

(2006) 11 PAT CK 0127
In the Patna High Court
Case No : LPA No. 1248 of 2005

The State of Bihar and Others

APPELLANT

Vs

Anil Kumar

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Constitution of India, 1950 — Article 309
Recruitment of Sub Inspector of Excise Rules, 1954 — Rule 1

Citation : (2007) 1 BLJR 641 : (2007) 2 PLJR 133

Hon'ble Judges : J.N. Bhatt, C.J.; Shailesh Kumar Sinha, J

Bench : Division Bench

Advocate : P.K. Shahi, General, Piyush Lall and Vikash Kumar, JC, for the Appellant; Mihir Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—The short question which has come up for consideration in this Letters Patent Appeal, under Clause 10 of the Letters Patent in the Patna High Court Rules, is as to whether the interpretation reached by the learned Single Judge in the impugned judgment dated 22.7.2005, passed in CWJC No. 1556 of 2000, with regard to the age limit prescribed for appointment by promotion to the post of Sub Inspector of Excise in Rule 1 of the Recruitment of Sub Inspector of Excise Rules, 1954 (In short "1954 Rules"), which were brought into force in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, in supersession of all previous rules, on the subject, of the Government of Bihar relating to recruitment of Sub Inspector of Excise by direct appointment, as well as, by promotion, is justified or not?

2. A few material and relevant facts giving rise to this appeal may be articulated at this juncture with a view to appreciating the merit of the appeal and challenge against it.

(i) The respondent-original writ petitioner Anil Kumar joined the post of Excise Clerk in the Excise & Prohibition Department, Government of Bihar, on 8.4.1991;

- (ii) His date of birth, as per the record, is 9.8.1963;
- (iii) The original writ petitioner completed the age of 35 years on 9.8.1998;
- (iv) The original writ petitioner initiated legal battle by filing CWJC No. 1556 of 2000 on 9.2.2000 seeking direction against the appellant State to promote him to the post of Sub Inspector of Excise from the post of Excise Clerk with all consequential benefits with effect from 12.12.1998.

3. Upon consideration of the facts and circumstances and interpreting Rule 1 of the Recruitment of Sub Inspector of Excise Rules, 1954, and other provisions of the Bihar Service Code, 1952, the learned Single Judge found the original writ petitioner fit for being promoted, holding that though he had completed the age of 35 years at the time of consideration of his case for promotion to the post of Sub Inspector of Excise, considering the requirement of minimum seven years of experience period, adding in the age the case could be considered till the age of 42. This is why the learned Single Judge directed the appellant State to reconsider the case for promotion of the original writ petitioner within the stipulated time. Hence, this Letters Patent Appeal at the instance of the original respondent State, appellant before us.

4. We have been addressed by the learned Advocate General for the appellant State and by learned Counsel Mr. Mihir Kumar Jha, appearing for the respondent original writ petitioner. We have also, dispassionately, examined the record and the relevant rule provision, as well as, text and texture of the impugned order of the learned Single Judge under challenge.

5. Let it be highlighted that there is no dispute in fact that on the date of consideration, the case of the original writ petitioner for promotion on 8.12.1998 by the Departmental Promotion Committee (DPC), the original writ petitioner had completed the age of 35 years. One of the requirements for being considered for promotion from the post of Excise Clerk to the post of Sub inspector of Excise has been that the candidate to be selected shall be below the age of 35 years. The learned Single Judge thought it expedient to fall back on the general provisions governing the service of the employees of the Bihar State, contained in the Bihar Service Code, 1952 ("Service Code"), which was brought into force with effect from 5th of December, 1952 in pursuance of the proviso to Article 309 of the Constitution of India. The question, therefore, emerges for consideration and determination at this juncture is as to whether when particular requirement is prescribed for promotion, in separate applicable recruitment rules, would the Court, with the help of general provisions, contained in the Service Code, embark on interpreting the embargo of a limit prescribed for promotion to the post of Sub Inspector of Excise from the post of Excise Clerk?

6. With due respect to the learned Single Judge, we are of the opinion that when separately applicable recruitment rules are made, general service provisions, contained in the Service Code will not be applicable. The detailed discussion is made in the impugned judgment enumerating the provisions of general service

code contained in Bihar Service Code, 1952. At this stage, it would be material to refer to the relevant rule provision of 1954 Rules. The rule provides for recruitment by direct appointment or by appointment on promotion. The case on hand is governed by the latter part under the 1954 Rules. The eligibility criteria have been prescribed under the statutory rules for appointment by promotion of Excise clerk to the post of Sub Inspector of Excise. Following considerations must figure for a candidate for being eligible to be promoted to the post of Sub Inspector of Excise from the post of Excise Clerk:

- (i) Completion of tenure of seven years of service on the post of Excise Clerk;
- (ii) He must be below the age of 35 years;
- (iii) Passing of the requisite departmental examination in all papers;
- (iv) Confirmation to the post of Excise Clerks;
- (v) Good service record with good character;

7. In view of the settled exposition and proposition of law in service jurisprudence that when special recruitment rules are prescribed and provided in exercise of the powers conferred on the State under proviso to Article 309 of the Constitution of India, the general provision contained in general Service Code would not be applicable, could the interpretation, as reached by the learned Single Judge be justified in adding the period of seven years, which is one of the requisites for being considered for promotion, to the age of 35 years, which is prescribed as maximum age for the purpose of promotion on appointment of Sub Inspector of Excise?

8. In our opinion, the learned Single Judge has fallen in the fallacy in interpreting the requisite age prescribed in 1954 Rules by falling back on the general rules of 1952. We, therefore, find that the interpretation reached by the learned Single Judge is not in consonance with the special provision of recruitment for post of Sub Inspector of Excise by promotion under the Sub Inspector of Excise Rules, 1954.

9. Needless to reiterate that the Court's function is to interpret the law as it stands. Court cannot legislate law; the Court cannot add or subtract in the legislative scheme or interpret the provisions contained in the Sub Inspector Recruitment Rules with the help of general service conditions and rules. Therefore, we are of the clear opinion that one has to interpret the special provisions, as contained in the Sub Inspector Recruitment Rules, as they are. The original writ petitioner would not be answering the requisite eligibility criteria of maximum age of 35 years on the date of consideration of his case for promotion to the post of Excise Inspector from the post of Excise Clerk. It is not the function of the Court to see or lay down the law, until amendment is made in the special recruitment rules in regard to seven years' experience being requisite condition for promotion under the Special recruitment rules with the help of general service rule 1954. The fallacy is apparent and transparent, when we,

meticulously, examine the special recruitment provision of 1954 Rules pertaining to the very posed question for the purpose of appointment by promotion to Sub inspector of Excise from the post of Excise Clerk. It will be interesting to note at this juncture that there was no challenge of vires or validity of the special rule provision governing the rule in question.

10. Let it also be noted that the seven years" minimum experience is not prescribed in the rule but it has been mentioned on one of the instructions by way of letter dated 12.6.1972 issued by the Personnel & Administrative Reforms Department, copy where of is Annexure 12 series to the original writ petition. Apart from the aforesaid, rational and reasoning indicated herein before, can general executive instruction override the statutory prescription of age limit in a special statutory service Rules? Obvious answer would, positively, be in the negative.

11. The penultimate paragraph of the impugned judgment, unambiguously, discloses that the learned Single Judge keeping in mind the mandate of minimum seven years" experience added in the existing age of the candidate, observed that the candidate is qualified and eligible so far as maximum age is concerned for the purpose of promotion. This view, in our opinion, is not supportable by law and cannot be accepted.

12. In the net result, we are left with no alternative but to allow this Letters Patent Appeal and quash and set aside the impugned order of the learned Single Judge challenged in this Letters Patent Appeal which we, hereby, do. Consequently, the impugned order shall stand quashed and set aside. This appeal shall stand allowed leaving the parties to bear their own costs.