
(2004) 04 PAT CK 0123
In the Patna High Court
Case No : L.P.A. No. 117 of 1996

The State of Bihar and Others

APPELLANT

Vs

Rama Kant Singh

RESPONDENT

Date of Decision : 26-04-2004

Acts Referred:

Citation : (2004) 04 PAT CK 0123

Final Decision : Allowed

Judgement

Nagendra Rai and S. Nayer Hussain, JJ.—Despite valid service of notice, the Respondent has not appeared.

2. This appeal is directed against the judgment dated 6.12.1995 passed by a learned Single Judge, whereby he has allowed the writ application filed by the writ Petitioner-Respondent, quashed the order dated 26.12.1994 (Annexure 6 to the writ application), whereby his seniority to the rank of Sub-Inspector of Police was fixed with effect from 8th of September, 1971, instead of 4th November, 1970, and directed the authorities to provide the writ Petitioner-Respondent with the seniority in the rank of Sub-Inspector of Police with effect from 4th November, 1970 and consequential benefits to the higher post with effect from the date mentioned in the order.

3. The writ Petitioner-Respondent had come to this Court earlier in C.W.J.C. No. 10903/92 for counting his seniority to the post of Sub-Inspector of Police with effect from the date of his officiating promotion i.e. from 4.11.1970 and the same was disposed of by this Court on 2.11.1992 with a direction to grant benefit of continuous officiation in accordance with law for determining the inter se seniority as also the consequential promotion. An S.L.R filed against the said order was dismissed by the Apex Court. Thereafter, it appears that the concerned authority considered the matter and granted seniority with effect from 8th of September, 1971 and not with effect from 4th November, 1970. The Petitioner-Respondent challenged the said decision in C.W.J.C. No. 7381 of 1995, which has been allowed by the learned Single Judge by the impugned order on the ground

that the writ Petitioner-Respondent having officiated on the post of Sub-Inspector of Police, even if treated to have been illegally appointed/promoted, is entitled to count the period from 4.11.1970 for the purpose of determination of his seniority.

4. Rule 653 of the Bihar Police Manua contains a provision with regard to appointment and promotion to the post of Sub-Inspectors and it provides that 50 per cent of the post of Sub-Inspectors of Police have to be filled up by selection from the rank of Assistant Sub-Inspectors. Rule 659 contains a detailed procedure for consideration of the matter of promotion. It requires constitution of a Range Deputy-Inspector General's Board, which shall make selection from those nominated from the districts and shall send names for consideration to the Central Selection Board. The Central Selection Board shall make selection after observing formality as provided in the said Rule.

5. Admittedly, the writ Petitioner Respondent was not appointed by following the aforesaid procedure and on ad hoc basis he worked on the post of Sub-Inspector of Police from 4.9.1970 to 8.9.1971. The view taken by the learned Single Judge, in our Opinion, that he is entitled to count the aforesaid period for the purpose of seniority is contrary to the settled law.

6. In the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, which was a case of promotion from the post of Sub-Inspector to the post of Inspector, the Apex Court held that when the initial promotion was on ad hoc basis and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority.

7. In view of the decision of the Apex Court aforementioned, the view taken by the learned Single Judge is not sustainable in law.

8. In the result, this appeal is allowed and the impugned judgment passed by the learned Single Judge is set aside.