

(2005) 05 PAT CK 0009
In the Patna High Court
Case No : CWJC No. 2821 of 2002

Sachchidanand Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-05-2005

Acts Referred:

Citation : (2005) 3 PLJR 172

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Teg Bahadur Singh and Ram Hriday Prasad, for the Appellant; A.K. Mishra No. 2 For the State, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition the prayer on behalf of the petitioners is for issuance of an appropriate writ/order or direction to the respondents to consider their cases for promotion to the post of Steno S.I. from the date their juniors were promoted with all consequential benefits, including arrears of salary of the promoted post. In paragraph 5 of the writ petition, names of juniors to the petitioners have been mentioned, which has not been denied in the counter affidavit rather, according to the learned Junior Counsel to Standing Counsel No. VI, it is admitted by the respondents that those who were retained as Steno ASI were juniors to the petitioners and were given promotion as S.I. without considering the case of the petitioners. However, he has submitted that the petitioners were transferred to general cadre in 1995 as they never opted to continue in the cadre of Steno ASI.

2. It is not the case of the respondents that there was/is any provision for exercise of option by such persons. It is not their case in the counter affidavit filed on behalf of the respondents either that the aforementioned juniors were retained because they opted to continue in the Steno ASI cadre.

3. The Division Bench of this Court long back in the case of Girish Pandey and

Ors. vs. The State of Bihar & Ors. (C.W.J.C. No. 2601 of 1982) disposed of on 14th December, 1982, held that the Inspector General of Police cannot retain the petitioners of the said writ case as Stenographers under the purported exercise of powers under Appendix 42(5) of the Bihar Police Manual saying that it was necessary in the interest of the department and at the same time to deprive those petitioners of the right to be considered for" promotion to the higher posts.

4. Earlier, on the citation of the aforementioned Division Bench judgment by the learned counsel for the petitioners, learned Standing Counsel sought for adjournment to take instruction and file affidavit/counter affidavit regarding redressal of the grievance of the petitioner, which was granted vide order dated 2.5.2005 and the matter was directed to be posted on 6.5.2005. On 6.5.2005 again learned Standing Counsel prayed for pass over as till then no such affidavit was filed on behalf of the respondents and the matter was passed over.

5. Today, an affidavit has been filed on behalf of the D.G.-Cum-I.G. of Police, the D.I.G. of Police (Administration), and the D.I.G. of Police (Personnel), Bihar, Patna (respondents No. 2 to 4 respectively) reiterating more or less the same stand as was taken in the earlier counter affidavit instead of redressing the grievance of the petitioners.

6. It is really unfortunate that it has become the usual feature that after elaborate arguments are advanced and realising the error, time is sought for redressal of the grievance. But instead of doing so, the respondents merely come with such affidavit reiterating their earlier affidavit and thereby the Court's time is unnecessarily wasted.

7. It is not the case of the respondents that the petitioners were transferred to the general cadre on their own request. It is not disputed that these petitioners were working as Steno ASI with their aforementioned juniors.

8. Despite law being settled by the Division Bench long back in the year 1982 vide aforementioned judgment, the respondents, specially the D.G.-cum-I.G. of Police, Bihar, Patna (respondent No. 2), who is the head of the office, has not bothered to rectify the mistake despite opportunity granted to them and have insisted to reiterate the same stand, which is contrary to the law settled by the Division Bench. This, in fact, in my opinion, amounts to gross contempt.

9. However, in the facts and circumstances aforementioned, it is a fit case where heavy cost should be awarded to be paid by respondent No. 2 from his pocket, especially because instead of coming with redressal of the grievance, for which adjournment was granted on 2.5.2005, he has simply reiterated the stand by filing a supplementary counter affidavit today despite the Division Bench judgment, referred to above.

10. In the result, the writ application is allowed with a cost of Rs. 10,000/- (ten thousand) to be paid by respondent No. 2 from his pocket to the petitioners and a receipt in token thereof must be filed in this Court within a week. The

respondents are directed to consider the case of the petitioners for their promotion as S.I. by treating/taking them back in the Steno A.S.I. cadre from the due date i.e., from the date their juniors were promoted as S.I. and issue necessary order/notification within four "weeks from today. As prayed by the learned Junior Counsel to Standing Counsel No. VI, let a copy of this order be supplied to him for its strict compliance.