

Rameshwar Prasad

Vs

State of Bihar and Others

Writ Petition No. 4313 of 1978

(Syed M. Fazal Ali, P.S. Kailasam, A.P. Sen JJ)

31.08.1979

JUDGMENT

FAZAL ALI, J. -

1. This petition under Article 32 has been filed against the order of the Governor of Bihar accepting recommendations of the High Court and superseding the petitioner Rameshwar Prasad by promoting other subordinate Judges as Additional District Judge. Mr. Sarjoo Prasad appearing in support of the petitioner mainly raised two points before us. In the first place it was contended that the judicial career of the petitioner was without any blemish and there was nothing against him to justify his supersession when the High Court recommended the case of promotion of the Sub-Judges for appointment as Additional District Judge and hence the order impugned is violative of Article 16 of the Constitution. There is, however, abundant material on the record to show that the case of the petitioner was fully considered by the High Court and he has not considered fit for promotion by the High Court, hence his case was not recommended for promotion as Additional District Judge. In this view of the matter it is manifest that Article 16 cannot be violated because the petitioner's case for promotion was fully considered by the High Court and the Government and then it was decided not to promote him. All that Article 16 requires is that the case of employees similarly situate and eligible for promotion must be considered before others are promoted. If it was established that the petitioner's case was not considered at all and persons junior to him were promoted without any reason, then something could be said in support of the petitioner's case. It would appear from the affidavit filed by the High Court that the Government considered the case of the petitioner. The averment in para 14 of the affidavit filed by the High Court runs :

It is incorrect to say that there was any departure from any common usual practice in sending the second proposal though final orders on the first proposal were not passed by the State Government specially in the context that at the time of sending the second proposal this respondent came to a definite conclusion that the work and conduct of the petitioner was such that he should not be recommended for promotion unless he showed improvement in his conduct.

2. Furthermore at page 35 of the Annexure I it is clearly mentioned that the court has recommended the case of other Sub-Judges after considering the case of the concerned appellant. Mr. Rameshwar Prasad and it is also established that the Government concurred with the recommendation of the High Court. Although Mr. Prasad submitted that the petitioner had an unblemished career, there are enough materials on the record to show that this is not correct. Thus the petitioner and other Sub-Judges not being similarly situate as being of equal merit the question of discrimination or infraction of Article 14 of the Constitution also does not arise. At any rate, since the High Court is the best

judge of the performance of its officers and if the High Court was not satisfied about the suitability of the petitioner having regard to his past record, for promotion, Article 16 is not attracted and this Court would not, therefore, interfere at this stage. Secondly, it was faintly suggested that there was a colour of malice in the recommendation by the High Court but no such clear plea has been taken in the petition or proved in the affidavit filed by the petitioner. In these circumstances, we cannot take any notice of such an allegation. For these reasons, we find no merit in this petition. We would, however, like to observe that the High Court itself was of the opinion that in case the petitioner improves his merit and ability, he may be considered for promotion and for this purpose one vacancy was kept reserved. Although this vacancy has since been filled up, yet if in future there is any vacancy, the High Court may consider his case for promotion, if he shows improvement and progress.

3. The application is accordingly dismissed.

4. There will be no order as to costs.

</html