

**(2006) 03 PAT CK 0027**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 11211 of 2003

Surya Nath Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

**Date of Decision :** 30-03-2006

**Acts Referred:**

**Citation :** (2006) 2 PLJR 409

**Hon'ble Judges :** Navaniti Prasad Singh, J;Aftab Alam, J

**Bench :** Division Bench

**Advocate :** Bamdeo Pandey and Jitendra Pandey, in C.W.J.C. No. 11211/03 and Sunil Kumar, in C.W.J.C. No. 11667/03, for the Appellant; Prabhakar Tekriwal, S.C.I. and Nirmla Kumari, J.C. to S.C. III in C.W.J.C. No. 11211/03 and S.J. Rahman, G.P. VII and Dilip Kumar, J.C. to G.P. VII in C.W.J.C. No. 11667/03, for the Respondent

**Final Decision :** Dismissed

## Judgement

Navaniti Prasad Singh, J.—These two writ petitions are filed by eight people (five in C.W.J.C. No. 11211 of 2003 and three in C.W.J.C. No. 11667 of 2003) who joined the State Police Force as Steno Sub-Inspector/Steno Assistant Sub-Inspector. The recruitment of Steno Sub-Inspector, Steno Assistant Sub-Inspector and Typist Assistant Sub-Inspector is made in terms of the provisions contained in Appendix 42 of the Bihar Police Manual. Paragraph 5 of the Appendix provides that after serving as Stenographer for a period of 5-years, a Steno Sub-Inspector/Steno Assistant Sub-Inspector would "ordinarily" revert to district work, generally taken as the main line of the police force. Previously, on "reversion" to the main line, the seniority of a Steno Sub-Inspector/ Steno Assistant Sub-Inspector used to be reckoned there on the basis of the date of his joining the original post. Relevant to this was paragraph 7 of Police Order No. 260 of 1997 that contained a stipulation to that effect. By order dated 22.09.2003 issued by the Director General and Inspector General of Police, Bihar under his memo No. 3537/P-2 (coming under challenge in these two writ petitions) paragraph 7 of the earlier police order No. 260 of 1997 was deleted. As

a consequence, the seniority of a Steno Sub-Inspector/ Steno Assistant Sub-Inspector on his "reversion" to the main line would be reckoned there from the date of his "reversion" to the main line. In other words, for the purpose of seniority in the main line, he would not get the benefit of the period of his work as Stenographer.

2. The impugned order (enclosed as Annexure 1 in both the writ petitions) was issued following a Bench decision of this Court in B.P. Singh v. B. Tiwary 1995 (1) BLJR 11. Here, it may also be stated that against the judgment in B. P. Singh, a SLP filed before the Supreme Court being SLP (Civil) No. 568 of 1994 was dismissed in limine by order dated 11.02.1994. It is, therefore, impossible to assail the impugned police order unless it is also shown that the case of B. P. Singh was wrongly decided. For that purpose, the petitioners rely upon an earlier unreported Division Bench decision of this Court dated 14.12.1982 in Girish Pandey and Ors. v. The State of Bihar and Ors. (C.W.J.C. No. 2601 of 1982). On behalf of the petitioners, it is contended that the unreported decision in Girish Pandey supports their claim that their seniority in the main line must be reckoned on the basis of the date of their joining as Steno Sub-Inspector/Steno Assistant Sub-Inspector and the case of B. P. Singh was wrongly decided because the earlier decision in Girish Pandey and the provisions of Paragraph 5 of Appendix 42 of the Bihar Police Manual was not brought to the notice of the Court in the later case. According to the petitioners, there is a conflict between the two decisions, the earlier one in Girish Pandey and the later in B.P. Singh.

3. These two writ petitions were first listed, as per the rules, before a learned Single Judge but he felt that on the question of determination of seniority of Steno Sub-Inspector/Steno Assistant Sub-Inspector on their "reversion" to the main line, there was an apparent conflict between the two Division Bench judgments. He, accordingly, referred the two writ petitions to a Division Bench and that is how the two cases were listed before this Bench.

4. The two decisions, at the first glance, indeed appeared to be at variance with each other. But on a careful examination of the matter and on hearing Mr. Bamdeo Pandey, Counsel for the petitioners in C.W.J.C. No. 11211 of 2003, Mr. Sunil Kumar, Counsel appearing on behalf of the petitioners in C.W.J.C. No. 11667 of 2003 and Mr. S. J. Rahman, G.P. VII representing the State, I am clearly of the view that the two decisions are on different issues and the petitioners in the two cases can not derive any benefit from the decision in Girish Pandey in support of the plea that the case of B.P. Singh was wrongly decided by the Court.

5. In the first place in Girish Pandey, the issue was not as to what would be the relevant date for determining the seniority of Steno Sub-Inspector/ Steno Assistant Sub-Inspector on their "reversion" to the main line. In Girish Pandey, the petitioners prayed for a direction in the nature of mandamus to "revert" them to the district work of the Police Department and not to retain them as Steno Sub-Inspectors of Police for a period exceeding five years. The prayer was

with reference to Paragraph 5 of Appendix 42 that provides that after serving as Stenographers for a period of five years, Steno Sub-Inspector/ Steno Assistant Sub-Inspector would ordinarily revert to the district work subject to the condition that where necessary, the Inspector General could retain them as Stenographers for a longer period. The question of seniority of Steno "Sub-Inspectors/ Steno Assistant Sub-Inspectors arose very marginally as the petitioners in Girish Pandey made the grievance that denial of "reversion" to the main line would be prejudicial to them because in that event, they would not be considered for promotion along with Sub-Inspectors/Assistant Sub-Inspectors who joined the service with them. Secondly, the case of Girish Pandey was not decided on any adjudication by the Court; it was decided primarily on a concession made by the State Counsel. The relevant, operative portion of the decision in Girish Pandey is as follows :-

The Learned Standing Counsel after consulting the authorities concerned, made a statement before the court that the apprehension of the petitioners that their cases for promotion to the posts of Inspector of Police shall not be considered alongwith the persons who had been appointed with petitioners and had been doing district work, is without any basis. Learned Standing Counsel further stated that the cases of the petitioners shall be considered alongwith others and they shall not be ignored on the plea that they have not done district work and have remained Stenographers. In my opinion, the Inspector General of Police can not retain these petitioners as stenographers under the purported exercise of the powers under the aforesaid appendix 42(5) saying that it was necessary in the interest of department and at the same time to deprive the petitioners of the right to be considered for promotion to the higher posts. In view of the categorical statement given on behalf of the State in my view the petitioners should have no grievance if they are being retained as Steno Sub-Inspector more than five years.

6. On the other hand, the decision in B.P. Singh was directly on the issue of inter se seniority between Steno Sub-Inspector/Steno Assistant Sub-Inspector and Sub-Inspector/ Assistant Sub-Inspector on the former's "reversion" to the district police work. The question that was framed for consideration in that decision was as follows:-

The short question which has fallen for our consideration in this writ application is as to whether the date of appointment of the petitioners in the cadre of Steno. Sub-Inspectors of Police is to be treated as the basis for determination of their seniority in the cadre of Sub-Inspector of Police or their entry in the later cadre would be the basis for the said purpose.

7. The Court then proceeded to examine the relevant rules and on that basis came to find and hold that the posts of Steno Sub-Inspector/Steno Assistant Sub-Inspector and those of Sub-Inspector/ Assistant Sub-Inspector belonged to two distinctly separate cadres and hence, the service rendered as Steno Sub-Inspector/Steno Assistant Sub-Inspector in a separate cadre could not be taken

into account for determining seniority in the cadre of Sub-Inspector/ Assistant Sub-Inspector on "reversion" to the main police line. The question framed for consideration as quoted above was answered in the following manner :-

Keeping in view the facts of the present case and the principles governing determination of seniority it has to be held that for the purpose of determining inter se seniority of the petitioners and respondents No. 1 to 19, the respective dates of entry/ appointment of these persons in the cadre of sub-Inspector of Police can be the only relevant basis and neither the date of first appointment of the petitioners in another cadre nor the date of confirmation of the respondents on their respective post is of any consequence for the said purpose.

8. Mr. Bamdeo Pandey and Mr. Sunil Kumar, Advocates for the petitioners in the two cases submitted that the decision in B.P. Singh did not consider the provisions of paragraph 5 of Appendix 42 of the Police Manual. Paragraph 5 of Appendix 42 is as follows:-

The standard of educational qualifications, measurements, age and physical tests shall be the same in case of steno sub-inspector as is for sub-inspector (unarmed), vide Rule 658 and for steno or typist assistant sub-inspectors, those of constables, vide Rule 663. In suitable cases relaxation in height and chest may be done by Dy. I.G. Admin. up to 1" and by the Inspector-General up to 2". In case of scheduled caste/tribe, further relaxation may be done by 1". All candidates shall be allowed to appear in test of shorthand dictation/typing and after that they may be required to appear in physical tests meant for respective ranks. However, suitable candidates may be exempted from these tests. The candidates shall be appointed by the Central Selection Board [Appendix 72(2)]. They will serve as stenographers for a period of 5 years, after which they will ordinarily revert to district work but before that they shall undergo the usual course of training at the Police Training College for ordinary Police duties. The Inspector-General shall be at liberty to retain them as stenographers for a longer period where necessary.

9. The paragraph quoted above is completely silent on the point of seniority of Steno Sub-Inspector/ Steno Assistant SubInspector on their "reversion" to the main police line and the petitioners' contention that it gives them the benefit of the service rendered as stenographers for fixing their seniority in the district police appears to be pure assumption. Mr. Bamdeo Pandey, however, laid great emphasis on two aspects of the rule contained in paragraph 5 of Appendix 42. He submitted that it fixed the same eligibility criteria for appointment as Steno Sub-Inspector/Steno Assistant Sub-Inspector and further pointed out that "reversion" of Steno Sub-Inspector/ Steno Assistant Sub-Inspector to the district work was by operation of the rule and not by their choice as was observed in the decision in B.P. Singh. He submitted that in view of the two features of the rule, namely (i) the same eligibility criteria for recruitment as Steno Sub-Inspector/Steno Assistant Sub-Inspector and (ii) their "reversion" to the main line by operation of rule, it must be construed that paragraph 5 of the Appendix allowed them the

benefit of their length of service as Stenographers for fixing their seniority in the district police. I find no substance in the submission. The eligibility criteria being the same does not mean that those appointed as Steno Sub-Inspector/ Steno Assistant Sub- Inspector would also compete in the general selection and would be able to get selected along with others for appointment as Sub-Inspector/ Assistant Sub-Inspector. But their additional skill of stenography opens for them another door for joining the police force as Steno Sub-Inspector/ Steno Assistant Sub- Inspector. It is an admitted position that the cadre of Steno Sub-Inspector/ Steno Assistant Sub-Inspector is a closed cadre without a single promotional avenue. Hence, if they were to remain there, they would spend their entire service tenure without a single promotion. In order to avoid this highly inequitable situation, a provision is made for their "reversion" to the main police line but in that event, their seniority in the main police force could only be reckoned from the date of their "reversion" for the simple reason that the two posts were in completely different cadres.

10. On a careful consideration of the decision in B.P. Singh, I am of the view that this Court properly examined, the relevant rules and came to the right conclusion that the posts of Steno Sub-Inspector/Steno Assistant Sub-Inspector and those of Sub-Inspector/ Assistant Sub-Inspector were in different cadres. Mr. Rahman submitted that for arriving at its findings in B.P. Singh the Court took notice of sub Rules (3) and (9) of Rule 7A of the Police Manual. He further invited out attention to some other provisions that only support and strengthen the conclusion of the Court in B.P. Singh. Paragraph 2 of Appendix 42 reads as follows:-

Every year in the month of July, the Inspector-General shall work out the number of vacancies in the ranks of steno sub-inspectors and steno assistant sub-inspectors. On the basis of these vacancies, he shall decide to make direct recruitment by the procedure given hereinafter keeping in view the reservations for scheduled caste/tribe. He will also decide as to what quota should be fixed for promotion from the rank of steno assistant sub-inspector to steno sub-inspector.

11. Paragraph 14 and 15 of the same Appendix read as follow:-

14. The primary object to be aimed at is the provision of a body of trained stenographers capable of reporting verbatim a speech delivered in Hindi, for which a speed varying from 120 to 160 words in a minute is necessary. Superintendents should bear this in mind and see that work is arranged with a view to attain that object. They should also ensure that stenographers are made to do regular daily practice by having passages dictated to them on days on which they have not, in the course of their duties, had to take down sufficient to keep them up to the mark.

15. The appointment of steno sub-inspector/assistant sub-inspector and typist assistant sub-inspector shall be done by Deputy Inspector-General under Police Act. They shall wear Police uniform but shall not use any of the powers of police

so long as they work as stenographers and typist.

12. These provisions further support the view that recruitment of Steno Sub-Inspector/ Steno Assistant Sub-Inspector was completely separate and in an altogether different cadre.

13. On a consideration of the two decisions in Girish Pandey and B.P. Singh and the relevant provisions of Appendix 42 of the Bihar Police Manual, I come to the following conclusions.

(i) The posts of Steno Sub-Inspector/Steno Assistant Sub-Inspector and those of Sub-Inspector/ Assistant Sub-Inspector belong to entirely different cadres.

(ii) Ordinarily, after serving as Stenographers for five years, Steno Sub-Inspector/ Steno Assistant Sub-Inspector would revert to the district work and on "reversion", their seniority in the main police line would be reckoned from the date of their "reversion".

(iii) In case, Steno Sub-Inspector/ Steno Assistant Sub-Inspector are retained by the Inspector-General of Police as stenographers for a period exceeding five years, on "reversion" their loss of seniority shall not be more than five years inasmuch as the Inspector-General of Police can not retain them beyond five years and cause further prejudice to them with regard to their seniority on reversion", as observed in the decision in Girish Pandey.

14. Thus, it is found and held that the decisions in B.P. Singh was correctly rendered and that decision fully covers the facts of this case. In the result, I find no merit in these two writ petitions. These are dismissed but with no order as to cost.

Navaniti Prasad Singh, J.

15. I Agree