
(2006) 11 PAT CK 0105
In the Patna High Court
Case No : LPA No. 1295 of 2005

Sureshwar Ram

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Citation : (2007) 2 PLJR 258

Hon'ble Judges : J.N. Bhatt, C.J;S.K. Sinha, J

Bench : Division Bench

Advocate : Md. Khurshid Alam, for the Appellant; Vikash Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. By this Letter Patent Appeal under Clause 10 of the Letters Patent of the Patna High Court Rules, the challenge is against the judgment of the learned Single Judge, dated 1.9.2005 passed in CWJC No. 120 of 2005, whereby the writ petition filed by the appellant-original writ petitioner, seeking mandamus commanding the respondents to promote him to the post of Assistant Sub Inspector of Excise, with effect from the date his junior was promoted to the post, came to be rejected. Hence this appeal. Let there be skeletal projection of the facts. The original writ petitioner, appellant herein, belonging to the Scheduled Caste, was initially, appointed as Constable in the Excise Department. In the year 1994, his junior, Dudh Nath Prasad, along with others was promoted as Assistant Sub Inspector on 30.6.1994 without consideration of the case of the appellant-original writ petitioner.

2. The respondents, initially, resisted the writ petition contending that the relevant recruitment rules, clearly, provided that no one can be promoted or appointed as Assistant Sub Inspector of Excise after attaining the age of 50 or crossing the age of 50 years. The said rule is argued to be mandatory in nature. It is in these context it is further the case of the respondents that at the time of consideration of such promotion, the original writ petitioner, appellant before us,

had already crossed the age of 50 years.

3. Upon consideration of the facts and circumstances and the relevant proposition of recruitment rules, the learned Single Judge found that since the original petitioner, appellant herein, had passed the matriculation examination in the year 1995, therefore, there was no question of consideration of his case for promotion on the post of Assistant Sub-Inspector of Excise in the year 1994, when the said Dudh Nath Prasad was given promotion. The learned Single Judge has further found that as the original writ petitioner, had crossed the age of 50 years, at the time of consideration in the year 2004, again he was not entitled to be promoted as Assistant Sub Inspector of Excise and he has failed to make out a case that his junior Vijay Kumar had also crossed the age barrier at the time of promotion and as such, there was discrimination in the case of the petitioner-appellant.

4. There is no dispute about the fact that upper limit prescribed for promotion for the post of Assistant Sub Inspector of Excise is 50 years and a person, who has crossed 50 years of age is ineligible and not qualified for being considered for promotion to the post of Assistant Sub Inspector of Excise. There is nothing on the record to show that the decision making process, in not giving promotion to the petitioner, is, in any way, unjust and unreasonable or perverse requiring interference of this Court in exercise of its power under clause 10 of the Letters Patent. As a matter of fact, promotion cannot be claimed as a matter of right, rather right is to be considered for promotion. The case of the petitioner-appellant was considered and since he was found ineligible on the ground of age bar, as he had crossed 50 years of age, his case for promotion could not be considered. Merely, because there is a contention that case of one another junior, namely, Vijay Kumar, who was in similar position and had crossed the age of 50, which is a barrier, was considered, and he was given promotion, such contention cannot be accepted, as the learned Single Judge has rightly found on facts that nothing is brought on the record to show that the said Vijay Kumar had crossed the age of 50 years at the time of consideration. In this view of the matter, we are of the opinion that this Letters Patent Appeal is merit less and deserves to be dismissed at the threshold. Hence it shall stand dismissed. No cost.