
(2015) 04 PAT CK 0076
In the Patna High Court
Case No : CWJC No. 17484 of 2008

Rajani Kant Ranjan and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Citation : (2015) 4 PLJR 723

Hon'ble Judges : S.P. Singh, J.

Bench : Single Bench

Advocate : Rajiv Kumar Verma, Upendra Kumar Choubey and Nikhilesh Kumar, for the Appellant; Satish Narain Singh, for the Respondent

Final Decision : Disposed Off

Judgement

S.P. Singh, J.—The petitioners pray for quashing of seniority list contained in memo No. 2914, dated 21.10.2008 submitted by the Joint Director, Handloom and Sericulture Directorate, Bihar, Patna to Deputy Secretary, Department of Industries, Bihar, Patna, wherein they have been shown juniors to the persons who were earlier placed at Sl. Nos. 6 to 24 in the Provisional Gradation List. The petitioners have also challenged the subsequent promotion granted to persons originally placed at Sl. Nos. 6 to 24 in the provisional gradation list below the petitioners. During the pendency of this writ application, some more Interlocutory Applications came to be filed by the petitioners as well as Interveners. I.A. No. 8419 of 2009 was filed by the writ petitioners for grant of consequential relief in case the impugned seniority list is set aside. I.A. No. 5889 of 2010 was filed by Shatrughan Prasad Sinha and Anand Mohan Singh for being added as party respondents, as the reliefs sought for if granted would adversely affect their interest and seniority. They were duly added as interveners by order, dated 19.4.2011.

2. Again I.A. No. 7628 of 2010 was filed by the petitioners impleading persons mentioned in paragraph 3 as party respondent Nos. 11 to 30 which was allowed vide order, dated 22.4.2011.

3. Amongst the persons sought to be added as parties, All India Council for Technical Education was added as respondent No. 11, whereas newly added respondent Nos. 12 to 30 were the persons, who were shown seniors to the petitioners in the impugned final gradation list. On 18.5.2011, this Court observed that any promotion made in the case will be subject to final result of the writ application. Again this Court by order dated 21.6.2011 reiterated that any promotion granted to the private respondents and others would be subject to the result of the writ application.

4. Before, I consider the rival submissions of the parties, it would be apt to notice the case of the parties in short. The case of the petitioners is that they are Diploma in Handloom Technology from Varanasi under the Ministry of Textile, Government of India, which is the highest qualification in the Handloom Sector. The Indian Institute of Handloom Technology, Varanasi is one of the three best Indian Institute of Handloom Technologies in the country. The other two Institutes are at Salem and Varanasi. According to the petitioners they are State sponsored candidates and successfully got their diploma. The petitioners were appointed on the post of Technical Supervisor on 24.9.1986, 4.1.1986, 6.1.1986, 12.9.1986, 12.9.1986 and 19.9.1986 respectively in the old pay scale of Rs. 680-965. Later on, petitioner Nos. 2 to 6 has moved this Court in C.W.J.C. No. 9871 of 1995 for regularization of their services on the post of Supervisor/ Technical Supervisor and equivalent posts. The writ petition was disposed of on 24.1.1997 with a direction to the respondents to consider their case.

5. In view of the order of this Court, the Director, Handloom and Sericulture vide different orders passed in 1997 regularized the services of the petitioners w.e.f. 1986 which was confirmed vide order No. 922 dated 31.3.1999 (Annexures-5 and 5/A series) of Director, Handloom and Sericulture. Again the writ application bearing C.W.J.C. No. 2608 of 2002 was filed with a prayer to implead the Cadre of Diploma holders of handloom section in Industries Cadre Rules. 1987. The grievance of the persons belonging to Handloom and Sericulture Wing was founded on the premises that despite admission in counter affidavit that they were entitled for being included in the combined seniority list, the respondents had not implemented its own decision.

6. However, in the year 2005, the cadre of Technical Supervisor/Supervisor, Sizing Jobber, Technical Assistant were for the first time included in the Cadre Rules, 1987 in Clause "Gha" in Schedule-4 as a feeder posts for entering into Industrial Service Cadre. In other words. Schedule 4 of the Industrial-Cadre Rules" now some more posts, whereupon on promotion one entered in Industrial Service Cadre. After the amendment, persons holding the post of Technical Supervisor or Supervisor either in Handloom Sector or Sericulture Wing on promotion would be eligible for entry into the Industrial Service Cadre.

7. The Directorate of Handloom and Sericulture prepared a provisional gradation list of employees of Handloom and Sericulture in the year 2005 (Annexure-9) in which their names found place at Sl. Nos. 7 to 12, whereas the name of private

respondents figured from Sl. No. 13 onwards. However, the provisional list was subsequently amended and the private respondents were placed at Sl. Nos. 6 to 24 and the name of the petitioners was placed at Sl. Nos. 25 to 30. The said gradation list is in challenge in this writ application.

8. The petitioners submit that the private respondents were appointed in the year 1997 on Non-Technical Posts and were rightly shown below the petitioners in the provisional gradation list as their services were regularized w.e.f. 1986. The petitioners contend that as their regularizations with effect from 1986, have not been challenged up till date, the private respondents could not have been placed above them in the seniority list. The respondents as such were apparently in error in counting their services from the year 1996 while preparing the final gradation list and placing them below the private respondents. In fact, the respondents ought to have prepared the gradation list reckoning their service from 1986, as they were regularized with effect from the said date. In case, their services are counted from the said date, there would be no dispute with respect to their seniority. Since their regularization has not been challenged, it would not be open for the private respondents to contend that the services of the petitioner should not be counted from 1986, but from 1996. In support of their submission, the petitioners have relied upon a decision in case of *Shri L. Chandrakishore Singh Vs. State of Manipur and Others*, and in case of *S. Sumnyan and Others Vs. Limi Niri and Others*, .

9. In the case of *S. Sumnyan (supra)*, their Lordships observed that if the service is regularized from the date of initial appointment, then for the purpose of seniority, the same is to be counted from the said date in absence of any challenge. Para. 29 of the said judgment is quoted hereinbelow for easy reference:--

"29. The challenge appears to us to be belated and in this regard we would endorse the same view as expressed by this Court in the case of *Shri L. Chandrakishore Singh Vs. State of Manipur and Others*, which is extracted hereinbelow:--

"15. It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in *G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others*, ."

10. Dr. K.N. Singh, learned counsel appearing for the private respondents

submits that the private respondents have obtained their degree from Bihar Institute of Silk and Textile, Nathnagar, Bhagalpur. The Institute was an old one and was affiliated with Bhagalpur University. The admission was taken in the College on the basis of State Level Competition. Most of the private respondents were awarded degree in the year 1991. As per memo dated 12.5.1986, a degree awarded by the University is equivalent to degree awarded by other Universities. The All India Council for Technical Education also accorded approval for admission till 2002 batch, which has passed out by 2005. He next contends that the petitioners after passing the matriculation examination had acquired diploma certificate. On the other hand, the minimum qualification for admission into Bihar Institute of Silk and Textile, Nathnagar, Bhagalpur is Intermediate. Further more, the Diploma course is of three years. The course at Nathnagar Institute is of 4 years. The Industries Department published advertisement in the year 1991 inviting application from holders of B.Sc. degree as well as Diploma. Whereas the interveners applied pursuant to advertisement the petitioners did not choose to apply though they were continuing on ad hoc basis.

11. According to learned counsel, the appointment was being processed by Subordinate Selection Board which was abolished in the year 1994. However, as per direction of the Hon'ble Apex Court, their selection was finally processed through the Bihar Public Service Commission, whereas the writ petitioners did not go through any selection process before their appointment. In the same breath, he submits that the Subordinate Selection Board came into existence in the year 1981, still the petitioners were taken on ad hoc basis in the year 1986 in spite of there being ban of appointment on ad hoc basis. The grievance of the private respondents is that the services of the writ petitioners in no case should have been regularized w.e.f. the date of their ad hoc appointment in the year 1986 without following due process. Furthermore, there was no occasion for them to challenge the regularization of writ petitioners as they were shown above them in the seniority list prepared in the year 2008 which is impugned in this writ application. Initially they did file their objection when the writ petitioners were shown senior to them in the provisional list.

12. The respondents submit that the regularization of the ad hoc appointee can be affected only in accordance with Rules and not otherwise. Reliance was placed in the decision reported in Hindustan Shipyard Ltd. and Others Vs. Dr. P. Sambasiva Rao and Dr. S. Prasada Rao, . Further more, relying upon a decision reported in Sanjay K. Sinha-II and Others Vs. State of Bihar and Others, , particularly paragraph 17, the respondents submit that appointment made contrary to rules do not confer the benefit of seniority. According to the respondents, the regularization can be made with retrospective date if the same has been done in accordance with rules. Reliance has been placed in the case reported in Union of India (UOI) and Others Vs. Sheela Rani, .

13. Learned counsel for private respondents next submits that the regularization should be generally prospective so that the seniority of those who are in regular

service is not affected. Reference has been made to a decision reported in A.I.R. 1996 SC 1607 , particularly para 44. Again, the Apex Court in the case reported in S.K. Saha and others Vs. Prem Prakash Agarwal and others, has decried giving seniority with retrospective effect.

14. It is true that there cannot be any dispute to the contention advanced on behalf of learned counsel for private respondents that the regularization should generally be prospective and not with retrospective effect unless it is in consonance with the norms laid down by the Hon"ble Apex Court. However, correctness of the regularization is not in issue in the instant case.

15. In the matter in hand. I find that at no point of time the private respondents have challenged the regularization of the writ petitioners in 1997 w.e.f. 1986. The private respondents may have some good explanations for not challenging the same earlier on the merit of the issue of regularization. In the circumstances. I express no opinion whether regularization of the petitioners ought to have been made with retrospective effect from 1986 as the same would be a matter of independent writ proceeding. Till the regularization of the writ petitioners w.e.f. 1986 is not interfered with, the length of service for reckoning seniority would be 1986. The writ petition is, thus, disposed of with a direction to the respondents to re-arrange the seniority of the writ petitioners vis-a-vis private respondents. In the facts and circumstances of the case, the direction in this writ application would remain on hold for a month.