
(2000) 07 PAT CK 0088
In the Patna High Court
Case No : C.W.J.C. No. 4134 of 1998

Swapan Kumar Dhar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Citation : (2000) 3 PLJR 661

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Naresh Kumar Malhotra, for the Appellant; Jawahar Dhari Singh, for State and Durga Nand Jha, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—Heard the counsel for the Petitioner, State and the contesting 6th Respondent.

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

3. The Petitioner has challenged the final gradation list issued on 29th February, 1996, so far as it relates to Petitioner and the 6th Respondent, the 6th Respondent having declared senior. According to him, he having appointed as L.D.C. prior to the appointment of 6th Respondent, the Respondents could not shown Petitioner junior to the 6th Respondent.

4. The brief fact of the case shows that the Petitioner Swapan Kumar Dhar was appointed as Muharrir on 23rd January, 1966, whereas 6th Respondent Subodh Narain Jha was appointed as Tour Clerk on 28th April, 1966. Subsequently, the Petitioner was promoted as L.D. Clerk in the then scale of Rs. 105-155/-, vide order dated 17th January, 1967, whereas the 6th Respondent was taken in the said clause of L.D. Clerk vide order dated 16th November, 1969.

5. The authorities while took up the question of confirmation of L.D. Clerk and

other employees of the Survey Settlement Department, vide Memo No. 67/78-63 dated 8th April, 1980, and both Petitioner and the 6th Respondent were confirmed as L.D. Clerk. While the name of the Petitioner was shown above the 6th Respondent with date of appointment as L.D. Clerk as 17th January, 1967, the date of appointment of 6th Respondent was shown as 27th November, 1969. Subsequently, the posts of L.D. Clerk and U.D. Clerk were merged since 1-5-1980 and were provided with common nomenclature of clerk. When the provisional gradation list of clerk was issued on 12th September, 1981 the Petitioner was shown senior to the Respondent No. 6 therein their position was shown at Sl. Nos. 27 and 33 respectively. After receiving objections from concerned persons, when final gradation list was published on 20th August, 1985, again the Petitioner was shown senior to the 6th Respondent in the cadre of clerk at Sl. Nos. 15 and 21 respectively. All these time, the date of appointment of 6th Respondent as Tour Clerk (28th April, 1966) was also reflected in the other column.

6. It appears that after ten years of preparation of final gradation list, a provisional gradation list was again published on 21st August, 1995, wherein Petitioner was shown senior to the 6th Respondent. This time, on receipt of the representation, when the seniority list was finalised, by the impugned order dated 23rd February, 1966, the 6th Respondent was shown to be senior to Petitioner, his date of initial appointment as 28th April, 1966.

7. According to the counsel for the 6th Respondent, the post of Tour Clerk was higher in grade than the post of Muharrir, in which post (Tour Clerk), the 6th Respondent was initially appointed on 28th April, 1966, whereas the Petitioner was appointed as Muharrir on 15th January, 1967. The scale of pay of Tour Clerk being same and similar to the post of L.D. Clerk, the 6th Respondent was allowed seniority with effect from 28th April, 1966 and reflected in the impugned gradation list dated 23rd February, 1996.

8. Reliance was also placed on Circular No. 18980 dated 22nd October, 1975 to suggest that the period of probation is to be counted for the purpose of seniority on confirmation. It was suggested that the initial appointment as Tour Clerk should be treated to be on probation, the 6th Respondent having subsequently confirmed as L.D. Clerk. Further, according to the counsel for the 6th Respondent, he was not promoted to the post of L.D. Clerk but was appointed in November, 1969.

9. According to the counsel for the State, the post of Muharrir, Tour Clerk, L.D. Clerk etc. stood merged in view of policy decision of the State. However, order of merger cannot be taken into consideration for determination of the case, in question, the same having taken place after 1972, i.e. much after the appointment of Petitioner and 6th Respondent against the post of L.D. Clerk.

10. Admittedly, the 6th Respondent was appointed in the cadre of L.D. Clerk two years after the appointment of the Petitioner. While the Petitioner was appointed

as L.D. Clerk on 17th January, 1967, the 6th Respondent was so appointed as L.D. Clerk on 27th November, 1969. As the seniority in the cadre is dependent on the date of entry in the cadre, even on confirmation of both persons, it will shift back to the date of initial appointment to the post of L.D. Clerk and no person can take advantage of seniority of other cadre, like Muharrir and/or Tour Clerk.

11. In the aforesaid background, the writ Petitioner who was declared senior to the 6th Respondent in the earlier gradation list, I find no illegality in the same.

12. This apart, the seniority of both Petitioner and the 6th Respondent having finally settled in the cadre of clerk, while final gradation list was published on 20th August, 1985, there was no occasion for the Respondents to unsettle such seniority after 11 (eleven) years, without any valid reason particularly, when the 6th Respondent did not choose to challenge the final gradation list dated 20th August, 1985 before any court of law.

13. If the Respondents have rejected the claim of Petitioner's seniority over the 6th Respondent by some other order and the Petitioner has moved before this Court against the final gradation list, I find no illegality in the same.

14. Accordingly, I declare the Petitioner as senior to the 6th Respondent in the cadre of clerk and set aside the final gradation list dated 23rd February, 1996, with a direction to the Respondents to issue appropriate corrigendum to that effect. The consequential benefit to which the Petitioner is entitled, be also allowed in his favour.

15. The writ petition is allowed with the aforesaid observations and directions.