules prescribes eight years as minimum qualifying period of service in Subordinate Educational Service (Upper Division) for being eligible for promotion to Bihar Educational Service Class II. Clause 4(a) of appendix "C" contains the names of branches which include Rashtra Bhasha Parishad.

17. Learned Counsel for the Respondents has not been able to refer to any rule or governmental instruction laying down any requisite qualification for the purpose of promotion to the post in question in Bihar Educational Service Class II. As per the aforesaid rule, cases of all eligible candidates from amongst the members of the subordinate Educational Service (Upper Division) have to be

considered for promotion to the Bihar Educational Service class II in respect of the branches mentioned in Appendix "C".

18. It is not the case of the Respondents that the Petitioner did not belong to Bihar Subordinate Educational Service (Upper Division) nor it is their case that he did not possess the qualifying service for consideration of his case for promotion to the Bihar Educational Service Class II. Admittedly, the Petitioner is senior to Respondents No. 6 to 8 as is also evident from Annexure 7. There is no denial of the statement in the writ petition that the Petitioner has unblemished record of service.

19. In that view of the matter, in my opinion, the Respondents acted unconstitutionally, illegally and arbitrarily In not considering the case of the Petitioner for promotion along with Respondents No. 6 to 8. Thus, the impugned notification of their promotion cannot be sustained and it is, accordingly, quashed. The Respondents are directed to consider the case of the Petitioner and other eligible candidates, including Respondents No. 6 to 8, for the vacant posts of Research Officer and/or Deputy Director afresh in accordance with law and fill up the said vacancies as expeditiously as possible.

20. In the result, the writ application is allowed but without costs.