

(2001) 11 PAT CK 0012
In the Patna High Court
Case No : L.P.A. No. 469 of 2000

Satya Narayan Sinha and Others

APPELLANT

Vs

Vice Chancellor L.N.M. University and Others

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Citation : (2002) 1 PLJR 284

Hon'ble Judges : Nagendra Rai, J;D.P.S. Choudhary, J

Bench : Division Bench

Advocate : Ganesh Prasad Singh and Hemant Kumar Jha, for the Appellant;
Vishwanath Prasad Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the order dated 22nd February, 2000 passed in CWJC No. 1828 of 1998 by a learned Single Judge of this Court by which he has allowed the writ application filed by the writ Petitioners Respondents 3 to 9 herein (hereinafter referred to as the writ Petitioners) and quashed the retrospective part of promotion giving to Respondents 6 to 41 of the writ application (hereinafter referred to as the Respondents) by office order dated 12.3.1997 (Annexure-8 to the writ application) to the post of Assistants and held that the writ Petitioners are senior to them and remitted the matter to the University-authorities to determine the question of retrospective promotion of the Respondents which should be granted from any date, after the date of promotion of Petitioners so that their seniority may not affect.

2. Admitted fact is that the writ Petitioners and the Respondents are employees of the Respondent Lalit Narayan Mithila University (hereinafter referred to as the University) and they were working on Class IV posts. They were promoted to the posts of Routine Clerks and thereafter Assistants on different dates (Class three posts). The dispute is with regard to promotion and seniority to the post of Assistants. The case of the writ Petitioners is that they are senior to the Respondents No. 6 to 41. It is not in dispute that the promotion to the. post of

Assistant is made from the post of routine clerk. The controversy between the parties is as to the seniority. According to the writ Petitioners, they were senior to Respondents 6 to 41 as Routine Clerk and accordingly they were promoted to the post of Assistant as back as in the year 1983 whereas the Respondents at that time were working either as Routine Clerks or on class IV post and by the impugned order dated 12.3.1997 which has been quashed by the learned Single Judge they have been placed above them in the seniority list.

3. To appreciate the points raised by the parties, it is necessary to state in brief the facts of the respective cases of the parties.

4. The Petitioner case is that Petitioner Nos. 1 to 5 were working on Class IV post and they were appointed as Routine Clerk with effect from 21.12.1978 and since then they were working on the said post. Petitioners No. 6 and 7 were appointed on the post of Routine Clerks with effect from 20.9.1979. All the seven writ Petitioners were promoted to the post of Assistant by order dated 14.6.1983 issued under the signature of the Registrar of the University. A copy of the said order has been annexed as Annexure-2 to the writ application.

5. The Respondents, according to the Petitioner fell in two categories. Respondents 6 to 14 were appointed temporarily on the post of Routine Clerks with effect from 20.9.1979 by order dated 22.12.1979 issued under the signature of the Deputy Registrar of the University. A copy of the said order has been annexed as Annexure-4 to the writ application. Respondent No. 15 was appointed as Daftari in the month of July, 1976 and since then he was working in the University as Daftari. In 1980, a proposed gradation list of the employees was prepared and the Petitioners and. Respondents 6 to 14 were shown as Routine Clerks and Respondents 6 to 14 were placed below the Petitioners. In the said gradation list, Respondents 15, 16, 17, 19, 20, 24 to 29, 40 and 41 were shown as IV grade employees and Respondents 18, 21, 22, 23, 30 to 39 were not even in the service of the University and their names do not find place in any capacity in the said gradation list of the year 1980. A copy of the said gradation list has been annexed as Annexure-5 to the writ application. Subsequently by office order dated 12.3.1985 issued under the signature of the Registrar of the University, Respondent Nos. 15, 16, 17, 19, 20, 24 to 29, 39, 40 and 41 who were working as Class IV employees were promoted as routine clerks with effect from 21.12.1978 much after the promotion of the Petitioners as Assistant. A copy of the said order has been annexed as Annexure-6 to the writ application. Objection was raised by the Petitioners 6 and 7 with regard to. giving retrospective promotion to the aforesaid Respondents as routine clerks from 21.12.1978 on the ground that the same will affect their seniority, but no decision was taken by the University. In the year 1991, the remaining Respondents 18, 21, 22, 23, 30 to 38 who were class IV employees were promoted to the post of Routine Clerks vide order dated 28.1.1991 and their date of promotion was mentioned as 21.12.1978. A copy of the said order has been annexed as Annexure-7 to the writ application. The stand of the Petitioners

is that the aforesaid order was illegal as the remaining Respondents were given promotion as Routine Clerks 12 years back but as the Petitioners were working on higher post, they did not challenge the order of 1991.

6. In the meantime, the University issued the impugned order dated 12.3.1997 which has been annexed as Annexure-8 to the writ application, by which the earlier giving promotion to "the post of Assistant to the writ Petitioners and others in the University was modified and the Respondents 6 to 41 as well as Petitioners all were shown to have been promoted to the post of Assistant from the dates mentioned against their names. Respondents 6 to 41 were given the promotion retrospectively affecting the seniority of the Petitioners. The said order has been challenged by the Petitioners on the ground that the same was done without following the principles of natural justice and their promotion and seniority as Assistant in the year 1983 has been changed after a long gap at the instance of the Respondents which was not permissible in law.

7. The stand of the University is that the Petitioners 1 to 5 and others were class IV employees and they were promoted on the post of Routine Clerks with effect from 21.12.1978 and they along with the Petitioners were promoted as Assistant from different dates in the year 1981 to 1982 (Annexures 1 and 2 to the writ application). Several other IV grade employees who were appointed prior to Petitioner No. 2 Md. Washiruddin represented the matter before the University-authorities and claimed that they should be promoted on the post of Routine Clerk on the same date on which the Petitioners were promoted. A committee was constituted for the said purpose and the said committee made recommendation regarding promotion of IV grade employees to the post of Routine Clerks and Respondents 15, 16, 17, 19, 20, 24, to 29, 39, 40 and 41 were found senior to Petitioner No. 2 and as such they were promoted to the post of Routine Clerk with effect from 21.12.1978 (Annexure-6 to the writ application). The other IV grade employees who are Respondents 18, 21, 22, 23, 30 to 38 and others also represented the matter stating that they were senior to Petitioner No. 2 and that was also considered by the Committee and they were given promotion on the post of Routine Clerks. (Annexure-7 to the writ application). The aforesaid promoted Routine Clerks also claimed that they should be promoted to the post of Assistant as persons junior to them, namely, Petitioner No. 2 has been promoted as Assistant. The University constituted a Committee for the said purpose and the Committee considered their cases for promotion and recommended the case of the Respondents for promotion to the Assistant and accordingly, the Respondent-routine clerks were promoted as Assistant by the impugned order dated 12.3.1997 with a. clear stipulation that their inter se seniority will be decided by the Seniority Committee on the basis of established norms. The impugned order by which 45 Routine Clerks were promoted to the post of Assistant were issued for the reasons that some junior Routine Clerks, namely, the writ Petitioners were promoted to the post of Assistant and seniors Routine Clerks were left out. These seniors were demanding since long that they should also be promoted to the post of Assistant

with effect from the date of promotion of Sri Md. Washiruddin, Petitioner No. 2, as he was junior to them and the University found that injustice has been done in the matter of granting promotion to the Routine Clerk to the post of Assistant, they were promoted by the impugned order with effect from different dates of 1981 and 1982 mentioned against their names. The stand of the University that the Respondents are senior to the writ Petitioners in services and details showing the aforesaid facts have been mentioned in the counter affidavit.

8. Respondents 7 to 12, 14, 15, 17 to 22, 24, 26 and 27 to 41 had also filed a counter affidavit in the writ application. Their case is that no final decision has been taken with regard to seniority in the impugned order issued by the University and the matter with regard to seniority will be decided after inviting objection regarding inter se seniority amongst the Class III and Class IV employees of the University. They also claimed that they are senior to the writ Petitioners and when injustice was done to them while granting promotion to the post of Routine Clerk from Class IV post, they represented the matter and a Committee was constituted and thereafter orders were passed giving promotion to them in 1985 and 1991. The University after having considered the matter found that injustice has been done to the Respondents in the matter of promotion to the post of Assistant issued the impugned order.

9. The learned Single Judge has quashed the impugned order primarily on the ground that once the writ Petitioners were given promotion to the post of Routine Clerk in the year 1978 and to the post of Assistant in the year 1983, their seniority should not have been shifted and affected by giving retrospective promotion to the Respondents and held that the Petitioners are senior to them and remitted the matter to the University authorities to determine the question of retrospective promotion of Respondents 6 to 41 to the said post of Assistant, which should be later to the Petitioners.

10. The learned Counsel appearing for the Respondents (Appellants) submitted that the learned Single Judge has wrongly held that legality of the promotion of the writ Petitioners have been raised after a long time. Elaborating his submission, he submitted that as the Respondents are senior to the writ Petitioner, they were promoted on the posts of Routine Clerks as well as Assistant wrongly and thereafter the Respondents pursued the internal remedy before the University and the University constituted a Committee and the Committee considered the matter and found that injustice has been done to the Respondents and, accordingly, recommended their cases for promotion to the post of Routine Clerk and promoted them to the post of Routine Clerk by issuance of two orders in the year 1985 and 1991 which were not challenged by the Petitioners at any time. Thereafter, the University considered the matter for promotion to the post of Assistant and promoted the Petitioners as well as Respondents and placed them at appropriate places with a clear stipulation that their inter se seniority will be considered by the Seniority Committee. In other words, the seniority between the parties was not finally decided rather it was a

tentative one and the same is still to be decided. The learned Single Judge also wrongly held that the Respondents are junior to the writ Petitioners. The averments made on behalf of the Respondents as well as the University clearly show that they are senior to the writ Petitioners and those materials were overlooked by the learned Single Judge while holding that the writ Petitioners were senior to the Respondents.

11. The learned Counsel appearing for the writ Petitioners (private Respondents) on the other hand contended that admittedly the writ Petitioners were promoted in 1983. At that time, the Respondents were not even the Routine Clerks and giving retrospective promotion to them on the post of Routine Clerk and later on to the post of Assistant affecting the seniority of the writ Petitioners is not permissible in law.

12. Law is well settled that if the promotion has been given long back and the employees were allowed to continue on the said post, and by virtue of the said they acquired a right on the said post and (sic-then?) challenge to the said post cannot be allowed after a long period. However, that principle has. no application where the affected persons have agitated the matter before the authority and decision has been taken after a long gap of time.

13. In this case, admitted position, as stated above, is that the writ Petitioners and the Respondents were appointed on the post of Class IV post in the University. In the said University, the promotion is made to the post of Routine Clerk and thereafter to the post of Assistant. The writ Petitioners, no doubt, were promoted as a Routine Clerk and Assistant earlier to the Respondents. The Respondents took recourse to the internal remedy and file a representation before the University. The University constituted two committees and the Committee found that while giving promotion to the post of Routine Clerk to the writ Petitioners, injustice has been done to the Respondents and accordingly modified the orders issued in the year 1985 and 1991 as mentioned above giving retrospective promotion to the Respondents on the post of Routine Clerks. According to them, some of the writ Petitioners were directly affected by the aforesaid notifications. They did not challenge the same. Thus, the order promoting the Respondents to the post of Routine Clerks in 1985 and 1991 from earlier date has not been challenged by the writ Petitioners at any point of time. Respondents as stated above represented the matter with regard to injustice done with them. The University again constituted a Committee and found that even in the matter of promotion to the post of Assistant injustice has been done and accordingly issued the impugned notification wherein while giving promotion, some of the Respondents were made senior to the writ Petitioners. In that view of the matter, we do not agree with the view taken by the learned Single Judge that the issuance of the impugned notification was bad on the ground that it was issued after a long time affecting the seniority of the writ Petitioners.

14. When promotion is given to some employees and by subsequent order their promotion is affected, then principles or natural justice has to be followed and

the concerned employee has to be heard before the order is modified or recalled. Admittedly that has not been done in this case and on this ground impugned order suffers from legal infirmity and we would have upheld the order of the learned Single Judge on that ground and directed the authority to hear the writ Petitioners and take a fresh decision, but taking into consideration the specific statement made in the notification that the decision with regard to seniority is only tentative one and the final decision with regard to inter se seniority of the Petitioners and the Respondents has to be taken according to established criteria after the receipt of the report by the Seniority Committee already constituted for the said purpose, we only modify the impugned order to the extent that the writ Petitioners shall maintain their seniority on the basis of their promotion of 1983. Before taking a final decision with regard to seniority of the writ Petitioners vis-a-vis Respondents the authority shall hear the Petitioners and then take a final decision on receipt of the report of the Seniority Committee. In other words, if the University decides to modify the seniority of the writ Petitioners, it will give them opportunity of hearing before deciding the matter of seniority.

15. In the result, the appeal is allowed and the order of the learned Single Judge is set aside with the direction/observations as mentioned in the order.

D.P.S. Choudhary, J.

16. I agree.