
(2007) 02 PAT CK 0025
In the Patna High Court
Case No : LPA No. 753 of 2006

The State of Bihar and Others APPELLANT
Vs
Ram Lakhan Shukla and Another RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Citation : (2007) 2 PLJR 694

Hon'ble Judges : Narayan Roy, J;J.N. Singh, J

Bench : Division Bench

Advocate : Rajendra Prasad and Ritesh Kumar, for the Appellant; Siya Ram Sahi for Respondent No. 1 and Mr. P.K. Rajgrihar, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Rajendra Prasad, learned Additional Advocate General No. 1 for the appellants, Mr. Siya Ram Sahi, learned counsel appearing for the contesting respondents and Mr. P.K. Rajgrihar, learned counsel appearing for the Accountant General. The question involved in the writ application, the order of which is under challenge, is as to whether the writ petitioner was entitled for counting his seniority with effect from 15th December, 1976 till 20th December, 1989 as he officiated on the post of Sub-Inspector of Police in the Special Branch of Police hierarchy in the State of Bihar.

2. Learned single Judge of this Court on appreciation of facts and pleadings of the parties held that since the writ petitioner uninterruptedly continued on ad hoc promotion for about 13 years and when permanent promotion was granted to him with effect from 20th December, 1989 he would be entitled for reckoning his seniority since 15th December, 1976 until 20th December, 1989.

3. Mr. Rajendra Prasad, learned Additional Advocate General No. 1 submitted that the promotion of the writ petitioner on ad hoc basis was not substantive one rather that was done as a stopgap arrangement which does not confer any permanency on him and subsequently since he was given substantive promotion,

the services rendered by him on ad hoc basis would not be counted for the purpose of seniority from very inception. Learned counsel further submitted that even ad hoc promotion is required to be given according to the existing rules in the particular discipline and since it was not done so, learned single Judge of this Court erred in holding that the writ petitioner would be entitled for reckoning his seniority from the very date of his inception when he started officiating on the post of Sub-Inspector. In this context, Mr. Prasad placed reliance on a decision of the Apex Court in the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, . With reference to the ratio laid down by the Apex Court in the case of State of Bihar (supra), learned counsel submitted that to enable seniority to be counted from the date of initial appointment and not according to the date of promotion, the incumbent of the post has to be initially appointed according to the rules where the initial appointment is only ad hoc and not according to the rules and made as a stop-gap arrangements. Learned counsel further submitted that the engagement of the writ petitioner was to work on ad hoc basis on stop-gap arrangement and it was not an arrangement permissible in law and therefore the writ petitioner was not entitled to any relief in the writ petition as substantive promotion was already granted to him with effect from 20th December, 1989.

4. Mr. Siya Ram Sahi, learned counsel appearing on behalf of the contesting respondents, however, submitted that since the writ petitioner had uninterruptedly continued for 13 years by way of officiation on the post of Sub-Inspector of Police, the question of grant of such promotion according to rule does not apply to reckon his seniority from the date of his initial engagement on ad hoc basis. In support of the contention, learned counsel placed reliance on a judgment of the Apex Court in the case of The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, and in the case of T. Vijayan vs. Divisional Railway Manager, 2000 AIR SCW 1390.

5. In the case of Direct Recruit Class II Engineering Officers" Association (supra), the Constitutional Bench of the Supreme Court while faced with the similar situation categorised as under:--

(i) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(ii) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

6. The Apex Court, thus, held that if an incumbent though not appointed on ad

hoc basis according to the rule continued uninterruptedly for several years and subsequently he was promoted on substantive post, the period of officiation should be counted towards his past services.

7. Again in the case of T. Vijaya (supra), the Apex Court, relying upon the ratio laid down by the Constitutional Bench in the case of Direct Recruit Class II Engineering Officers" Association (supra), held as follows:--

"20. Applying the above principles to the instant case, since respondents 4 to 143 were promoted on ad hoc basis, and that too in a situation where regular promotion was not immediately possible and since ad hoc promotion was permissible in view of Para 216 of the Railway Establishment Manual quoted above, they are clearly entitled to the benefit of ad hoc service rendered by them on the post of Fireman "A" or "First Fireman" for the purpose of reckoning their seniority vis-a-vis the appellants.

8. So far as the facts of the case as reported in AIR 2000 S.C. 2306 is concerned, it appears that the incumbent was promoted on ad hoc basis with certain conditions whereas in the case at hand no such conditions were put by the authorities while promoting the writ petitioner on ad hoc basis. The ratio laid down by the Apex Court in that case, therefore, does not apply in the facts of this case. However, from the facts as enumerated above, it appears that the case of the writ petitioner is squarely covered by the judgment of the Supreme Court as rendered by the Constitutional Bench in the case of Direct Recruit Class II Engineering Officers" Association (supra) and even though the present writ petitioner was not given ad hoc promotion according to rules, his continuance for uninterrupted period of 13 years would suffice to render his past services for the purpose of seniority. Learned single Judge of this Court in view of the legal proposition as noticed above was wholly justified in issuing direction to the authorities to consider the case of the writ petitioner for promotion taking into account his seniority from 15th December, 1976 within the stipulated period. For the reasons aforementioned, therefore, we do not find any merit in this appeal. It is accordingly dismissed.