
(1997) 08 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 7605 of 1990

Ram Prakash Lal	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 07-08-1997

Acts Referred:

Citation : (1998) 1 PLJR 337

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Teg Bahadur Singh and Ram Hriday Prasad, for the Appellant; N.K. Sinha and R.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner is an Assistant Public Prosecutor ("A.P.P." for short). He has challenged the order, contained in Notification No. 8061 dated 10th of September, 1990, by which the Respondent No. 5, Sri. Vijay Angels Toppo has been granted promotion to Junior Selection Grade of the post of A.P.P. alongwith others.

2. It is not necessary to go into the detail facts of the case, except the relevant one.

Both the Petitioner and the Respondent No. 5 are members of the cadre of A.P.P. According to the Petitioner he is senior to Respondent No. 5. It is stated that the name of Petitioner is appearing at Serial No. 187 in the gradation list dated 15th of September, 1985; whereas the name of the Respondent No. 5 is appearing at Serial No. 218.

3. The grievance of the Petitioner is that while the Respondents have considered the cases of number of A.P. Ps. for promotion to Junior Selection Grade scale by the impugned order dated 10th of September, 1990, they have granted promotion to Respondent No. 5 to such selection grade scale with effect from 1st of April, 1986 without consideration of the case of the Petitioner. Further,

according to the Petitioner, such case of the Respondent No. 5 has been considered on the ground that he belongs to Scheduled Tribe category and the policy for reservation is also applicable in the matter of promotion to selection grade scale. It is for the said reason the Petitioner has also challenged the guideline issued by the Personnel Department of the State Government vide letter dated 4th of October, 1974, by which it has been mentioned that the selection grade should be treated to be a promotion.

4. According to the counsel for the Petitioner, grant of selection grade is not at all a promotion in the eye of law and thus the reservation policy cannot be made applicable for such grant of higher scale of pay.

5. In spite of notice the Respondent No. 5 has not filed any counter affidavit.

A counter affidavit has been filed on behalf of the Respondent No. 2. According to the Respondent-State, in terms with the circular dated 4th of October, 1974, the reservation policy is to be made applicable for grant of selection grade scale, as the same has been treated to be a promotion.

6. Admittedly the cadre of A.P.P. is one common cadre. It is only on the recommendation of the Fourth Pay Revision Committee when the same was accepted by the Finance Department's Letter/resolution dated 31st of December, 1981, the selection grade scales were granted, which are commonly known as Junior Selection Grade and Senior Selection Grade. While certain percentage of the posts have been provided with Senior Selection Grade Scale (10 per cent in most of the cases), certain percentage of posts are provided with Junior Selection Grade scales (20 percent in most of the cases); the rest of posts are provided with the basic grade (i.e. rest 70 per cent). Thus, it is clear that within the same cadre certain posts are provided with higher grade.

7. It is a settled law that promotion includes grant of higher status, rank and scale of pay. In the matter of grant of selection grade scale while a person is provided with higher grade, he remains in the same rank with the same status. Thus, grant of selection grade within the same cadre cannot be termed to be promotion under the service jurisprudence. The word "promotion" generally used by the State Government in the matter of grant of selection grade scale is redundant in the eye of law, as only the procedure of promotion is to be followed for grant of higher scale. The Supreme Court in the case of Shri Lalit Mohan Deb and Ors. v. Union of India and Ors. (1972 (7) S.L.R. 411) also held that such grant of selection grade is not a promotion in the eye of law. Similar decision has already been given by a Division Bench of this Court in the case of Anant Kishore alias Anand Kishore Sharma and Ors. v. The District Education Officer and Ors. (1986 P.L.J.R. 50).

8. Accordingly, while I hold that the reservation principles cannot be made applicable in the matter of grant of selection grade scale, I set aside the guideline, contained in letter No. 19629 dated 4th of October, 1974 (Annexure-4) issued from the Personnel Department of the State of Bihar. I also set aside the

order of promotion of Respondent No. 5, Shri Vijay Angels Toppo to the Junior Selection Grade Scale, as granted by the impugned notification dated 10th of September, 1990. The matter is remitted to the Respondents to consider the case of the Petitioner vis-a-vis Respondent No. 5 and other eligible persons for promotion to Selection Grade Scales (junior or senior to which they are entitled), in accordance with law, without taking into note the reservation policy for such grant of selection grade scale.

9. The writ petition is allowed with the aforesaid observation and direction.

10. On the facts and circumstances of the case, there will be no order as to costs.