
(1998) 01 SC CK 0098

In the Supreme Court Of India

Case No : Civil Appeal No"s. 4112 of 1991 and ... of 1998 Arising out of SLP (C)
No. 17244 of 1992

Yogendra Prasad Mandal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-01-1998

Acts Referred:

Citation : AIR 1998 SC 2590 : (1998) AIRSCW 2623 : (1999) 1 BLJR 104 :
(1998) 4 JT 289 : (1999) 1 LLJ 1070 : (1998) 3 SCC 137 : (1998) SCC(L&S)
764 : (1998) 9 Supreme 168

Hon'ble Judges : Sujata V. Manohar, J;S. S. M. Quadri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is filed by one Yogendra Prasad Mandat who was appointed as a Forester in the Bihar State Forest Development Corporation in 1977. At the material time the appellant was posted at the Palamau Project of the Bihar State Forest Development Corporation. Up to about November 1981 the forest work was done by the Bihar State Forest Development Corporation on the basis of a lease granted to them by the State Government. In November 1981 the Bihar State Forest Development Corporation, which is an autonomous body decided to close down its project at Singhbhum and the departmental wing at Palamau. As a result of this decision the entire staff working at Singhbhum and a substantial staff working at Palamau became surplus.

2. In order to absorb the staff so rendered surplus with the Bihar State Forest Development Corporation, meetings were held with the State Government Officers including the Chief Conservator of Forests. The minutes of the meeting dated 11-11-1981 record the discussions held regarding absorption of surplus staff as a result of the closure of the Singhbhum Project and the departmental wing of the Palamau Project of the Bihar State Forest Development Corporation, In the minutes the detailed particulars of the staff rendered surplus, inter alia,

under the Palamau Project are set out. It is recorded that the Bihar State Forest Development Corporation in connection with the Palamau Project will maintain only one division. The surplus staff as set out in detail in the minutes will be absorbed by the State Trading Wing of the Forest Department and will be accordingly transferred to the State Trading Wing of the Forest Department.

3. Accordingly, the appellant along with other employees who were so rendered surplus were relieved from the Palamau Project and were appointed in the State Trading Wing of the Forest Department of the State of Bihar. The respondents have annexed a large number of appointment letters all dated 2-3-1982, addressed to all the other employees of the Palamau Project which were so absorbed and transferred in the Forest Department of the State of Bihar. All these letters are letters of appointment issued to all the employees absorbed in the State Trading Wing of the Forest Department of the State of Bihar. Only in the case of the appellant such a letter is not forthcoming. But we have no reason to believe that he was treated differently from the other employees who were so absorbed.

4. It is the contention of the appellant that he was not freshly appointed in the service of the State Government but he was merely transferred and is, therefore, entitled to continuity of service and all consequential benefits. We have not been shown any provision or any Rule under which the services of an employee of an autonomous body can be transferred to the State Government with continuity of service or preservation of seniority. In the minutes of 11-11-1981 there is no mention of any continuity of service being maintained or the seniority of the staff absorbed being preserved from the date of their joining the Bihar State Forest Development Corporation. In the absence of this specific provision, the appointment in the State cadre has to be considered as appointment from the date when it takes effect. The High Court, therefore, was right in coming to the conclusion that the services of the appellant will count from the date of his appointment in the State Trading Wing of the Forest Department of the State of Bihar and the earlier service rendered by him with the Corporation will not be counted for the purpose of seniority and other benefits. The appeal is, therefore, dismissed. There will, however, be no order as to costs. SLP (C) No. 17244 of 1992

5. Special leave granted.

6. This appeal is in respect of the absorption of respondent-Shiv Shankar Prasad Gupta who was originally working with the Bihar State Forest Development Corporation in the State Trading Wing of the Forest Department of the State of Bihar. In the present case, however, the respondent had filed a suit claiming the relief that he was entitled to a basic scale of Rs 665 and not Rs 580 per month from the date of his joining the State Service, which he claimed, was on his transfer from the Corporation. The appellant, State of Bihar in its written statement, however, stated that the claim of the respondent for a scale of Rs 665 per month was accepted by Office Order No. 33 dated 21-11-1983 (para 8). In

the written statement in para 9 it was further stated that the services of the respondent were transferred to the Bihar State Trading Division and no fresh appointment letter was issued. In view of this statement in the written statement the suit was decreed and ultimately the second appeal of the State of Bihar before the High Court has also been dismissed.

7. It is now pointed out to us by the counsel for the State of Bihar that all these statements made in the written statement are factually incorrect. Our attention is drawn to the appointment letter of 2-3-1982 being Office Order No. 17 issued by the Office of the Conservator of Forests, State Trading Circle, Jamshedpur under which it is stated:

"Consequent upon the declaration of excess staff in Bihar State Forest Development Corporation the following clerks relieved from different units are appointed in the scale of Rs 580-860 per month from the date of their joining."

8. The name of the respondent is at Serial No. 1 and the date of joining is 1-2-1982. Thereafter, Office Order No. 33 dated 21-11-1983 was issued fixing the pay of the staff mentioned therein including the respondent at Rs 665 per month from the date of their joining. The date of joining mentioned as against the name of the respondent is 1-2-1982. There is, however, a subsequent Office Order No. 30 which is dated 2-7-1985 which sets out that Office Order No. 33 dated 21-11-1983 has wrongly fixed the salary. Office Order No. 33 dated 21-11-1983 is, therefore, cancelled and the employees appointed under Office Order No. 17 dated 2-3-1982 are fixed in the pay scale of Rs 580-860 from the date of their joining and their pay is Rs 580 per month. The name of the respondent is at Serial No. 8 and his date of joining is 1-2-1982.

9. The two Office Orders of 2-3-1982 and 2-7-1985 were, for reasons best known to them, not produced before the High Court by the appellants and the written statement contained averments which appear to be contrary to these two Office Orders. The decision of the High Court, therefore, has not taken into account these two Office Orders.

10. In order that a correct decision may be arrived at in the case of the respondent, it is important that all relevant orders relating to the respondent are placed before the High Court. We, therefore, set aside the impugned order. The appellants are permitted to file all relevant documents pertaining to the appointment and pay fixation of the respondent before the High Court by an additional affidavit. The respondent will also be at liberty to produce all relevant documents in this connection which he has not already produced before the High Court. The High Court shall thereafter decide the second appeal in accordance with law. This order is being passed looking to the special circumstances governing the present case which create a strong impression that someone in the appellants' department concerned withheld inconvenient documents in order to help the respondent.