

(2020) 09 PAT CK 0327

In the Patna High Court

Case No : Letters Patent Appeal No. 588 Of 2019, Civil Writ Jurisdiction Case No. 4281 Of 2018

Ram Yash Sah And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 25-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 09 PAT CK 0327

Hon'ble Judges : Dinesh Kumar Singh, J;Anil Kumar Sinha, J

Bench : Division Bench

Advocate : D.K. Sinha, Jai Prakash Verma, Dinesh Maharaj

Final Decision : Dismissed

Judgement

Heard Mr. Devendra Kumar Sinha, learned Senior counsel for the appellants and learned AC to AAG-11 appearing for the State-respondents.

The present Letters Patent Appeal has been preferred against the judgment dated 12.04.2019 passed in C.W.J.C. No. 4281 of 2018, whereby the final

gradation list issued vide Memo No. 970 dated 30.01.2018, has been quashed by the learned Single Bench and the concerned Department has been

directed to redraw the seniority list after enunciating equitable and rational principle for fixing the same.

The writ application was filed by the respondent nos. 6 to 9 on the ground that they entered into the services of Energy Department after their names

were recommended by the Bihar Public Service Commission (hereinafter referred to as the Commission) and were consequently appointed as Junior

Electrical Engineer vide order dated 17.5.2003. The appellants who were respondents before the writ court, were the erstwhile employees of the

Bihar Agriculture Produce Marketing Board (hereinafter referred to as 'Marketing Board') and they were absorbed as Junior Engineer

(Electrical) in the Energy Department vide resolution contained in Memo No. 4672 dated 23.6.2011 but they were ranked senior to the respondents

writ petitioners in the final gradation list.

The factual matrix of the case is that the writ petitioners entered into the Energy Department, on the recommendation of the Commission, as Junior

Engineer (Electrical), but subsequently they were transferred en masse to the Building Construction Department on 17.5.2003. Since Building

Construction Department had no separate cadre for the Junior Engineer (Electrical), a policy decision was taken by the government for merger of all

Electrical Works Department and the Energy Department in the Building Construction Department vide Memo dated 27.6.2010 whereas the

appellants being erstwhile employees of the Marketing Board were absorbed in the Energy Department as Junior Engineer (Electrical) vide resolution

contained in Memo No. 4672 dated 23.6.2011 (Annexure 3 to the writ application) after abolition of the Marketing Board. Thereafter their services

were absorbed in the Building Construction Department. The present appellant as well as some other employees of the erstwhile Marketing Board, by

resolution dated 2.9.2008, were subjected to new pension scheme (CPF, gratuity and leave encashment) and they challenged the same in CWJC No.

4452 of 2012 (Ram Surat Singh and ors. Vs. The State of Bihar and ors.) and other analogous cases, primarily challenging their absorption in the

government service as fresh appointment and that they would be amenable to the new pension scheme. The said writ application was allowed by the

learned Single Judge vide judgment dated 22.5.2015 in the following terms:-

'In addition, it is also the case of the writ petitioners that by three enactments of the year 2007, containing identical provisions, the Bihar

Intermediate Council, Bihar Inter University Board and the Bihar University (Constituent College) Service Commission were dissolved and their

officers/employees after adjustment in services under the State Government have been granted the benefit of the old pension scheme. The averments

made in this regard in the writ applications have not been denied by the respondents. However, on behalf of the respondents, it has been contended

that the officers/employees of the Board/Committee/Samiti were not holding

pensionable posts before their absorption and they have been paid the amount of their contributory provident fund (CPF), gratuity and leave encashment etc. This fact has, however, been denied by the writ petitioners.

This Court is not inclined to enter into this controversy, and after overall consideration of the facts and circumstances, this Court directs the

respondent/authority to reconsider the condition restricting the absorbed officer/employee to the new pension scheme, as contained in the

resolution/notifications dated 02.09.2008 and follow up resolution/notifications, in accordance with law keeping in view the abovementioned facts and

discussions. Such reconsideration must be bestowed by the respondent/authority expeditiously and preferably within a period of three months from the

date of receipt/production of this order.

These writ applications are, accordingly, allowed with the aforesaid directions. In the facts and circumstances of the case there shall however be no

order as to costs.â??

On non-implementation of direction stipulated in judgment passed by the learned Single Judge in CWJC No. 4452 of 2012 (Ram Surat supra) within

the stipulated time, MJC No. 3421 of 2015 was filed for initiating contempt proceeding. The stand of the State in the aforesaid M.J.C. was that a

decision had been taken by a Three Member Committee constituted by the State, which decided that the inter se seniority between the Junior

Engineer (Electrical) transferred to the Building Construction Department vis-a-vis the erstwhile employees of the Marketing Board shall be decided

in accordance with the general principles of the General Administration Department of the Government of Bihar. Accordingly, the contempt

application was disposed of.

The said judgment of the learned Single Judge was challenged by the Junior Engineers of Building Construction Department by preferring L.P.A. No.

275 of 2016 which was disposed of vide judgment dated 24.07.2017 in following terms:-

â??That being so, so far as the relief claimed for grant of seniority is concerned; it was premature as the seniority list itself was not finalized.

Accordingly, we dispose of the appeal granting each and every employee to file their objections to the seniority, if any already done, within a period of

30 days and thereafter the State Government to consider the objections and

publish the final gradation list within three months thereafter. We expect the State Government to publish the seniority list as per the Rules governing the grant of seniority and in publication of the seniority list the order passed by the learned Writ Court impugned in this appeal so far as it relates to any observation with regard to drawing of seniority shall not be taken note of, it shall not be considered by the State Government and the State Government independent of the order passed by the Writ Court with regard to issue of seniority shall decide the objections and thereafter liberty shall be available to any aggrieved person to challenge the final gradation list in accordance with law and the observations and the findings recorded in the writ petition in this regard shall not come in their way.

With the aforesaid observations and directions, the appeal stands disposed of.â??

In view of the judgment passed by the Division Bench, final gradation list was prepared and published vide Memo No. 970 dated 30.01.2018, as

contained in Annexure- 11 to the writ application, wherein the employees of the Marketing Board were granted seniority, which led to filing of

C.W.J.C. No. 4281 of 2018 by the Junior Engineers of Building Construction Department, seeking following reliefs:-

â??1. That the petitioners have filed the present writ application for following reliefs-

(i) A writ in the nature of certiorari setting aside the office order bearing memo no 970 dated 30.01.18 issued under the signature of respondent no 5

under which without proper consideration of objection filed by the petitioner with regard to inter-se seniority on the basis of provisional seniority list

and contrary to well settled proposition of law regarding determination of seniority the private respondent who have entered into the cadre of junior

Engineer Electrical have been shown above to the petitioners.

(ii) To declare the petitioners are senior than the private respondent and re-scheduled the final seniority list putting the petitioners above to the private

respondent as petitioners have come in the cadre earlier than the private respondents.

(iii) For any other appropriate relief or reliefs for which the petitioners are entitled in the facts and circumstances of this case.â??

The learned Single Judge, considering the fact that the Junior Engineer (Electrical) of the Building Construction Department entered into the services

on the recommendation of the Commission and joined the government service in 2003, whereas the employees of Marketing Board, who were

absorbed in the government service, only on the dissolution of the Marketing Board, cannot be equated with the writ petitioners who entered into the

permanent service in 2003, particularly when there are two modes of recruitment. Hence, the final gradation list dated 30.1.2018 was quashed and the grant of promotion was directed to await the publication of final gradation list. Relevant findings in the judgment of the learned Single Judge read as follows:

65. Tying the strings together, the petitioners are the direct recruits, recommended by the B.P.S.C and appointed in the year 2003 in the

department of Energy on the post of Junior Engineer (Electrical). For the non-availability of the cadre of Junior Engineer (Electrical) in the Building

Construction Department, a policy decision was taken by the government with the approval of the cabinet for transfer of the entire electrical wing en

masse from the Energy Department to the Building Construction Department. The petitioners being direct recruits, recommended by B.P.S.C., of the

Energy Department of the government, on one hand and private respondents being erstwhile employees of the Agriculture Produce Marketing Board

who were absorbed in the government service only on dissolution of the Board in the Energy Department and later inducted in the Building

Construction Department cannot be equated together and be kept on the same platform.

66. In such a situation, counting the period of service from the date of appointment in the respective organization for fixing inter se seniority, therefore

has not only bruised severely the career prospect of the petitioners but has also resulted in an anomaly, so far as seniority is concerned, which needs

to be revisited and reformulated by the government/concerned department.

67. For the reasons aforesaid, the seniority list dated 30.01.2018 contained in Memo No. 970, issued under the signature of the Chief Engineer,

Department of Building Construction, Bihar, Patna is quashed/set aside.

68. The concerned Department is directed to redraw the seniority list after enunciating equitable and rational principle for fixing the same. It would be

better to invite objections from the employees and only thereafter formulate the final gradation list which ought to reflect the principles of fixation of

seniority. The exercise is required to be done within as short a time as possible, preferably within a period of three months from the date of production

of a copy of this order before the Principal Secretary, Department of General Administration, Bihar, Patna (respondent No. 2).

69. Needless to state that any exercise of granting promotion will have to await the final publication of the gradation list within the stipulated period.â??

The said writ order is under challenge in the present Letters Patent Appeal.

Mr. D.K. Sinha, learned Senior counsel for the appellants submits that the appellants were the employees of erstwhile Marketing Board and the

seniority list was prepared pursuant to the order dated 24.7.2017 passed by the Division Bench in LPA No. 275 of 2016. The general accepted

principle for computing seniority is the date of entry into service and that was considered by the authorities while placing the appellants above the

respondents in the final gradation list. Mr. Sinha has relied upon the case of Panchraj Tiwari Vs. M.P. State Electricity Board and Others (2014) 5

SCC 101 and the case of Priya Ranjan Sharma Vs. State of Bihar and Others 2010(2) PLJR 387. Learned Senior counsel for the appellant further

submits that the learned Single Judge has committed an error of record, while recording that all the Junior Engineers of Energy Department and

subsequently that of Building Construction Department entered into service through the Commission.

Learned counsel for the respondents, however, submits that in pursuance to the judgment under appeal passed by the learned Single Judge, the

Building Construction Department vide Office Order no. 212-cum-Memo No. 5077 (Bh) dated 6.6.2019 has published the provisional gradation list of

Junior Electrical Engineers and also invited objections from the concerned employees. After receiving objections from all the concerned affected

employees, the file has been sent to the General Administrative Department, Government of Bihar to examine the objection as per the Rules and to

publish final gradation list of the Junior Electrical Engineers.

Considering the rival submissions of the parties, we are of the considered opinion that the learned Single Judge has quashed the final gradation list

dated 30.1.2018 as contained in Annexure 11 to the writ application taking into account the fact that while fixing the inter se seniority of the permanent

electrical Junior Engineers recruited through Commission and absorbed in

erstwhile employees of the Marketing Board who were not recruited through the Commission or their services were not pensionable cannot be treated alike. Moreover, government initially directed that the absorbed employees of the Marketing Board will be subjected to new pension scheme which was under challenge in the earlier writ application (Ram Surat supra). However, the learned Single Judge in the said writ application directed to examine the inter se seniority and only to that extent the appellate court modified the order of the learned Single Judge and disposed of the LPA No. 275 of 2016 with a liberty to the aggrieved persons to challenge the final gradation list.

In the judgment relied upon by the learned counsel for the appellants, in the case of Panchraj Tiwari (supra), the issue was that the services of the employees of Rural Electricity Cooperative Society, Rewa, on government decision to dissolve the said Society, were merged with the Madhya Pradesh State Electricity Board but were denied promotional avenues in the merged cadre though they were given protection of pay scale, age of superannuation, pension and gratuity in accordance with the government rules. The said denial was challenged in the writ application when the learned Single Judge dismissed the writ on the ground of maintainability. However, in the appeal before the High Court the Electricity Board admitted that they have been merged in the Board. Hence, the issue of maintainability was waved by the appellate Court but it was held that the principles of integration decided by the government cast no obligation on the Electricity Board to give promotion to the appellant. However, the Apex Court held that the authority concerned has to lay down equitable principles with regard to the fixation of seniority in the merged cadre. Once a service gets merged with another service, the employee concerned has a right to get positioned appropriately in the merged service. Paragraph 13 of the judgment reads as follows:

“13. It is open to the authority concerned to lay down equitable principles with regard to fixation of seniority in the merged cadre. Once a service gets merged with another service, the employee concerned has a right to get positioned appropriately in the merged service. That is the plain meaning of ‘absorption’. The MPSEB, having absorbed the appellant and other employees, cannot maintain a stand that even after absorption they will

retain a distinct identity in the equated cadre without any promotion as enjoyed by their compeers in the parent service. That is a plain infraction of the equity clause guaranteed under Articles 14 and 16 of the Constitution of India.

Similarly, the denial of promotion has been deprecated by holding that chances of promotion are not conditions of service, but negation of even the

chance of promotion certainly amounts to interfere with the fundamental rights under Articles 14 and 16 of the Constitution of India and thereby

directed the authorities that the absorbed employees of the Rural Electricity Cooperative Societies to be placed with effect from the date of absorption

as juniors to the juniormost employee of the Electricity Board in the respective categories. Paragraph 14 of the judgment reads as follows:

“14. Chances of promotion are not conditions of service, but negation of even the chance of promotion certainly amounts to variation in the

conditions of service attracting infraction of Articles 14 and 16 of the Constitution of India. No employee has a right to particular position in the

seniority list but all employees have a right to seniority since the same forms the basis of promotion.”

Hence, the ratio laid down in Panchraj Tiwari (supra) vindicates more the case of the respondents than the appellants.

The ratio laid down in the case of Priya Ranjan Sharma (supra) has no application to the facts of this case.

Upon perusal of the pleadings before the learned Writ Court and the ratio of judicial pronouncements, we are in full agreement with the reasons

assigned by learned Single Judge for coming to the conclusion while deciding the writ petition.

More so the tentative gradation list has already been prepared, objections have been invited, the appellants have filed their objections and have not

even challenged the tentative gradation list. The final gradation list is in the course of publication and thus the order of the learned Single Judge has

been given effect to.

For the reasons discussed and stated above, we are unable to fathom any reason warranting interference in the order of learned Single Judge. This

Letters Patent Appeal is, accordingly, dismissed.