
(2012) 04 PAT CK 0077
In the Patna High Court
Case No : CWJC No. 6492 of 2007

Vinod Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Citation : (2012) 3 PLJR 714

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Sarvadeo Singh, Md. Anjum Akhtar, for the Appellant; Akashdeep, Shyameshwar Kr. Singh for the Respondent Nos. 5 to 7, Mr. Bibhakar Tiwary for the Respondent nos. 8 to 10, M/s Sunil Kumar Mandal, Dr. Abdus Shakoor for the State, for the Respondent

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner, counsel for the private Respondent Nos. 5 to 7 as also counsel for private Respondent Nos. 8 to 10. Petitioner was initially appointed as Fisheries Extension Officer in the year 1994. Later, he participated in fresh selection process for appointment as District Fisheries Officer conducted by the Bihar Public Service Commission (hereinafter referred to as the BPSC) and having become successful, he was so appointed as direct recruit in the year 2005. Private Respondent Nos. 5 to 7 did not appear in the said examination and continued to serve as Fisheries Extension Officer. Private Respondent Nos. 8 to 14 appeared in the selection process for direct recruitment as District Fisheries Officer in the year 2005 but only private Respondent No. 8 could succeed in the selection process, he also did not join as District Fisheries Officer in the year 2005. Private Respondent Nos. 8 to 14 continued to hold the substantive post of Fisheries Extension Officer.

2. This writ petition has been filed praying, inter alia, to direct the respondent-authorities to place the petitioner above the private Respondents in the gradation list of the District Fisheries Officer as petitioner having become successful in the appointment process for direct recruitment on the post of District Fisheries

Officer in the year 2005, is required to be given seniority above the private Respondents. Such request of the petitioner was allowed under order dated 29.11.2010 passed in the instant writ case, but the said order has been recalled after hearing the private Respondents and the writ petition is being heard afresh.

3. It is submitted on behalf of the private Respondent Nos. 5 to 7 that they were senior to the petitioner even in the grade of Fisheries Extension Officer and have been officiating as District Fisheries Officer from 2001 against post in the quota of promotees, as such, petitioner cannot be allowed to be placed over their head. Appreciating such submission order dated 29.11.2010 was recalled by the Hon''ble Judge who passed the said order. I do not see any reason not to accept the submission made on behalf of Respondent Nos. 5 to 7 that they having been senior to petitioner in the category of Fisheries Extension Officer have to rank above in the gradation list of District Fisheries Officer.

4. Counsel for the petitioner, however, submitted, with reference to the judgment of the Hon''ble Supreme Court in the case of M.P. Palanisamy and Others Vs. A. Krishnan and Others, , paragraph 36 that private Respondent Nos. 8 to 14 having failed in their endeavour to become District Fisheries Officer through the open competitive examination conducted by the BPSC for direct recruitment on the post of District Fisheries Officer in the year 2005, cannot be allowed to secure a march over the petitioner giving them the advantage of continuous officiation in the light of the order, bearing Memo No. 878 dated 12.5.2001, Annexure-2 asking private Respondent Nos. 8 to 14 to hold the officiating charge as District Fisheries Officer. According to the learned counsel for the petitioner, they having failed to succeed in the open competitive selection process cannot be allowed the seniority of continuous officiation in the category of promotees.

5. Aforesaid submission of learned counsel for the petitioner is wholly fallacious in view of the provisions contained in the Animal Husbandry and Fisheries Service Appointment Rules, 1993 notified in the Gazette on 11.1.1993 which provides for appointment on the post of District Fisheries Officer from two sources i.e. 50% by way of direct recruitment and 50% by way of promotion from amongst the Fisheries Extension Officers. Petitioner was appointed as District Fisheries Officer in the year 2005 against 50% vacancies earmarked for direct recruitment. He is entitled to have seniority in the category of direct recruits. Private Respondents have been appointed as District Fisheries Officer against 50% vacancies meant for appointment by promotion from amongst the Fisheries Extension Officer. Learned counsel for the petitioner has not been able to indicate any Rule by which direct recruit is to be shown as senior to the promotees. As there is no Rule to govern inter se seniority between the direct recruit and the promotees, in my opinion, both the direct recruit and promotees are to maintain seniority as per their date of appointment and continuous officiation provided continuous officiation was allowed to the promotee considering his seniority in the basic grade i.e. in the grade of Fisheries Extension Officer. Private Respondent Nos. 8 to 14 having been officiating as District

Fisheries Officer from 2001 and petitioner has not been able to point out that continuous officiation was allowed to the promotees ignoring the seniority of the basic grade, in the circumstances, I do not find any illegality in granting the promotees the benefit of continuous officiation.

6. Learned counsel for the petitioner then submitted that the authorities have published final gradation list under letter no. 812 dated 4.5.2010, Annexure-13 after rejecting the objection of the petitioner and others, but without indicating any reason for rejecting the objection of the petitioner. This writ petition is, accordingly, disposed of directing the Secretary, Animal Husbandry and Fisheries Department to consider the objection of the petitioner as regards the final gradation list dated 4.5.2010, Annexure-13 and pass appropriate reasoned order in the matter in accordance with law, as early as possible, in any case within two months from the date of receipt of the fresh objection alongwith a copy of this order in the office of the Secretary, Animal Husbandry and Fisheries Department of the Government.