

Balkrishna Pandey

Vs

State of Bihar and Others

Civil Appeal No. 2927 of 1979

(K. Ramaswamy, B. L. Hansaria JJ)

14.12.1995

ORDER

1. This appeal by special leave arises from the order of Patna High Court made in CWJC No. 754 of 1979 on 13-4-1979. The admitted facts are that the appellant was appointed as a Junior Statistical Supervisor in the Department of Statistics. When a temporary post of Senior Statistical Assistant fell vacant in the Directorate of Special Employment and Planning (for short 'SEP'), it would appear that on an application made by him and forwarded by the parent department, the appellant came to be appointed to the temporary post as Senior Statistical Assistant by order dated 12-7-1973 and he joined the post on 1-9-1973. It would appear that the post was made permanent on 1-1-1978. On 16-8-1977, when the gradation list of the Senior Statistical Assistants (for short "SSAs") in the Directorate of SEP was prepared, the name of the appellant was not shown therein. The appellant thereon made a representation dated 26-9-1977. By proceedings date 28-9-1977, Arun Prasad Mandal, the fifth respondent herein, came to be promoted initially as SSA followed by further promotion as Senior Research Assistant (for short "SRA"). The appellant was reverted to the parent department by proceedings dated 23-2-1979. The appellant challenged the reversion and the High Court dismissed the writ petition as stated earlier. After reversion, he was promoted as SSA in the parent department. These facts are not in dispute.

2. Shri L. R. Singh, the learned counsel appearing for the appellant, contended that since the order of appointment shown that he was appointed by selection, in other words, by consideration of comparative merits according to the procedure, his appointment must be deemed to be on regular basis in the Directorate of SEP. Though initially the post was temporary, once it was made permanent on 1-1-1978, he must be deemed to have been absorbed to the permanent post and thereby he is entitled to be considered for the post of promotion as an SSA. Instead of considering his case, the fifth respondent came to be promoted twice overlooking the claim of the appellant for SRA; and, therefore, the reversion is bad in law.

3. In the counter-affidavit dated 13-8-1979 filed by the State it was mentioned that the appellant came to be appointed as an SSA to a temporary post on deputation; his lien as a Junior Statistical Supervisor in the parent department, namely, Statistical Department, continued to exist; on his reversion to the parent department he was promoted in his own right as SSA; the fifth respondent had his initial appointment in the Directorate of SEP and as he is a permanent incumbent to the post, he came to be promoted in his own right. When the post of SSA fell vacant, he being the permanent incumbent of the department came to be promoted to the said post. Since the appellant was only a deputationist, he cannot claim his right to promotion in the Directorate of SEP. In his own right he had his promotion as SSA in his parent department. Therefore, there is no illegality in the action taken by the Government. The High Court, therefore, was right in dismissing the writ petition.

4. The question, therefore, is whether the promotion of the fifth respondent as SSA is valid in law. It is rather unfortunate that despite filing of the counter-affidavit as early as on 13-8-1979, no rejoinder-affidavit was filed nor any unimpeachable documentary evidence has been placed on record to establish the nature of his appointment as SSA in the Directorate of SEP. In that state of things, we are necessarily driven to accept the uncontroverted averments made by the State in the counter-affidavit. It gets corroboration from the seniority list prepared and maintained by the parent department of the appellant, namely, Statistical Department. Therein it was shown in Item 9 that the appellant was continuing in the Directorate of SEP on deputation.

5. It is settled law that an employee on temporary promotion would continue to hold the lien in his substantive post until it is duly terminated. He cannot hold two substantive posts at the same time. Once it is concluded that the appellant is a deputationist working in the Directorate of SEP, his name was rightly not shown in the seniority list of that Department. Therefore, he continued to hold his lien and seniority as Junior Statistical Supervisor in the parent department. On reversion, he came back to his post as a Junior Statistical Supervisor and in his own right he was promoted as SSA. Since the fifth respondent happened to be a permanent incumbent in the Directorate of SEP, he was promoted as SSA. When further vacancy in the higher ladder, namely, SRA, had fallen vacant, he was considered and promoted in that vacancy. Under those circumstances, the High Court is well justified in refusing to interfere with the matter and we do not find any justification warranting interference.

6. We are informed that pursuant to the interim directions granted by the High Court and also by this Court the appellant has continued to work in the Directorate of SEP. Though he was continuing in the Department, he must be deemed to have continued to hold his lien as a Senior Statistical Assistant in the parent department, namely, Statistical Department and he will be entitled to all the rights and to further promotion, if any, in that department according to rules.

7. The appeal is accordingly disposed of with the above observations. No costs.