

(1990) 06 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 4422 of 1989

Sheo Dayal Ray and Others	Vs	APPELLANT
The State of Bihar and Another		RESPONDENT

Date of Decision : 25-06-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Criminal Procedure Code, 1973 (CrPC) — Section 25

Citation : (1991) 1 BLJR 126 : (1991) 1 PLJR 536

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Binod Kumar Roy, J.—The fifteen petitioners have filed this writ application for issuance of an appropriate writ, order or direction to the respondents and to decide the question of grant of promotion to them, they being Assistant Public Prosecutors, in the junior and senior selection grades and also to grant them time bound promotion expeditiously from their due date. Their further prayer is to pay penal interest at the rate of 18% on their increased pay on promotion and to direct the Respondents not to keep any post in reservation for Scheduled Castes and Scheduled Tribes in the Selection grade of the Assistant Public Prosecutors.

2. Shortly stated the case of the petitioners is as follows. The petitioners and other Assistant Public Prosecutors were appointed as Assistant District Prosecutors under the Police Act, 1861 except those belonging to the 1977 batch and on wards. They were to conduct cases in the courts of Magistrates on behalf of the State. According to Section 25 of the Code of Criminal Procedure, which came into force from 1st April, 1974, no police officer was made legible to be appointed as Assistant Public Prosecutor for conducting prosecution in the courts of Magistrates. Thus the Police Prosecutors were divested of their police powers and were appointed Assistant Public Prosecutors under the aforementioned

Section. A report of the 4th Pay Revision Committee was published revising the scale of pay of Government employees. The revised scale of pay was made applicable to all State Government employees, who were in service on the 1st of April, 1981, and also to new appointments on promotions made effective on or after the said date. The Finance Department of the Government of Bihar adopted a Resolution (as contained in Annexure-1 which is the relevant extract). Sections 10 and 11 of the Resolution run as follows:

10. The General recommendations of the Fourth Pay Revision Committee in respect of Selection Grade are as follows:

- (i) Selection Grade should be provided in all services, cadres and posts.
- (ii) There should be normally two level of Grade. For the Stale services, the Committee have recommended continuance of two Selection Grades to be known as the Junior Selection Grade and the Senior Selection Grade, and a Supertime Scale existing at present.
- (iii) The Junior Selection Grade should consist of 20 per cent of the total cadre and the Senior Selection grade 10 per cent of the total cadre. The actual number should be determined for particular cadres taking into account the normal promotion prospects already existing for the cadres so that the first and second levels of promotion inclusive of the selection Grade remains at least 20 per cent and 10 per cent respectively. In case of the State Services, however, the percentage of junior and senior selection grade should be 20 per cent and 12.5 per cent respectively and for the supertime scale, 2.5 per cent.
- (iv) Promotions to the Selection Grade should of course be subject to the condition that the employees is found otherwise fit for the same.

(11) With regard to time-bound promotion, the Fourth pay revision Committee have made the Following recommendations:

- (i) Personnel management should envisage providing atleast two promotions to each and every employee in Government service, the first by the end of ten years of service and the second by the end of 25 years of service.
- (ii) If an employee who is otherwise fit for promotion and had not been able to get a single promotion by 10 years of service notwithstanding the fact that a specified percentage of the cadre is already provided in the different levels of promotion inclusive of the selection grade, he should be promoted to the Junior Selection grade at the end of the tenth year.
- (iii) If an employee, although otherwise found fit for a second promotion, has not been able to secure a second promotion by the 25th year of his service notwithstanding the fact that a specified percentage of the cadre is already provided in the different levels of promotion inclusive of the selection grade, he should be promoted to the senior selection grade at the end of the 25th years.
- (iv) The aforesaid facilities should be extended to all employees whether they

belong to any formally constituted service or cadre, or not and including employees holding isolated posts. In their case, the pay scale immediately higher than the pay scale prescribed for the junior selection grade, and the pay scale immediately higher to that of the aforesaid junior selection grade should be deemed to be the pay scale for the senior selection grade.

(v) The aforesaid scheme of time-bound promotion will not be applicable to services, cadres and posts of which the maximum of the pay scale of the basic grade exceeds Rs 2,000/-.

The Government of Bihar in its Home (Police Department issued a letter dated 23rd August, 1985 through its Additional Secretary to the Auditor General, Bihar, as contained in Annexure 2, mentioning therein that there will be 69 posts (including 2 temporary) of junior selection grade and 35 posts (including 1 temporary) of senior selection grade in the cadre of Assistant Public Prosecutors with effect from 1st of April, 1985. On 7th December, 1985 through a letter bearing No. 747 the Directorate of prosecution initiated the matter regarding time bound promotion and selection grade through memo No. 310 dated 20th August 1988, and the names of Assistant Public Prosecutors, found legible and fit for promotion in both grades, were submitted by the Directorate of Prosecution to the Home (Police) Department making a proposal for reservation of Scheduled Castes and Scheduled Tribes in the selection grade posts. Lists prepared for the purpose are Annexures-3 and 3/1 respectively to this writ application. Through memo No. 336 dated 31.8.1988 (as contained in Annexure-4) the Directorate of Prosecution submitted names for recommendations for promotion the post of time bound promotion. The Finance Department vide its memo No. 3/PAR-03-52/88/7664 Patna dated 21.12.88 (as contained in Annexure-5) communicated all concerned departments to immediately implement the bound promotion and to grant selection grade to the Government servants. The Directorate of Prosecution, which is the head of the prosecution cadre, through memo No. 70 dated 9.3.1989, as contained in Annexure-6, submitted names, according to merit of the Assistant Public Prosecutors to the Home (Police) Department. Amongst the Assistant Public Prosecutors, who had opted for their absorption in the cadre of Deputy Superintendent of Police, have been given promotion in the Junior as well as senior selection grade and Indian Police Service long before, but not a single promotion has been given to those Assistant Public Prosecutors who remained in the prosecution cadre. Several representations copies of some of which are Annexure-7 series which were filed by previous General Secretary as also through petitioner No. 1, who is the present incumbent, also to expedite their promotion proved futile. Due to slackness and culpable delay the petitioners are not only entitled for their due promotion but are also entitled for interest at panel rate on the increased pay on promotion from the date they were entitled for the same for their promotion. The Assistant Public Prosecutors are without any promotion since 1960. The proposal for reservation of Scheduled Castes and Scheduled Tribes in selection grade posts of the Assistant Public Prosecutors ultra vires Articles 14 and 16(4) of the

Constitution of India. No counter has been filed by the respondents.

3. Mr. Teg Bahadur Singh, learned Counsel for the petitioners, submitted as follows:

(i) The petitioners are without any promotion since 1960 and that even though the Government of Bihar vide Annexure-1 has accepted the recommendations of the 4th Pay Revision Committee and follow up action has also been taken by Home (Police) Department, vide Annexure-2, and recommendations were made by the Directorate of Prosecution vide Annexures-3, 4 and 6 also even by the Finance Department vide Annexure-5, but without any further effect it is high time that a writ in the nature of mandamus should be issued in the interest of justice in view of the patent fact also that the Assistant Public Prosecutors, who had opted for the absorption in the cadre of Deputy Superintendent of Police, were granted promotion whereas the petitioners were illegally deprived.

(ii) The Policy of keeping posts reserved for Scheduled Castes and Scheduled Tribes in the selection grade ultra vires Articles 16(4) of the Constitution of India on the analogy of Shedodhar Singh's and Anand Kishore Singh's cases which should be struck down as such.

(iii) Due to the attitude adopted, the respondent State is also liable to pay interest at the panel rate of 18% on the increased pay on promotion for withholding the same without any reasonable cause.

4. Mr. Madhup, appearing on behalf of the respondents, submitted as follows:

(i) The writ petition before this Court is not maintainable as petitioners have got an alternative remedy before the Bihar State Administrative Tribunal.

(ii) The matter still being examined by the Government and thus it would be not necessary for this Court to issue writs/directions prayed for as no final decision has yet been taken.

(iii) Article 16 has not been violated.

5. Mr. Teg Bahadur Singh in reply submitted as follows. The plea of non-maintainability on account of a remedy before the Bihar State Administrative Tribunal is misconceived for the reasons, firstly, that the Tribunal is not functioning, secondly, the Tribunal has got no jurisdiction to hear the cases belonging to the uniformed services like the petitioners, thirdly no such objection was taken at the time of the admission of the writ petition and lastly that even assuming that the petitioners had/have an alternative remedy the same cannot bar the jurisdiction of this Court to grant reliefs to the petitioners.

6. I deal the question of non-maintainability raised by Mr. Madhup first. I was a party to the order admitting this application on 25th May, 1989. On that date no objection was raised regarding non-maintainability of the writ petition on the said account. The Chairman of the Bihar State Administrative Tribunal was not even then appointed. The writ application having been admitted, and its expeditious

hearing having been ordered, I am of the view that the plea of non-maintainability on the ground of existence of an alternative remedy has got no legs to stand at the hearing stage and accordingly, I overrule this submission. The objection having been rejected, it is not necessary for me to decide as to what is the true scope of Section 1(4)(f) of the Bihar State Administrative Tribunal Act which lays down that it shall not apply to the persons belonging to the unfomed service which the petitioners claim.

7. The learned Standing counsel very fairly stated that the representation filed by the petitioners are pending serious active consideration. The question, however, is as to whether an appropriate writ should be refused to be issued merely on this Account. I am of the view that protracting the matter in the peculiar facts and circumstances of the case, would be frustrating the cause of justice for which the petitioners have been crying. The attitude of the State in not disposing of the representations even during the pendency of this application is also not understandable. The follow up action taken by the Directorate of Prosecution as also by the department of Finance of the Government of Bihar compels me to proceed to dispose of this case. The facts being apparently clear and undisputed and the claim being justified, I am of the view that the respondent-State has erred in not granting due promotion to the petitioners on the one hand and in granting promotion to other ones who had opted for the Deputy Superintendent of Police as already stated above. In this backdrop, I hold that the petitioners are entitled for issuance of a writ as prayed for by them.

8. Article 16 (1)(2) and (4) of the Constitution of India are as follows:

16 Equality of opportunity in matter of Public employment.--(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.

(3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens would in the opinion of the State, is not adequately represented in the services under the State.

9. Learned Counsel for the petitioners in support of his proposition that the reservation for the Scheduled Castes are not permissible at the subsequent stage relies on decision of Sri Anant Kishore v. District Education Officer 1986 PLJR 50.

10. It is embarrassing for me to make any comment on the judgment of the learned single Judge as I do not find in the Full Bench decision of this Court in Sehodhar Singh's case 1985 PLJR 369 for the purpose of holding that the reservation for the Scheduled Caste are not permissible at the subsequent stage of the service.

11. The law in this regard stands fully covered by State of Kerala and Another Vs. N.M. Thomas and Others, , I would have referred this case to a Division Bench but since the judgment of the apex court in Thomas & case (supra) has not been considered, I do not think it is desirable for me to refer this case to a Division Bench.

12. People belonging to the Scheduled Casts and the Scheduled Tribes are the zealously protected children of the Constitution of India. The expression matters relating to employment or appointment in Article 16 in my view includes all matters in relation to employment both prior and subsequent to the employment which are incidental to the employment and form part of the conditions and terms of the employment and guarantee enshrined in Article 16(1) covers not only initial appointments but promotions as well. Thus, I am of the view that it cannot be said that the State of Bihar was not justified in making reservation for the people belonging to Scheduled Caste and Schedule Tribes in the selection grade post of the Public Prosecutor.

13. The matter, however, does not rests here. Considerable time has elapsed, as already admitted by Mr. Madhup, in not granting due promotion to the petitioners. Any further delay would frustrate the fair play procedure guaranteed under Articles 14 and 16 of the Constitution of India. Mr. Teg Bahadur Singh informs me today that a representation made to the Director of Prosecution-cum-Inspector General of police to grant promotion to the petitioners and similarly situated persons is pending by now since about a year but no decision one way or the other has been taken by the Respondents. It is high time that the Respondents should take decision in this regard. In the said view of the matter, I direct the Respondents to dispose of the representations filed by the petitioners peremptorily within three months from today failing which the petitioners shall, apart from taking appropriate steps, shall also be entitled to panel interest as per their claim.

14. This writ application is, thus, allowed in part but in the peculiar facts and circumstances, there shall be no order as to cost. Let a writ of mandamus issue accordingly. Let a copy of this judgment be handed over to the learned Standing Counsel No. 1 also.