

(1993) 12 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 293 of 1979 (R)

Sitaram Mandal and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-12-1993

Acts Referred:

Bihar Panchayat Samiti and Zila Parishad Act, 1961 — Section 78, 78(1)
Bihar Panchayat Samitis and Zila Parishads (Conditions of Service) Rules, 1964 — Rule 2, 7(2), 7(3), 7(4), 7(5)
Constitution of India, 1950 — Article 14
Miscellaneous Rules of the Board of Revenue, Bihar, 1958 — Rule 157, 157(J)

Citation : (1994) 2 PLJR 480

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

Bench : Single Bench

Advocate : V.P. Singh and A.K. Sinha, for the Appellant; V. Shivanath and M.B. Lal for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the Petitioners for quashing the order dated 9-1-1975 issued by the Assistant Development Commissioner (Headquarters), Ranchi by which these Petitioners have been reverted from the post of selection grade to lower division clerks.

2. The relevant facts giving rise to the dispute in question may be stated in short. The Petitioners were appointed in 1965-66 as lower division clerks in Ranchi Zila Parishad. The details of their appointments have been set out in paras 5 of the writ application. Subsequently, they passed the final departmental examination in accounts in or before 1971. Pursuant to the passing of this examination and on due scrutiny at their eligibility and suitability, the Petitioners were promoted to selection grade as head assistant-cum-accountant in the pay scale of Rs. 160-400/- by office order dated 7-8- 1972 as contained in memo No. 1069 issued by the Respondent, Secretary, Zila Parishad, Ranchi a copy of which is at Annexure "1" to the writ petition. But for the reasons that after the grant of

promotion to the Petitioners, some of the clerks who were ranking senior to the Petitioners, had acquired the qualification for promotion by passing the final Account Examination these Petitioners were reverted to their original posts to accommodate those clerks on the promotional posts by the impugned order dated 9-1-1975 (Annexure 2). The order of reversion has been passed without affording any opportunity of hearing to the Petitioners and, therefore, when they learnt about the same, some of them filed representation questioning the validity of such reversion. One of such representation has been filed as Annexure-3. It appears that on receipt of the representation, the Chairman of the Zila Parishad examined the matter for himself and referred the same to the State Government for necessary clarification since according to him the reversion was not in accordance with the law. The said communication dated 17-11-1975 has been filed as Annexure 4.

3. The State Government after examining the relevant statutory provisions and the service conditions applicable to the Government servants in relation to promotional matters, under its communication dated 14-7-1976 (Annexure 5) cancelled the impugned order dated 9-1-1975 (Annexure 2) and directed that the Petitioners, who had been promoted in the selection grade will remain in that grade. Since in spite of the said orders and directions of the Government, the Respondent-Zila Parishad and its officers did not act on the same and insisted on reversion of the Petitioners, they filed a writ petition in this Court being C.W.J.C. No. 339 of 1976(R). But the same was allowed to be withdrawn by order dated 3-2-1979 (Annexure 10) for non-impleading, of the clerks who were ranking senior to the Petitioners and have been granted promotion at the cost of the Petitioners with liberty to the Petitioners to file a fresh writ application after impleading all the necessary parties. It is in the background of these facts that the present writ application has been filed. Though some of the private Respondents had appeared through their advocates at earlier stage but have not chosen to contest the proceeding since there is no representation on their behalf.

4. Mr. V.P Singh, learned Counsel appearing for the Petitioners has taken me through the various provisions contained in Bihar Panchayat Samitis and Zila Parishads Act, 1961 (In short "the Act" only) and Bihar Panchayat Samitis and Zila Parishads (Conditions of Service) Rules, 1964 (In Short the Rules only) and the relevant circulars issued by the State Government from time to time pertaining to the promotion of the Government servants. In the background of these statutory provisions and documents, he has submitted that the impugned order (Annexure 2) is ex-facie illegal and can not be sustained in law not only because it is contrary to the statutory provisions but also for the reason that the same has been passed in violation of the principle of natural justice. His further submission is that in any view of the matter since the impugned order has already been set aside by the State Government pursuant to the powers conferred on it u/s 78 of the Act. It was incumbent upon the Respondents-Zila Parishad and its officers to allow the Petitioners to continue on the promotional post and their inaction in this regard can not be justified on any count.

5. On the other hand Mr. V. Shivanath, G.P.I., who also appears on behalf of Zila Parishad, has tried to support the impugned order of reversion by submitting that the promotions of the Petitioners in selection grade was purely temporary and so the Petitioners had got no right to continue on those posts and. as such, it is within the discretion of the concerned authorities to revert them at any time if they find any plausible reason or ground for doing so.

6. For proper appreciation of the questions involved in the writ application, Sub-rules (4), (5) and (7) of Rule 7 of the Rules are material and are being quoted hereunder:

7(4) The selection of candidates for appointment to the lowest post of each, of the category mentioned in Sub-rule (2), shall be made by a Committee consisting of the Upadhyaksha, a member of the Zila Parishad nominated by the Adhyak-sha, the District Development Officer and a District Level officer nominated by the Collector of the district and written examination for the purpose shall be conducted by the District Development Officer.

(5) All appointments by promotion to the posts of ministerial officers shall be made on the recommendation of a Committee consisting of the Adhyaksha, Additional Collector of the district, District Development officer and two Pramukhs selected by the Zila Parishad on an annual basis:

Provided that the primary considerations for selection for promotion shall be merit, technical qualification and knowledge and integrity; seniority may be considered only thereafter:

Provided further that where a senior employee is proposed to be superseded the Committee shall record full reason for doing so.

(7) Subject to the provisions of Sub-rule (3), the service conditions of all ministerial officers shall be governed mutatis mutandis by the rules in force for the corresponding class of officers of State Government.

From the above referred rules, it is quite clear that for according promotion to the posts of ministerial officers the primary consideration is to be that of merit, technical qualification, knowledge and integrity. The aspect of seniority has to be a secondary consideration in such matters. In the present case, it is an admitted fact that even for grant of promotion to ministerial officers in higher grades, the passing of final Accounts Examination as contemplated under Rule 157 of the Bihar Boards Miscellaneous Rules, 1958 (In short Boards Miscellaneous Rules only) has always been taken to one of the main basis. It has been so because, that is one of the conditions for granting promotion to the corresponding officers of the State Government and as per Sub-rule (7) of Rule 7 of the Rules, noticed above, the service conditions of all ministerial officers are to be governed mutatis-mutandis by the rules in force for the corresponding class of officers of the State Government. It will be noticed here that service conditions have been defined under Rule 2(ii) of the Rules inter alia to mean all conditions relating to

promotion as well. It if, also not in dispute that under Rule 157(J) of the Boards Miscellaneous Rules passing of final examination in account is a prerequisite for promotion in selection grade.

7. It was on the above considerations that the Chairman of the Respondent-Zila Parishad having felt that gross injustice has been met to the Petitioner referred the matter to the State Government. The Government on close examination of the relevant statutory provisions and respective conditions of service, held the impugned order or reversion to be bad and. accordingly, set aside the same by specifically holding that the age old Government instruction of reverting promoted eligible clerks to higher grade to accommodate the seniors who had subsequently acquired the eligibility for promotion has been given a go-by for good reasons much back in 1966. In my opinion, on consideration of all the relevant facts and the statutory provisions, referred to above, it has to be held that the Respondent-Zila Parishad and its officers have acted illegally in reverting the Petitioners. It is not in dispute that on the date of promotion i.e. 7/8/72 the Petitioners had the requisite eligibility for being promoted to selection grade and the competent authorities having found them suitable had granted such promotion In that view of the matter it was wholly unjust and unsupportive of any statutory provision to revert the Petitioners depriving them of their promotional benefits just to accommodate some persons, who were ranking senior fn the cadre but were not eligible for any promotion on the date when the Petitioners were so promoted.

8. The impugned order is not only contrary to the statutory provisions but is also violative of Article 14 of the Constitution of India inasmuch as it is an arbitrary exercise of powers.

9. I may also notice here that u/s 78 of the Act the State Government has been clothed with the powers of revision and review of the orders and Sections of the Zila Parishad. Sub-section (1) thereof reads as under:

78. Power of revision and review by State Government.--(1) The State Government may, either suo motu or on an application made by any person interested, call for and examine the record of a Panchayat Samiti or a Zila Parishad or of its Standing Committee in respect of any proceeding to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and, if, in any case it appears to the State Government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, it may pass orders accordingly:

Provided that the State Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.

Therefore, under the aforesaid statutory provision, the State Government was competent enough to examine the legality of the impugned order of reversion and annul it as has been done in the present case by order (Annexure 5).

Therefore, independent of any other consideration, in view of this order, the impugned order of reversion, Annex. 2 has lost its existence and, therefore, its effect could not have been perpetuated by compelling the Petitioners to remain on the reverted posts. Thus the action of the Zila Parishad merely amplified their illegal and arbitrary act towards the Petitioners.

10. For the reasons, as aforesaid, it is declared that the impugned order (Annexure 2) stood set aside by the Government order (Annexure 5) and, therefore, the Petitioners will be deemed to have been duly promoted by order dated 7-8-72 (Annexure 1). As such they will be entitled to all the benefits of salary, promotion and other consequential benefits to which they may be entitled on the basis of the said promotion.

11. In the result, the writ application is allowed with cost assessed at Rs. 500/- (Rupees five hundred) only to each of the Petitioners payable to them with their salary for the month of January, 1994.