

(2000) 08 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 937 of 1992

Sri Kapil Deo Prasad and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2001) 1 BLJR 447 : (2001) 1 PLJR 372

Hon'ble Judges : Sudhansu Jyoti Mukhopadhaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhansu Jyoti Mukhopadhaya, J.—This application was initially preferred by the petitioner against the temporary and provisional lists of Junior Engineers, including those belonged to Scheduled Castes appointed between 1980 and 1984, published vide Memo No. 7083(E), Patna dated 18th December, 1991 with further prayer to direct the Respondents to issue fresh gradation list, in accordance with law, declaring the petitioners senior to Respondent Nos. 3 to 14.

2. During the pendency of the writ petition, one or other person, including contesting Respondents having promoted to the post of Assistant Engineers, and further provisional gradation list having published amendment petitions were filed which were allowed.

3. As the case can be disposed of on short point, it is not necessary to discuss all the facts, except the relevant one.

4. The facts as pleaded but not disputed by the Respondents are that on advertisement was issued in newspaper "AAJ" on 13th March, 1983 calling for application from candidates belonging to Scheduled Castes/Scheduled Tribes for appointment against temporary posts of Junior Engineers, on ad hoc basis. In pursuance of said advertisement, petitioners and contesting Respondents applied, wherein after they were provided with interview letters. The petitioners

were asked to appear in the interview on 8th June, 1983, vide, Memo dated 19th May, 1983 and on selection most of the candidates, including contesting Respondents were appointed, vide Notification No. 3617(E) dated 5th October, 1983.

5. So far as petitioners are concerned, no formal orders of appointments were issued, in respect to them, and they were asked to furnish further affidavits, vide, letter issued on 5th October, 1983. On furnishing such affidavits, the petitioners were appointed, vide Notification No. 246 dated 20th January, 1984, along with contesting Respondent Nos. 6 and 14.

6. On appointments, while petitioners were functioning, the Respondent-State issued "Bihar Gazetted Officers Ad Hoc Appointment Regularization Act, 1986", in pursuance of which the services of petitioners and the contesting Respondents were regularized, vide Notification No. 399 dated 8th December 1986, from the initial date of ad hoc appointment. Subsequently, provisional gradation list was issued, vide Memo No. 2898 (E) dated 19th May, 1990, against which the petitioners preferred objection, wherein after the impugned provisional gradation list was issued, vide Memo No. 7083(E) dated 18th December, 1991.

This time, in spite of objection made by the petitioners, they having shown junior to the contesting Respondents, have preferred the present writ petition.

7. During the pendency of the writ petition, some of the contesting Respondents were promoted to the higher post of Assistant Engineers, vide orders issued, from time to time, including the Notification dated 3rd May, 1994, but petitioners were promoted as Assistant Engineers, later on, vide notification dated 30th March, 1996.

8. The main grievance of the petitioners is that the Respondents have all the time prepared gradation list on provisional basis, that too on the basis of date of joining and not on the basis of their position as reflected in the merit list prepared at the time of appointment as ad hoc Junior Engineers.

9. It is stated that the names of petitioners were shown above the names of contesting Respondents in the merit list at the time of initial appointment, which was also reflected in the initial orders of appointment, by which the contesting Respondents and petitioners were appointed. Further, according to the petitioners, seniority cannot be depended on fortuitous circumstances of joining, which was based on issuance of notification of appointment, issued irrespective of the position in the merit list.

10. The Respondent-State while objected the prayer made on behalf of the petitioners, relied on one or other circulars relating to determination of seniority including the Circular dated 22nd October, 1975. It has been pleaded that in terms with the aforesaid 1975 Circular, the period of ad hoc appointment is not to be counted for determination of inter se seniority as Junior Engineers.

11. It is not in dispute that the initial appointment of petitioners and contesting

Respondents 3 to 14 was made in pursuance of common advertisement dated 13th March, 1983. They were selected on interview and a merit list was prepared on the basis of which initial order of ad hoc appointments were made. It is only because the petitioners were to furnish certain more information by filing affidavits, their orders of appointments were not issued on 5th October, 1983, when others including those lower in the merit list were appointed, but formal orders were issued subsequently on 20th January, 1984.

12. Though such appointments were made after following all the procedures in accordance with Articles 14 and 16 of the Constitution of India, but as because the recommendation of the (sic) was not obtained, it was termed to be "ad hoc". Subsequently, in pursuance of Regularization Act of 1986, the petitioners as well as the contesting Respondents were regularized against their respective posts of Junior Engineers from the date of their initial appointments, (as ad hoc Junior Engineers).

13. Admittedly, there is no separate rule of seniority for Junior Engineers framed by the State, but they are guided by general rule/guidelines issued from time to time.

14. The aforesaid fact has been taken into consideration by a Full Bench of this Court in the case of Bishundeo Mahto v. State of Bihar and Ors. 1982 B.B.C.J. 45.

In the said case, the Court took into consideration the Circular No. 6509-A dated 12th December, 1934 relating to determination of seniority of officers in State and subordinate services where more than one officer is appointed to the service at the same time.

15. The Full Bench held that by virtue of Notification No. 2555/31 27/50-A dated 15th April. 1950 issued by the State, the Notification of 1934 has the force of statutory rule under proviso to Article 309 of the Constitution of India. The Full Bench further held that the said statutory rule of 1934 has overriding effect on circulars issued from time to time including the circular dated 26th August, 1972.

16. Admittedly, the 1934 Rule is still in vogue having not superseded by any other rule framed under proviso to Article 309 of the Constitution of India. In terms with the said rule, if officers are recruited by direct recruitment, in pursuance of merit list, full consideration is given to the opinion of the Board, i.e., the merit, as reflected in the merit list. Even in the subsequent circular issued by the State on 26th August, 1972, similar law laid down to fix the seniority of direct recruit, appointed in pursuance of common advertisement, on the basis of their position in the merit list. By 1975 circular, as referred by the State, the position has not been altered.

17. Both the petitioners and contesting Respondents 3 to 14 having appointed initially in pursuance of common advertisement, on the basis of a common merit list. The seniority between them has to be determined on the basis of their position in the merit list and same cannot be altered on the basis of date of

joining, joining being based on fortuitous circumstances. If the position of petitioners was shown above the contesting Respondents 3 to 14 in the merit list, at the time of initial appointment, on regularization of their services made in pursuance of same Act by common order, the original seniority is to continue, which is to be based on the basis of the merit list.

18. Thus, the petitioners position in the merit list being above the contesting Respondents 3 to 14, the fact having not denied by the Respondents, I hold the petitioners senior to contesting Respondents 3 to 14.

19. It will be evident from the writ petition, affidavits and enclosures attached there to that no final gradation list has been published till date and the Respondents are still continuing with the provisional gradation list, last of which was issued on 6.2.1996 and on the basis of such provisional gradation list, promotion orders were issued in favour of one or other candidates, to higher post of Assistant Engineers.

20. Accordingly, I direct, the Respondents to finalize the gradation list of Junior Engineers, showing the position of persons as shown in the merit list and appointed on the basis of common advertisement and thereby to place the name of petitioners above the Respondents 3 to 14 and to provide them the consequential benefits.

If one or other juniors, including Respondents 3 to 14 have been promoted to the higher post of Assistant Engineers from a date prior to the date of promotion of petitioners, the Respondents will consider the cases of petitioners for such promotion to the post of Assistant Engineers with effect from the date juniors, including Respondents 3 to 14 were so promoted and, if necessary, the Respondents will come out with appropriate corrigendum, shifting back the date of promotion of petitioners. The question relating to grant of consequential benefit, including promotion to the post of Assistant Engineers from the date the juniors promoted is to be determined and appropriate order is required to be issued by the authorities within six months from the date of receipt/production of a copy of this order.

21. The writ petitioner is allowed, with aforesaid observations and directions.

22. However, in the facts and circumstances, there shall be no order, as to costs.