

(2007) 03 PAT CK 0092
In the Patna High Court
Case No : CWJC No. 7133 of 2001

Thakur Ravi Shankar Prasad Singh and Another APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Citation : (2007) 2 BLJR 1453 : (2007) PLJR 188 Supp

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Sharda Nand Mishra and Dhananjay Kr. Gupta, for the Appellant;
Dhananjay Kr. Gupta, Ritesh Kumar, JC to AAG I, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh, J.—Petitioners were working as Horticulture Inspector. By an order dated 14th October, 1999, petitioners and some other Horticulture Inspectors were promoted to the post of Horticulture Officer/Sub Divisional Horticulture Officer. In pursuance of the decision contained in the letter dated 10th May, 2001 and communicated by the letter dated 11th May, 2001, the said promotions of the Petitioners were cancelled. Petitioners, therefore, have filed the present writ petition challenging the decision contained in the letter dated 10th May, 2001, communicated by the letter dated 11th May, 2001. The letters dated 10th May, 2001 and 11th May, 2001 do not disclose the reasons for cancellation of such promotions of the petitioners.

2. In the counter affidavit, four reasons have been given for cancellation of the said promotions of the petitioners. The first of them is non-clearance of model roster for promotion. There is no dispute that roster points 111 to 157 were being filled up by according such promotions. There is also no dispute that in view of the decision of the Government, contained in a notification dated 11th March, 1992 in relation to promotions, roster as prescribed by the notification dated 8th November, 1975 shall apply. In terms thereof, which is a 50 Point roster, roster points 5th, 5th & 7th are unreserved. In such view of the matter,

points 155, 156 & 157 were available for unreserved category candidates. Petitioner No. 2 was at 157 whereas Petitioner No. 1 was at 150. The Promotion Committee while making recommendations on 24th April, 1999 decided not to recommend three of the candidates, who were respectively at roster points 114, 125 & 156. Out of these two persons, the Promotion Committee has stated that two of them did not pass the departmental examination, and, accordingly, they were not eligible to be promoted, while the other was dead by that time.

3. If three persons are not to be promoted than the position of the Petitioner No. 2 comes down to 154, whereas the position of the Petitioner No. 1 comes down to 156. Having regard to the fact that all the three persons, who were not promoted, belonged to unreserved category, both the Petitioners No. 1 & 2 could be appropriately accommodated in accordance with the roster notified by the Government. It may be possible that roster clearance was not obtained but for not obtaining roster clearance, the directions contained in the roster have not been violated and, accordingly, only on the ground that roster clearance was not obtained, the promotions to the petitioners could not be cancelled.

4. The next point that has been taken in the counter affidavit to support the cancellation of promotions of the petitioners is that they did not have the minimum working experience, as is required for according such promotions. The minimum working experience, in the instant case, is admittedly five years. Petitioner No. 1 was appointed on 9th November, 1989, whereas Petitioner No. 2 was appointed on 17th December, 1993 as Horticulture Inspector. They were accorded promotion to the post of Horticulture Officer / Sub Divisional Horticulture Officer by the decision taken on 24th April, 1999. In such view of the matter, both of them had the required experience of working as Horticulture Inspector. This point, therefore, is not available to cancel the said promotions of the petitioners.

5. The third point taken in the counter affidavit to support the cancellation is that the Promotion Committee, which decided the promotion, was not duly constituted. In accordance with the Gazette Notification gazetted on 4th September, 1982, the Promotion Committee should be comprised of three persons, namely, Agriculture Director, Director (Administration), Agriculture Department and a nominee of the Personnel & Administrative Reforms Department of the State, who should belong either to Scheduled Caste or Scheduled Tribe.

6. Annexure-4 to the writ petition is the decision of the Promotion Committee dated 24th April, 1999, which committee made recommendations for promotion of the petitioners and others. This recommendation has been signed by the Agriculture Director, Director (Administration), Agriculture Department and Deputy Agriculture Director. Despite having had an opportunity to go through Annexure-4 to the writ petition and despite having stated in paragraph 4 of the counter affidavit that a new file with the help of relevant papers has been constructed, after it was detected that the original file is missing, it has not been

stated in the counter affidavit that Deputy Agriculture Director, who was the Member of the Promotion Committee, which decided the fate of petitioners and others on 24th April, 1999, did not belong either to Scheduled Caste or Scheduled Tribe or he had not been nominated by the Personnel and Administrative Reforms Department of the State. In those circumstances, this ground too fails.

7. The last ground to support the order of cancellation is that the Director, Horticulture was not competent to effect the promotion. He should have obtained approval before issuing order of promotion as per established procedure. In paragraph 13 of the counter affidavit, it has been stated that normally the proceeding of the committee has to be approved by the A.P.C. before issuing the orders. It has not been stated anywhere that by reason of any decision of the Government approval of A.P.C. of the decision of the Promotion Committee is a necessary. The Government has not authorised A.P.C. by any of its decision to sit in appeal over the decision of the Promotion Committee. Once a decision has been taken by the Promotion Committee to promote, mere communication of such decision by the Director, Horticulture cannot be said to be such impurity that on such ground, the promotions can be cancelled, even assuming that the Director, Horticulture was not competent to communicate the decision to promote. It has been incorrectly insinuated in the counter affidavit that the Director, Horticulture effected the promotions. The promotion was granted by the Promotion Committee and the decision of the Promotion Committee was merely communicated by the Director, Horticulture. The State has failed to bring on record any decision of the Government, which suggests that any particular person as named by the State is competent to communicate the decision of the Promotion Committee.

8. In those circumstances, the writ petition succeeds and the orders impugned in the writ petition stand quashed.