

Dr. (Capt.) Akhouri Ramesh Chandra Sinha and Others

Vs

State of Bihar and Others

Civil Appeals No. 1578 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

02.01.1996

ORDER

1. Leave granted.

2. We have heard the counsel on both sides. These appeals by special leave arise from the judgments of the Division Bench of the Patna High Court in CWJCs. Nos. 7049 of 1993 and 1801 of 1990 made respectively on 19-8-1994 and 6-12-1994. The question is the vexed inter se seniority of the appellant and the respondent-employees in these cases. The appellant was admittedly appointed on temporary basis in March 1966 and thereafter he was drafted as a Commissioned Officer and served in the Army in defence of the country in national emergency. After discharge from the Army, he was appointed on regular basis on 6-9-1966. The respondent-employees came to be appointed initially on 29-9-1964 on temporary basis and were then appointed on regular basis as Civil Assistant Surgeon w.e.f. 15-7-1974. The question is whether the appellant is entitled to his seniority w.e.f. 6-9-1966 and thereby would become senior to the respondent-employees though they were initially appointed on temporary basis w.e.f. 29-9-1964. Circular dated 20-9-1965 issued by the Government with regard to the entitlement of the Army Officers is found in Annexure VI. The relevant part reads thus :

"Besides the facilities in the Army, all temporary officers are allowed lien in service in accordance with Government Order No. 7892(B) dated 10-12-1962. It has further been accepted by Government that of the existing permanent vacancies (sic) would be reserved for the temporary assistant surgeons who volunteer to join the Army and they would be on probation with effect from the date on which they join the Army service and on completion of two years of satisfactory service, they will be confirmed in the State Medical Service."

3. As a consequence of the above circular, on appointment to the post and on completion of the probation for a period of two years, the candidate would be confirmed in the cadre as Civil Assistant Surgeon in the Bihar State Medical Service. It is settled law that on completion of the satisfactory probation, his confirmation would date back to the date of his initial appointment. Admittedly, he was regularly appointed on 6-9-1966. Consequently, he was regularly appointed as Civil Assistant Surgeon w.e.f. 6-9-1966.

4. It is true that the respondent-employees came to be appointed pursuant to the recommendations dated 17-4-1964 made by the Bihar State Public Service Commission and were appointed on 29-9-1964. But all the appointments are only to temporary posts though they were selected by the Bihar Public Service Commission on regular basis. They were admittedly confirmed w.e.f. 15-7-1974.

Under these circumstances, the regular service for the purpose of seniority as regards the respondents would commence only from 15-7-1974, of course, for other benefits, their appointments would date back to the date of their initial temporary appointment. Consequently, the appellant becomes senior to them. Resultantly, he is entitled to all the consequential benefits except back wages.

5. The appeals are accordingly allowed and the order of the High Court is set aside. No costs.