

Sheo Dayal Sinha and Others

Vs

State of Bihar and Others

Civil Appeal No. 487 (N) of 1975

(Syed, M. Fazal Ali, A. Varadarajan, A. N. Sen JJ)

08.04.1981

JUDGMENT

FAZAL ALI, J. –

1. This appeal by certificate is directed against the order of Patna High Court dated January 25, 1974 by which a writ petition filed by the appellants had been dismissed.
2. It appears that the appellants and respondents 5-8 were referred to the Bihar Agricultural Service Class I. Certain promotions were made in higher category of Class I in which the cases of respondents 5-8 were referred to the Public Service Commission and pending opinion of the Public Service Commissioner, the respondents concerned were promoted on ad hoc basis. Unfortunately, it appears that the necessary records were not submitted to the public Service Commission as a result of which the Commission was not able to give its recommendation up to date and respondents 5-8 continued to occupy the promotional posts upto today on a pure ad hoc basis. In view of the lapse of time, the fifth person retired and he has therefore not been made a party to this appeal.
3. The admitted position seems to be that in the Bihar Agricultural Service, there were two classes and several categories of officers according to the nature of their qualifications, experience and other attributes. Initially, the officers were taken in the two classes. By memo issued by the Government by its letter dated August, 13, 1953 which is to be found at page 856 of Compendium of Important Circulars and Orders of Agricultural Department (hereinafter to be referred as 'Compendium'), it was clarified that in future officers should not be confirmed in the specified posts in the service in Class I or Class II of the Bihar Agricultural Service as the case may be. It was also pointed out that the posts under separate categories would be interchangeable, excepting those which existed in the botanical section which would not be interchangeable with the posts in the research or general administration groups.
4. The main plank of the arguments of Mr. Divan in this case is that the State Government while promoting the respondents concerned, have not at all considered the cases of the appellants who were entitled to promotion on merit although in fact most of the appellants were senior to some of the respondents and, therefore, entitled to be considered for promotion. It is also the admitted case of the parties that while the service records of respondents 5-8 were sent to the Public Service Commission, those of the appellants were not sent at all by the Government to the Public Service Commission as a result of which the cases of the appellants could not be considered even by the Commission.
5. In the counter-affidavit the stand taken by the State Government was that as the posts to which

respondents 5-8 were promoted were of a special nature which required sufficient administrative experience, the question of the consideration of the cases of the appellants did not arise. It was, however, not alleged in the counter-affidavit that the appellants or any of them held purely botanical posts so as to be excluded from being considered to other posts.

6. The High Court came to a clear finding that the posts to which the respondents concerned were promoted were not selection posts and it therefore follows as a logical corollary that inter se merit of the candidates eligible for appointment had to be considered by the Government. This, however, was not done and the defence taken by the State before us as mentioned above was that the promotional posts were of a special nature. Before the High Court, it appears, the stand taken was that the aforesaid posts were ex-cadre posts and the High Court seems to have proceeded on that basis. As discussed above, it is clear that the promotional posts were not ex-cadre posts, but were posts in the same class, i.e., Class I, and the appellants may not have been considered for promotion only if they had held posts in the Botanical section which alone was not interchangeable. This aspect of the matter has been completely overlooked by the High Court or perhaps was not even argued before it. Thus, the irresistible inference which arises from the materials placed before us is that the cases of the appellants had to be considered as they were eligible for promotion and since their cases were not considered, Articles 14 and 16 of the Constitution were clearly attracted. The High Court does not seem to have dwelt on this important aspect of the matter obviously because the proper materials were not placed before it and perhaps the counsel appearing for the Government was not very clear about the stand taken by him. Sometimes he proceeded on the basis that the promotional posts were selection posts and when he failed to establish this, he raised some other extraneous matters without drawing the attention of the High Court to the memorandum, referred to above, and Rule 12 with which we will deal hereafter.

7. Furthermore, Mr. Goburdhun was unable to point out any order of the Government or document produced before us or before the High Court to show that the posts of the appellants were not interchangeable with the posts on which the respondents concerned were promoted. In these circumstances, therefore, it is manifest that the stand taken by the Government is contrary to its own rules and orders passed earlier. Rule 12 which was framed under the Government of India Act runs thus :

12. 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.

This rule also does not seem to have been complied with.

8. Another violation which was committed by the Government in continuing the promotions of the respondents concerned was that Rule 12 extracted above makes it incumbent on the Governor to supply the Commission with the necessary records of the officer nominated for promotion together with the records of persons who are senior to the nominated officer, In this case it is not disputed that some of the appellants were undoubtedly senior to the respondents who were nominated for promotion. Mr. Goburdhun was unable to state the position which prevails today and we would, therefore, be justified in assuming that the promotes, namely, respondents concerned, continue up to this day as ad hoc appointees. Thus, apart from there being a clear violation of the rules and orders framed by the State Government as the cases of the appellants had to be considered for promotion

which the Government was bound to consider, there has been a clear violation of Articles 14 and 16 of the Constitution of India.

9. Unfortunately, the High Court seems to have accepted the averments in the counter-affidavit and has not noticed the glaring infirmities in the order impugned to which we have adverted.

10. For the reasons given above, we allow this appeal and quash the order of the Government promoting respondents 5-8. We direct that the Government should send the records of the appellants also to the Public Service Commission along with the records of the respondents concerned and call for the opinion of the Commission as soon as possible. After the opinion is received, the Government will make the necessary appointments according to rules and in the light of the observations made by us. Until the Commission gives its advice to the Government, status quo will be maintained and the respondents 5-8 will continue on ad hoc basis. We would also request the Commission to give its advice as soon as possible because the matter has been delayed already for several years.

11. The appellants will be entitled to cots, both in this Court and in the High Court, quantified at Rs, 5000, to be paid by the State of Bihar, respondent 1.

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