

(1999) 01 PAT CK 0057
In the Patna High Court
Case No : L.P.A. No. 1260 of 1998

Tejendra Kumar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-1999

Acts Referred:

Citation : (1999) 1 PLJR 768

Hon'ble Judges : B.M. Lal, C.J.; Shiva Kirti Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Appellants were Petitioners in writ petition bearing C.W.J.C. No. 8239 of 199-3. They have preferred this appeal against the order dismissing the said writ petition and rejecting their prayer for being granted the benefit of continuous officiating in the rank of Assistant Engineer.

2. The learned writ court after noticing the facts of the case in brief has noticed the decision of the Hon'ble Supreme Court in the case of Nirmal Kumar Chaudhary and Ors. v. State of Bihar and Ors. reported in AIR 1988 S.C. 394. In that case the writ Petitioners were parties as Respondents. It is not in dispute that it was on the basis of the direction in the said judgment, the seniority list of Junior Engineer was prepared and that seniority list is not under challenge in this case.

3. The case of the Appellants is that since they got ad-hoc officiating in the rank of Assistant Engineer since 31.3.73, they are entitled" to get seniority in the rank of Assistant Engineer with effect from that date. On the other hand, the stand of the Respondent-State is that the Petitioners were not promoted to the post of Assistant Engineers even on ad-hoc basis rather they were simply posted on current charge basis in their pay scale of Junior Engineer as a stop gap arrangement. They were never promoted in the rank of Assistant Engineer before 1988 when the gradation list of Junior Engineer was published in terms of the

order of the Supreme Court.

4. The learned writ court has rightly found that the ratio in the decision of the case of Nirmal Kumar Chaudhary (supra) does not support the contention of the learned Counsel for the Appellants that seniority in the post of Assistant Engineer has to be counted from the date they were given current charge of the post.

5. The Appellants could not assail the reasoning and finding of the learned writ court that in the present case, according to the relevant regulations, they could enter the cadre of Assistant Engineers only on selection on the basis of the recommendation of Public Service Commission and without such a recommendation it cannot be said that they entered the said service nor they were placed in the scale of pay attached to the post of Assistant Engineer. Therefore, it cannot be said that the Appellants were born in the cadre of Assistant Engineer either on ad-hoc basis or on stop gap basis. Their appointment was merely on current charge basis and they continued to remain in the pay scale of Junior Engineer with additional pay. The current charge posting given to the Appellants in 1973 was not given to them in order of seniority nor there was any recommendation of the Bihar Public Service Commission. Thus, such posting was a purely temporary arrangement on the basis of the aforesaid findings.

6. The learned writ court rightly relied upon a recent judgment of the Hon'ble Supreme Court in B.L. Gupta and Another Vs. M.C.D., and found that the impugned order at Annexure-7 has been passed on proper consideration of entire facts and the regular appointment to the post of Assistant Engineer has been done on the basis of seniority position in the post of Junior Engineer for which a seniority list was prepared on the basis of the judgment of the Hon'ble Supreme Court to which most of the Petitioners were parties.

7. Thus, we find no error in the order under appeal and this appeal is, accordingly, dismissed.