

Bachan Prasad Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jan-04-2007

Judge : Ramesh Kumar Datta, J.

Appeal No. : CWJC No. 11631 of 2004

Appellant : Bachan Prasad

Respondent : The State of Bihar and ors.

Advocate for Def. : Mayank Rukhaiyar, JC to GA 5

Advocate for Pet/Ap. : Nanhe Prasad and Kumar Madhurendu, Advs.Rakesh Kumar Singh, Adv.

Disposition : Application allowed

Judgement :

Ramesh Kumar Datta, J.

1. Heard Mr. Nanhe Prasad, learned Counsel for the petitioner, learned JC to Government Advocate No. 5, for the State and Mr. Rakesh Kumar Singh, learned Counsel for the Accountant General, Bihar.

2. The petitioner seeks a direction upon the respondents to grant him promotion on the post of Circle Inspector-cum-Kanungo with effect from the date his juniors

have been granted the said promotion with all Consequential benefits including the retirement benefits.

3. The petitioner was appointed on the post of Karamchari in the district of Munger on 19.8.1969. Subsequently his services were transferred under the Collector and District Magistrate, Bhojpur which place he joined on 10.3.1983. Subsequently, a final gradation list of Revenue Karamchari working in Patna Division was circulated by letter No. 2268 dated 3.12.1999 of the Secretary to Commissioner, Patna Division and reports were called for from all the Collectors of the division for the purposes of considering the cases of promotion to the post of Circle Inspector-cum-Kanungo. Finding that the name of the Revenue Karamchari appointed till 1988 were included in the gradation list yet the petitioners name was missing from the same, the petitioner represented before the Collector, Bhojpur, who by letter dated 11.8.2000 (Annexure-3) wrote to the Secretary to the Commissioner that names of the petitioner and another Revenue Karamchari were wrongly omitted from the seniority list and accordingly, their service book and ACRs were being enclosed and they should also be given the benefit of promotion on the said post. However, by order dated 25.9.2002 (Annexure-5) certain Revenue Karamchari were promoted but the petitioner was not among them. It is pointed out that Sl. Nos. 12, 14 and 15 in the said order dated 25.9.2002 namely, Raj Kumar Prasad, Sachidanand Sharma and Rama Shankar Tiwary have been appointed on 25.1.1972, 30.3.1972 and 26.10.1972 yet they have been promoted while the petitioner who was appointed on 19.8.1969 has not been considered for promotion. Subsequently, it appears that the gradation list dated 5.12.2003 as contained in Annexure-4 was also published in which the seniority of the revenue Karamchari of Bhojpur Collectorate as on 1.1.2003 has been shown. In the said gradation list the petitioner is at Sl. No. 2 and is shown to have retired on 31.3.2003 whereas, Ramashankar Tiwary has been shown at Sl. No. 6 and Raj Kumar Prasad has been shown at Sl. No. 7

4. On the basis of the aforesaid facts it is submitted by the learned Counsel for the petitioner that it was only on account of fault of the authorities that the case of the petitioner was not considered for promotion and the only reason for the same was that in the chart of employees he was shown as possessing the qualification of

middle pass whereas, he is a matriculate which is the minimum qualification required for promotion to the post of Circle Inspector-cm-Kanungo. It is further submitted by the learned Counsel that no good grounds have been shown in the counter affidavit by which the petitioner has been denied the said promotion and thus the petitioner would be entitled to be promoted at least from the date on which admittedly his juniors have been promoted.

5. In the counter affidavits filed on behalf of respondent No. 2, the Commissioner, Patna division and respondent No. 4, the District Magistrate and the Collector, Bhojpur at Ara, the aforesaid facts are not denied. It is however, stated in the counter affidavit filed on behalf of respondent No. 2 that earlier the provisional gradation list had been published in the year 1998 and thereafter the final gradation list was published but the petitioner did not make any objection to the same and accordingly, when the matter was taken up for considering the case of promotion on 18.8.2000 the case of the petitioner was not considered. The stand in the counter affidavit was that no communication from the Collector was received regarding the mistake made with regard to the case of the petitioner but subsequently it has been admitted that the letter dated 11.8.2000 (Annexure-3) has been received on 14.8.2000 but since the promotion committee had met on 18.8.2000 it was decided not to include any further name which did not find a place in the final seniority list as published earlier and for the said reasons the petitioner has not been promoted. The further stand taken in the counter affidavit is that in terms of the Board of Revenue memo No. 70-5A dated 25.5.1970 (Annexure-D), it is provided that in case a clerk is transferred from one division/district to any other division/district then he must be treated as the juniormost among the ministerial officers recruited in the year, and since the petitioner was transferred from Bhojpur division to Munger Division in 1983 hence he cannot be considered as senior to the other persons who have been promoted since they were appointees of 1972.

6. The aforesaid stand of the respondents does not appear to be supported by Board's memorandum dated 15.5.1970 which is in the following terms:

(i) When a clerk on a time scale is transferred from one Division/District to another on the same time scale, service in the previous District/Division will count for seniority at the new place of posting irrespective of the fact whether the transfer was compulsory or at the request of the clerk concerned.

(ii) The transferred clerk will take the juniormost place among the ministerial Officers recruited in the same year in that scale of the Collectorate to which he is transferred.

7. From a consideration of the aforesaid principles laid down by the Board it is evident that in the case of inter-district transfer whether the same is compulsory transfer or it has been made at the request of the employee concerned, it is clearly provided that the services in the previous district will count for seniority at the new place of posting. Clause (ii) however, provides that the said transferred clerk will take a juniormost place among the ministerial Officers recruited in the same year in the scale of the Collectorate to which he is transferred. The two clauses must be read harmoniously and the only harmonious reading that can be made from the same is that the seniority of the transferred employee is preserved by the said circular and he is to be treated as juniormost among the ministerial officers of the district who have been recruited in the same year in which the transferred employee was recruited. By no stretch of imagination it can be read as that he would be treated as juniormost among the employees recruited in the year of his transfer. That cannot be and is not the purport of the memorandum dated 25.5.1970 issued by the Board of Revenue.

8. In view of the aforesaid conditions prescribed in the service rules, it has to be held that the petitioner was senior to the three persons of Bhojpur district who have been granted promotion by order dated 25.9.2002 and he would thus be entitled to be granted promotion at least from the date from which the said juniors have been granted promotion. Since the petitioner has already retired on 31.3.2003, he can only derive financial benefits of the said promotion and it is accordingly ordered that the petitioner must be treated as having been promoted on the post of Circle Inspector-cum-Kanungo with effect from the date on which juniors to him had been promoted by the order dated 25.9.2002. It is further

directed that the petitioner shall be entitled to the financial benefits of the said promotion also since the same has been denied to him on account of the fault of the authorities and not on account of any laches committed by the petitioner. He would also be entitled to the corresponding increase in his pensionary and other retiral benefits.

9. The writ application is accordingly allowed with the aforesaid observations and directions.

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