

Dr. Jai Narain Misra

Vs

State of Bihar and Others

Civil Appeal No. 477 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

15.09.1970

JUDGMENT

HEGDE, J. -

1. The appellant and the third respondent are serving in the Agricultural Department of the Bihar Government. Till February, 1968, Mr. B. N. Sinha was the Director of the Agricultural in that State. He retired in February of that year. On November 25, 1967, the State Government of Bihar wrote to the Public Service Commission requesting the Commission to select one of the fourteen officers shown in the list accompanying that letter, for being promoted as Director of Agriculture. The pay scale of some of those officers was Rs. 900 - 1,400 and others Rs. 1,200 - 1,700. In that letter the the Government stated that the question of seniority of those officers is still under consideration and the list sent was not arranged in accordance will seniority. The Commission wrote to the Government on April 29, 1968, asking the Government to determine the seniority of those officers before it is asked to recommend one of them for being appointed as Director of Agriculture. The Government wrote back to the Commission on September 23, 1969, stating that the question of seniority of those officers cannot be easily settled as there were some complications and the Commission should proceed to select one of the officers mentioned in the list solely on the basis of merit and suitability.

2. After examining the records of all the officers concerned, the Commission recommended the name of the appellant. Immediately thereafter the third respondent approached the High Court with a petition under Article 226 of the Constitution praying that the recommendation of the Commission may be quashed and the Government asked to make the appointment in accordance with the rules. The High Court came to the conclusion that the third respondent is senior to the appellant and has greater merit then the appellant. Hence under the rules he was entitled to be promoted. This is an appeal by certificate against that decision. Thereafter the Government appointed the third respondent to officiate as Director of Agriculture. It appears that the third respondent is superannuated on the 1st of this month but he has been given a month's extension.

3. It was not disputed before us that the post of Director of Agriculture is a selection post. Therefore, the question of seniority was not relevant in making the selection. It is for the State Government to select such officer as it considers as most suitable. In this view we think the High Court was not justified in going into the question of seniority nor will we be justified in going into that question. It may be noted that at the time the Commission made this recommendation the pay scale of both the appellant as well as the third respondent was Rs. 1,200 - 1,700.

4. So far as the question of suitability is concerned, the decision entirely rested with the

Government. In other words, the Government is the sole judge to decide as to who is the most suitable candidate for being appointed as the Director of Agriculture. For discharging that responsibility it was open to the Government to seek the assistance of the Public Service Commission. In our judgment the High Court was not justified in calling for the records of the Public Service Commission and going through the notings made by various officers in the Commission as well as the correspondence that passed between the Commission and the Government. The High Court overlooked the fact that the Government sought the assistance of the Commission and not that of the High Court for finding out the most suitable candidate. In this case there was no complaint of mala fides either on the part of the Government or the Commission. That being so the interference of the High Court in the matter of selection made by the Government was not called for.

5. The post of Director of Agriculture is admittedly an ex-cadre post. The selection to that post is made solely on the basis of merit. Merely because the Government in its letters to the Commission used the word "promotion", the High Court should not have treated the case as one of "promotion". The word "promotion" used in the Government's letter was an inappropriate word. What the Government really meant was selection of a person to be posted as the Director. The nature of the post cannot be changed by the Government's using the word "promotion". The post remains to be a selection post.

6. The High Court was also not right in opining that the recommendation made by the Commission was not in accordance with the rules. The two rules referred to by the High Court are : (1) Rules regulating the Bihar and Orissa Agricultural Service, Class I, promulgated on April 11, 1935 and (2) the Rules Regulating the Recruitment to Bihar Agricultural Service, Class I, the Bihar Agricultural Service, Class II, the General Provincial Service and special posts outside these cadres promulgated on July 9, 1945. The High Court has come to the conclusion that 1935 Rules were by implication though not specifically repealed by the 1945 Rules. 1935 Rules make it clear both in its preamble as well as by the definition of the word "The Service" that those rules do not apply to the appointment to the post of Director of Agriculture. Further Rule 16 of those rules reads :

"The post of the Director of Agriculture shall remain outside the cadre of the service, but subject to the provision of Rule 17 below, it may be filled at the discretion of the Local Government by a member of the service."

Rule 17 says :

"None but a member of the Indian Agricultural Service borne on the cadre of the Bihar and Orissa shall be appointed to the post of the Director of Agriculture so long as any such member is available for appointment to the post and who has not been held by the Government of Bihar and Orissa to be permanently unfit to hold such post :

Provided that whenever the Local Government consider that no officer of the Indian Agricultural Service borne on the cadre of Bihar and Orissa is fit for the post of the Director, the assistance of the Government of India shall be sought with a view to procuring a suitable selection from among the members of the Indian Agricultural Service in other provinces before any other person is appointed to the post."

7. From a reading of Rules 16 and 17 of the 1935 Rules, it is clear that the 1935 Rules did not come

in the way of the Government making its selection.

8. Now coming to the 1945 Rules, it is clear from its preamble that those rules apply only to : (1) the Bihar Agricultural Service, Class I; (2) the Bihar Agricultural Service, Class II and (3) the General Provincial Service and special posts outside these cadres. The reference to the posts outside the cadre of Class I and Class II Services, it was contended on behalf of the appellants as well as on behalf of the State Government refers to posts in Class I and Class II in addition to cadre posts and not to selection posts. It is not necessary for our present purpose to decide that question. It is clear from Rule 12 of the 1945 Rules that these rules do not apply in the matter of filling up the post of the Director of Agriculture. That rule reads :

"Whenever the Governor decides that a vacancy shall be filled by promotion or transfer of an officer already in the service of Government, a reference shall be made to the Commission to advise on such selection. The Commission shall be supplied with the records of the officer nominated for promotion by the Director of Agriculture, together with the records of officers, if any, who are senior to the nominated officer."

9. We are unable to visualise that any service rule could have provided for the nomination of his successor by an officer who is about to be superannuated. In our judgment Rule 16 of the 1935 Rules is not superseded by the 1945 Rules.

10. In the result this appeal is allowed and the writ petition dismissed. Taking into consideration the fact that the third respondent is already superannuated we make no order as to costs in this appeal.

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