

(1995) 11 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 5573 of 1995

Sharda Nandan Sharma and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0007

Judgement

N. Pandey, J.—The Petitioners, who are Assistant Public Prosecutors working in different Courts of this State, have sought for a writ of mandamus commanding the Respondents to take a decision for creation of different avenues of promotions in the light of recommendation of the 5th Pay Revision Committee and keep the Directorate of Prosecution free from the Police Department for all practical purposes. Their case is that considering the desirability to provide promotional avenues to the Assistant Public Prosecutors, the 5th Pay Revision Committee in its report recommended that in each of the districts where Assistant Public Prosecutors have been posted, one post in the scale of Rs. 1360-2000 should be created for proper supervision and control of the working done by the Assistant Public Prosecutors. Secondly there should be at least four Regional Public Prosecutors with headquarters at Patna, Ranchi, Muzaffarpur and Bhagalpur in the scale of Rs. 1575-2300 for supervision of the work in the districts within the original jurisdiction of these old division. Thirdly posts of Additional Director be filled up from either the cadre of Assistant Public Prosecutors or from Superior Judicial Services. It was also recommended that the prosecuting cadre should not be directly under the Director General of Police.

2. It is alleged that although the recommendation of the 5th Pay Revision Committee was accepted by State Government but no promotional avenues has been created except providing selection grades.

3. It is stated that in absence of any promotional avenues, Assistant Public Prosecutors have to serve the same post throughout the service career whereas Munsifs/Judicial Magistrates have avenue of promotions to the rank of District

Judge and even elevation as Judge of this Court. Similarly, Deputy Superintendent of Police having lesser qualifications and appointed on the basis of same panel, are getting promotions to the Indian Police Service and ultimately also get chance for promotion even to the rank of Director General of Police.

4. Although it would appear from the resolution of the Government bearing No. 2/0-1-1042/80 Grih As, 2203 Home (Police department, that having regard to different decisions of this Court as well as statutory requirements provided u/s 25 the Code of Criminal Procedure, separate Directorate of Prosecution completely independent from the Police Department was created but in practice all the higher posts of such Directorate are being filled up by the officials of the Police Department. Therefore, unless higher posts of the Directorate are filled up by the Assistant Public Prosecutors, the prosecution, wing would not be free from influence and control of the Police Department. It was pointed out that the Supreme Court while examining the case of S.B. Shahane and others Vs. State of Maharashtra and another, has held that each State Government is required to constitute a separate cadre of Assistant Public Prosecutors, either district-wise or State-wise by creating separate Prosecution Department for them and its head be made directly responsible for such department's work to the State Government. The disciplinary control and conduct of prosecution should also be free from the administrative Stand disciplinary control of the Police Department.

5. But admittedly in the State of Bihar, the Prosecution Department has been separated from the Department of Police by creating a separate cadre. Therefore, only grievance of the Petitioners relevant for consideration is that all the higher posts of that department should only be filled up by promotion of the Assistant Public Prosecutor and not by any other department.

6. I have already indicated that 5th Pay Revision Committee having considered large number of representations of the Assistant Public Prosecutors as also after taking note of service condition of different identical services, made a positive recommendation for creation of different posts with higher scale to enable the Assistant Public Prosecutors to get their promotion and posting against such posts.

8. Unfortunately, in this case, in spite of sufficient opportunity to the Respondents authorities, no counter affidavit was filed so that one can circumstances the recommendation of the 5th Pay Revision Committee has not been given its full effect. But I have noticed the cadre of prosecution as required u/s 25 of the Code has already been created. The whole object to create a separate cadre free from the Police Department as required u/s 25 of the Code was that no Assistant Public Prosecutor should consider himself subordinate to a Police Officer. Therefore, there is no dispute that considering all these mandatory requirements, the Vth Pay Revision Committee recommended, for creation of posts and to provide promotional avenue to the Additional Public Prosecutors.

9. In the background of facts the noticed above, I direct the Respondent

authorities to implement the recommendation of the 5th Pay Revision Committee in its true spirit as also to keep such Assistant Public Prosecutors free from the administrative and disciplinary control of the Police Department or its officer, if they still continue to be under such control.

10. With the aforesaid observations/directions, this application is disposed of.