

(2003) 03 PAT CK 0073
In the Patna High Court
Case No : L.P.A. No. 41 of 1996

Shyam Sunder Prasad Sinha

APPELLANT

Vs

Bihar State of Pollution Control Board and Others

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Citation : (2003) 51 BLJR 789 : (2003) 2 PLJR 626

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : Devendra Kumar Sinha and Kumar Nr. Jamuar, for the Appellant;
Shivendra Kishore, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J. and R.N. Prasad, J.—This Letters Patent Appeal has been filed against the judgment dated 7th December, 1995 on CWJC No. 284 of 1985; Shyam Sunder Prasad Sinha v. Bihar State Pollution Control Board and Ors.

2. The issue plainly is on the aspect whether the petitioner-appellant Shyam Sundre Prasad Sinha has been wrongly denied his position as a Routine Clerk. According to the judgment which has been challenged his function as a Routine Clerk has been frustrated as the promotion of respondent No. 4 has been permitted over and above the petitioner-appellant.

3. It is on record that the petitioner-appellant was asked to look after the work of Routine Clerk from 13-11 -1980.

4. The short background is necessary. The petitioner is not the senior-most. The senior-most is respondent No. 4. The exclusion of respondent No. 4 and preferring the petitioner to look after the work of a Routine Clerk is itself an answer. The respondent No. 4 was not possessed of qualifications to discharge the function of a Routine Clerk. In effect, the management was itself making an election and selection both, by eliminating the senior-most as he was not possessed of qualifications and, thus, selected the petitioner-appellant because

he had to required qualifications to perform the function of a Routine Clerk. A formal order on this promotion had never been passed.

5. Subsequently, the respondent No. 4 acquired the qualification. He edged out the petitioner-appellant with subsequently acquired qualification.

6. The petitioner then filed a writ petition. The learned Judge was of the opinion that the respondent No. 4 being he senior-most and having received the qualification was rightly entitled to the position of a Routine Clerk. Here, the learned Judge committed a manifest error apparent on the face of the record as on the day of vacancy (when it occurred is not relevant otherwise) the respondent No. 4 did not have the qualification. Subsequently even when the petitioner-appellant came into service, he was required to look after the work of Routine Clerk, because he was qualified in comparison to the respondent No. 4, who was not qualified. Impliedly by a selection process at the relevant time the respondent No. 4 has been over looked because of lack of qualification.

7. In the circumstances, when the petitioner-appellant had been asked to look after the work of Routine Clerk his right cannot be denied because the persons senior to him did not have the qualifications, which were acquired subsequently. At that relevant time the petitioner-appellant was possessed of qualification. He was the second senior-most and, therefore, in effect, was selected to perform the job. The respondent No. 4 in selection would now take his place subsequently. The order of the learned Judge dated 7th December, 1995 on the writ petition is set aside.

8. The appeal is allowed.