
(2002) 05 PAT CK 0060
In the Patna High Court
Case No : C.W.J.C. No. 1596 of 2001

Srinath Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-05-2002

Acts Referred:

Citation : (2002) 2 BLJR 1105

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This writ petition arises from a dispute of promotions from Class III posts to posts in the higher pay-scale, Class II category in the Bihar State Housing Co-operative Federation Limited, Patna. The four petitioners seek to challenge the promotion orders, dated 31.8.1999 (Annexure-7), and dated 10.8.2000 (Annexure-9) by which respondents 4 to 11 were allowed promotions, disregarding the petitioners. The main grievance of the petitioners is that in granting promotions their respective seniority over the respondents was overlooked.

2. It is common ground that the promotions were made in terms of the provisions of the office order, dated 22.4.1999 issued by the Secretary to the Federation in pursuance of resolution No. 368, dated 26.2.1999 passed by the Federation's Board of Directors. The office order made it expressly clear that promotions from the posts of Sr. Assistant/Assistant and other equivalent posts to the higher pay-scale in Class II category will be made on the basis of selection, for which Selection Committee(s) will be constituted by the Managing Director from time to time; that for being considered for promotion a list of candidates will be prepared, in accordance with seniority, which would contain the names of candidates, three times in number of the available vacancies; that on the basis of their comparative merits, character rolls/special character rolls, the candidates will be categorized as outstanding, very good and good. And the

departmental promotion committee will make its recommendations to the Administrator/Board of Directors in respect of the candidates on the basis of their character rolls, devotion to duty, achievement of work targets, knowledge of subject, behaviour with superiors, subordinates and members of the public and having regard to their seniority. On promotion seniority in the promoted rank will be reckoned on the basis of the inter-se-seniority in the lower grade. The office order thus made it quite clear that the seniority in the rank of Sr. Assistant/ Assistant etc. will serve only two purposes (i) it will be used for fixing the zone of consideration and (ii) in case of promoted candidates their seniority in the promoted rank will follow their inter-se-seniority in the lower grade.

3. Dr. Jha, learned Counsel appearing in support of this writ petition first submitted that the provisions of the office order were not statutory rules which could only be framed with the prior approval of the Registrar. Learned Counsel pointed out that the bye-laws of the Federation provided for framing of Regulations. Dr. Jha submitted that promotions should have been made after framing the statutory Regulations and till such time as the Regulations were framed only seniority could serve as the basis for promotion. Learned Counsel contended that in the absence of any statutory rules, the only basis for promotion could be seniority and not the provisions contained in the office order. In support of the submission learned Counsel relied upon a decision of this Court in Bihar State Agriculture Market Committee Employees Association Vs. The Bihar State Agriculture Marketing Board and Others, . It is true that in paragraph 13 of that decision there is a sentence to the following effect:

4. It is by now well settled that in the absence of specific Rule relating promotion the general Rule of length of service is the criteria subject to fulfilment of requisite qualification, if any.

5. Relying upon the use of the word "Rule" in the above sentence Dr. Jha submitted that so long as there were not statutory rules length of service could be the only criterion for promotion. I am unable to accept the submission. The decision is on a different issue and the word "Rule" has been loosely used in the sense of a binding provision, be it statutory in nature of executive instructions etc. Now, it is well settled that in the absence of any statutory rules even executive instructions on the subject are binding. In this case the office order was issued in pursuance of a resolution of the Board of Directors which will undoubtedly hold the field till such time as statutory rules are framed on the subject.

6. The bye-laws may provide for making necessary regulations on different issues. Nevertheless, there is nothing to prevent the Board of Directors of the Federation to pass a resolution, laying down guidelines or making provisions regulating promotions till such time as statutory regulations were made for the purpose. And to my mind Mr. Narendra Prasad, learned Counsel appearing for the Federation was quite right in his submission that what was to be examined in this case was not the correctness of the office order but whether or not the provisions

of that office order were followed in making the impugned promotions.

7. On this aspect of the matter Dr. Jha submitted that the provision for granting promotion, on the basis of comparative merits, to be determined in the light of the relevant service records was impossible to be followed in the Federation for the simple reason that the service records of the employees were not maintained properly. Laying some emphasis on this submission Dr. Jha invited my attention to the statements made in paragraphs 14 and 22 of the writ petition where it is stated that since 1985 no character rolls of the Assistants were being maintained in the Federation. Further, in para 3 of I.A. No. 1003 of 2001 filed by the petitioners, it is stated that the Federation was not maintaining any character rolls and in the absence of any character roll the grading of the employee was not possible.

8. Dr. Jha further stated that though one of the petitioners namely Chandreshwar Singh (petitioner No. 3) was given, letters of commendation dated 26.11.1986 and 27.11.1989 for his work in loan collection, he was not allowed promotion but respondent No. 7 who was awarded punishment in a disciplinary action was promoted by the promotion order, dated 10.8.2000 (Annexure-9).

9. The counter-affidavit filed on behalf of the Federation gives full and adequate reply on his aspect of the matter. The counter-affidavit brings on record, as annexures, copies of the proceedings of the promotion committee from which it appears that the committee went into great detail in appraising the respective merits of the candidates under consideration for promotion. It may be noted that in the meeting held on 10.7.1999, though respondent No. 7 came within the zone of consideration, he was not considered for promotion because the punishment of censure given to him was still operative. He was next considered in the meeting of 26.7.2000 and by that time the punishment of censure given to him had lost its force and in that meeting he was placed in the outstanding category and was placed at serial No. 1 of the list of candidates selected for promotion. From the proceedings of the promotion committee I find that the provisions of the office order dated 22.4.1999 were faithfully adhered to.

10. Thus on hearing Counsel for the parties and on going through the writ petition, the counter-affidavit and the other affidavits filed on behalf of the petitioners I find no infirmity either in the office order, containing the provisions for grant of promotion or the impugned orders of promotion and it appears to me that no case is made out for any interference in this matter by this Court. This writ petition is accordingly dismissed.