

(2012) 11 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8441 of 1993

Radhe Shyam Das

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Citation : (2012) 11 PAT CK 0026

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Rajendra Narain, with M/s Ram Hridaya Prasad, Anju Narain and Umesh Kumar Roy, for the Appellant; Mrigank Mauli, Advocate for Respondent No. 7 and Mr. M.S. Hoda, Advocate, for the Respondent

Judgement

Navaniti Prasad Singh, J.—On behalf of respondent No 8 Kanhai Lall Vishkarma, Shri M.S. Hoda, Advocate appears and files a counter affidavit. For respondent No 7 Ramadhar Prasad, Shri Mrigank Mauli is present but is unable to file vakalatnama as he is unable to contact his client who is allegedly gone to Delhi for training. None has appeared for hearing today on behalf of respondent No 6 though respondent No 6 has entered his appearance by filing vakalatnama way back in 1995 itself. No one has appeared on behalf of respondent No 9 too. It appears the writ petition was filed by the petitioner challenging the purported seniority being given to respondents No 6 to 9 over him in the Technical Wing of the Police Wireless Organization. The writ petition was filed in the year, 1993. In the writ petition, order dated 27.01.1995 notes that Shri Awadhesh Kumar Pandey had entered appearance by filing vakalatnama on behalf of respondents No 6, 8 and 9. He had undertaken to appear on behalf of respondent No 7 also. The writ petition was admitted and by judgment dated 31.07.2009, it was allowed by a learned Single Judge of this Court clearly holding that respondents No 6 to 9 could not claim seniority over the petitioner. As against this, respondent No 8 Kanhai Lall Vishkarma filed a Letters Patent Appeal being LPA No 257 of 2011. Before the Letters Patent Bench, it was urged that some one had wrongly represented him in the writ proceedings. Respondent No 7 in the appeal was

respondent No 7 in the writ petition as well. The same stand was also taken by him before the Division Bench in Letters Patent Appeal. Be that as it may, the Letters Patent Bench set aside the order of the learned Single Judge on ground of misrepresentation and non-notice to the respondents and remanded the matter for fresh consideration. Accordingly, Mr. M.S. Hoda appears for respondent No 8 in the writ petition. Mr. Mauli appears on behalf of respondent No 7 in the writ petition. Respondents No 6 and 9 remain unrepresented.

2. A supplementary affidavit has been filed today on behalf of the petitioner. In the supplementary affidavit, copy of which has been served on respondents No 7 and 8, it is stated that during pendency of the writ petition, the final gradation list (Annexure 9 to the supplementary affidavit) was published on 14th of December, 1996. While doing so, State upgraded the post of Constable (Technical) to ASI (Technical). In the final gradation list, as published aforesaid, petitioner is shown at serial 50 having joined service on 01.10.1982 and having passed the necessary technical examination being Grade III Course on 05.07.1984. His seniority was reckoned with effect from the said date of passing the examination. So far as respondents are concerned, respondent No 6 is placed at serial 59 having joined service on 01.09.1976 but managing to pass the examination only on 20.01.1990 and, as such, seniority was reckoned from the said date. So far as respondent No 8 Kanhai Lall Vishkarma is concerned, he figures at serial 57 having joined service on 31.08.1979 and having passed the examination on 20.01.1990 and, accordingly, seniority was reckoned from the said later date. Respondent No 9 Kuar Brajesh Chandra has been positioned at serial 58 and his case is identical to Shri Vishkarma aforesaid. So far as respondent No 7 Ramadhar Prasad is concerned, he is placed at serial 60 having joined service on 18.08.1977 and having passed his examination on 20.01.1990 and his seniority was determined accordingly.

3. This final gradation list, with upgradation of post, has remained as such for more than one and a half decades. None of these respondents have ever challenged the same in any proceeding. The appearing respondents are unable to contest this position.

4. It is further pointed out in the supplementary affidavit that this upgradation of post was subsequently sought to be withdrawn by the Government which was again subject matter of challenge before this Court in CWJC No 9836 of 1999 and analogous case (Alauddin Ansari and Another-Versus-State of Bihar and Others) which was allowed by judgment and order dated 01.05.2006 by this Court whereby the efforts of the State to recall that part of the order of 1996 by which the post was upgraded was not disturbed. Thus, Annexure 9 stood restored in its complete sense. The said judgment has attained finality.

5. In that view of the matter, Shri Rajendra Narain, learned Senior Counsel for the petitioner seeks leave to withdraw this writ petition as his client has no further grievance in the matter. Having considered the matter, as the petitioner is satisfied with the state of affairs as is emanating today and does not want to

pursue this writ petition, leave is granted. The writ petition is permitted to be withdrawn as such in view of the facts aforesaid and is disposed of as such.