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**(1990) 10 PAT CK 0005**

**In the Patna High Court**

**Case No : Civil Writ Jurisdiction Case No. 336 of 1983**

Shamshul Bari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 12-10-1990

**Acts Referred:**

**Citation :** (1992) 2 PLJR 746

**Hon'ble Judges :** G. C. Bharuka, J

**Bench :** Single Bench

**Advocate :** M. S. Madhup and N. Wari, for the Appellant; D.N. Singh and Uday Chand Prasad, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

G.C. Bharuka, J.—In the present writ application, reliefs sought for by the Petitioner is that he be declared senior to Respondent No. 4 in the gradation list prepared provisionally as well as finally in respect of Inspector of Excise and further for a direction to the Respondents concerned to grant all consequential benefits to the Petitioner pertaining to his service to which he is found entitled to pursuant to the declaration of his seniority. A similar claim of seniority was made by the Petitioner over Respondent No. 3 also; but, in the course of hearing Mr. Madhup, learned Counsel appearing for the Petitioner, has given up this claim.

2. The short facts giving rise to the controversy at issue are that the Petitioner was appointed as a Sub-Inspector of Excise on 29.6.1948. Subsequently he was promoted to the post of Inspector of Excise on 22.2.68 and on 22.2.1970 his promotion to this post was confirmed retrospectively from the date i,f his initial promotion i.e. from 22.2.1968.

3. In paragraph No. 12 of the Supple, mentary Counter-Affidavit filed on behalf of the Respondent-State, it has been admitted that the Petitioner had been piowoted to the post of Inspector of Excise in the year 1968 against the vacancy of 1967-68 for the promotees quota. It is also an admitted fact that Respondent

No. 4 had joined as Inspector of Excise as a direct recruit on 10.9.69 against 1966-67 vacancy for the direct recruit quota. Therefore, as a matter of fact, admittedly the Petitioner has been promoted to the post of Inspector of Excise earlier to Respondent No. 4. Therefore, apparently there was no reason for placing Respondent No. 4 as senior to the Petitioner in the gradation list prepared either provisionally or finally.

4. The law with regard to determination of inter-se seniority has been finally laid down by the Supreme Court in the case of *The Direct Recruit Class-II Engineering Officers' Association and Ors. v. State of Maharashtra and Ors.* reported in AIR 1990 SC 1667 : 1990 (2) PLJR. 23 (SC). In paragraph No. 44 of the judgment, the Supreme Court has held that,

To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(R) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

In view of the law laid down by the Supreme Court, now there should be no manner of doubt that placing of the Petitioner as junior to Respondent No. 4 is obviously arbitrary and illegal. Accordingly, I hold that the Petitioner was senior to Respondent No. 4 and was entitled to all the benefits to which he would have been entitled if he was considered as senior to Respondent No. 4 at the appropriate time.

5. Under the circumstances, I hereby direct that the Petitioner be given all necessary benefits pertaining to his service in view of declaration made hereinbefore. This writ application is, accordingly, allowed to the extent indicated above. Considering the harassment caused to the Petitioner, a cost of Rs. 1000/- (Rupees one thousand) is awarded to him.