

Md. Sayeed and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Mar-16-2007

Judge : Barin Ghosh, J.

Appeal No. : C.W.J.C. No. 14289 of 2006

Appellant : Md. Sayeed and anr.

Respondent : The State of Bihar and ors.

Advocate for Def. : Anil Kr. Jha, GA 2 and Binodanand Mishra, JC to GA 2

Advocate for Pet/Ap. : Gajanan Arun, Md. Nurul Hoda and S.C. Mishra, Advs.

Prior history : Barin Ghosh, J. 1. On 19th August, 1980, both the petitioners were promoted to the post of Horticulture Inspector. There is no dispute that the post of Horticulture Inspector is a feeder post for promotion to the post of Horticulture Officer/Sub Divisional Horticulture Officer. On 24th April, 1999, the Departmental Promotion Committee made recommendations in favour of the petitioners for being promoted to the post of Horticulture Officer/Sub Divisional Horticulture Officer. On the basis of suc

Judgement :

Barin Ghosh, J.

1. On 19th August, 1980, both the petitioners were promoted to the post of Horticulture Inspector. There is no dispute that the post of Horticulture Inspector is a feeder post for promotion to the post of Horticulture Officer/Sub Divisional Horticulture Officer. On 24th April, 1999, the Departmental Promotion Committee made recommendations in favour of the petitioners for being promoted to the post of Horticulture Officer/Sub Divisional Horticulture Officer. On the basis of such recommendation, by an order dated 14th October, 1999, the petitioners and others were promoted to the post of Horticulture Officer/Sub Divisional Horticulture Officer. Petitioners were given a show cause and thereby they were informed that their promotion order dated 14th October, 1999 is liable to be cancelled. It was not indicated in the show cause in details the reasons in support thereof. Thereupon on 10th May, 2001, by one order the promotions accorded to the persons by the order dated 14th October, 1999 including the promotions of the petitioners were cancelled. The order dated 10th May, 2001 did not disclose in details the reasons for cancellation of the said promotions.

2. The order dated 10th May, 2001 was the subject matter of challenge in two writ petitions filed in the High Court of Judicature at Jharkhand as well as in this High Court. Both the High Courts stayed the operation of the said order dated 10th May, 2001 with a direction not to give effect to the same. As a result, despite the said order dated 10th May, 2001, the promotions accorded to the petitioners by the promotion order dated 14th October, 1999 had not been affected.

3. Subsequently the Government felt that the stay orders granted by the Courts applied only to the petitioners before the Courts and accordingly there is no impediment in implementing the order dated 10th May, 2001 in relation to the persons who are not parties to the litigations pending in the Courts and accordingly by an order dated 21st September, 2006 directed implementation of the order dated 10th May, 2001 in relation to the petitioners. In the order dated 21st September, 2006 also no reasons had been indicated as to why the promotion order dated 14th October, 1999 shall be recalled either en mass or in relation to the petitioners.

4. Therefore, the decision to withdraw the said promotions of the petitioners accorded by the order dated 14th October, 1999, according to the own showing of the State, became effective on the issuance of the order dated 21st September, 2006 and, aggrieved thereby, the petitioners have filed the present writ petition.

5. In the counter affidavit four reasons have been indicated for the decision to recall the promotions of the petitioners. The first of the grounds was that no roster clearance was obtained. The fact remains that the roster points 115 to 157 were filled in. There is no dispute that in terms of the notification issued in 1993 prescribing 100 Points Roster, the State Government made it clear that 50 Points Roster prescribed by the State by the notification issued in 1975 will hold the fort in relation to promotions. Admittedly, the positions of the petitioners in the roster points are at 117 and 125 respectively. The petitioners belong to open category. Having regard to their positions in the roster points, the petitioners were entitled to be appointed at those roster points, which were available in between roster point 111 & 157 for open category. The petitioners were, in fact, appointed in those roster points which were available for them on the basis of their seniority in the roster and which were available for open category candidates. Even assuming, roster clearance was not obtained, the appointments, as were given to the petitioners, were well within the prescription given in the roster notified by the State. It cannot, therefore, be said that the roster points have been ignored while according appointments to the petitioners. It has further been added that 20 posts earmarked for reserved category candidates were filled up by General category candidates. No attempt has been made by the State to bring on record either in the counter affidavit or otherwise that any post reserved for any category falling in between roster point 111 to 157 has been filled up by a person belonging to Open category. This allegation, therefore, is a bare allegation and no attempt has been made to establish the same. Such an allegation cannot be taken note of.

6. The next ground disclosed in the counter affidavit to support the cancellation of the promotions is that the petitioners did not have five years' minimum working experience. The fact remains that the Government has prescribed that in order to be promoted to the post in question, the candidate must have worked in the Horticulture Department of the State for five years. The fact remains that the

petitioners were discharging duties in the Horticulture Department as Horticulture Inspectors right from 1980 and accordingly they had more than five years' working experience in the Horticulture Department of the State. This ground, therefore, is non-existent in so far as the petitioners are concerned.

7. The third ground taken in support of the order cancelling the promotions is that the Promotion Committee was not duly constituted. In paragraph 4 of the counter affidavit, it has been stated that on 24th April, 1999 a meeting of the Departmental Promotion Committee was held for considering the case of promotion of the eligible persons. Once that has been alleged in one breath, it has been contended that the Promotion Committee was not duly constituted in the same breath, but no attempt has been made in the counter affidavit to explain why the State is contending that the Promotion Committee was not duly constituted. The fact remains that in accordance with the directions of the State the Promotion Committee is comprised of the Agriculture Director, Director (Administration), Agriculture Department and an Officer belonging to ST/SC category, as nominated by the Personnel & Administrative Reforms Department of the State. Admittedly, the Promotion Committee which considered the case of the petitioners on 24th April, 1999 comprised of Agriculture Director, Director (Administration), Agriculture Department and Deputy Agriculture Director. It has not been stated in any part of the counter affidavit that Deputy Agriculture Director did not belong to SC/ST category or that he had not been nominated by the Personnel & Administrative Reforms Department. In those circumstances, this contention having not been admittedly supported by any evidence or materials cannot be taken note of also.

8. The last contention is that the Director, Horticulture was not competent to promote to the post of Horticulture Officer and its equivalent post. The fact remains that the Director, Horticulture did not effect the promotions. Those were effected by the Promotion Committee. Mere communication of the decision of the Promotion Committee by the Director, Horticulture cannot be construed as grant of promotion by the Director, Horticulture. This ground, therefore, also is of no use to the State.

9. In those circumstances, the decision to cancel the promotions of the petitioners being bereft of any reasons or grounds, the same cannot be upheld. Accordingly, such decision is quashed and it must be deemed that the promotions as accorded to the petitioners by the said promotion order dated 14th October, 1999 has not been interfered with at all by the State in any manner whatsoever.

10. The writ petition accordingly stands disposed of.

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