

Dr. (Capt.) Akhouri Ramesh Chandra Sinha

Vs

State of Bihar and Others

Contempt Petitions (C) Nos. 488-89 Of 1996, I.As. Nos. 4-5 & 7 In Civil Appeals Nos. 1578-79 of 1996

(S. Saghir Ahmed, K. Ramaswamy JJ)

21.02.1997

ORDER

1. Application for intervention is dismissed.
2. The petitioner has filed this contempt petition on the ground that the respondent State has not obeyed the direction issued by this Court in Akhouri Ramesh Chandra Sinha (Dr) (Capt.) v. State of Bihar [(1996) 2 SCC 20 : 1996 SCC (L&S) 397 : (1996) 32 ATC 829]. Counter-affidavit has been filed by the respondents. The presence of the officers who are present is dispensed with. We have heard learned counsel on both sides.
3. The grievance of the petitioner is twofold. Firstly, it is alleged that in spite of the declaration of seniority with consequential benefit given by this Court in the above appeals whereby the appellant is entitled to seniority w.e.f. 6-9-1966 with all consequential benefits, the same has not been given to him. Secondly, the officers who are not entitled as per the seniority fixed by the Court, to be above him, have been confirmed with effect from the earlier dates, with consequential benefits. It is in derogation and in disobedience of the mandamus issued by this Court in the aforesaid appeals. He has further contended that even as per the proceedings produced today before the Court, the petitioner has not been restored to the position as per the seniority vis-a-vis the promotee officers who are not entitled to the seniority on a par with him. Therefore, there is wilful disobedience of the orders passed in the above appeals.
4. Shri B. B. Singh, learned counsel appearing for the State of Bihar, states that the delay in compliance of the directions of this Court has been properly explained by A. K. Mishra, Under-Secretary of the Health Department, Government of Bihar, Patna in his affidavit. The Government has explained how they understood the orders passed by this Court and worked it out. After the receipt of the judgment through the High Court of Patna, steps have been taken in working out the directions issued by this Court in the aforesaid appeals, they have collected all the relevant materials on account of which some delay had occasioned and, therefore, there is no wilful disobedience. He has stated that some of the doctors, S. N. Upadhyay and nine others whose names have been mentioned in the affidavit filed by the Under Secretary, A. K. Mishra had rendered service in the Military between the years 1963 to 1966, therefore, they are equally to be treated as senior or the petitioner. With regard to the omission to give promotion to the petitioner over the person who had already become junior but is holding the senior post, Shri B. B. Singh undertakes that he would see that the petitioner is given due promotion. This statement was made on the basis of the instructions given by the Under-Secretary who is present in the Court.

5. In view of the rival contentions, the question arisen whether the respondents have deliberately and wilfully disobeyed the order of this Court. With regard to inter se seniority of the petitioner and Dr. S. N. Upadhyay and others, since the controversy was not raised before this Court at the time of hearing of the appeals, hence we are not inclined to go into that matter; hence the matter does not come under the purview of the contempt. If the respondents misunderstood the scope of the judgment and have given any benefits which Dr. S. N. Upadhyay and eight others are not entitled to, i.e., parity with the petitioner, it would be open to him to have his rights adjudicated in appropriate proceedings in the light of the judgment of this Court and the law. No attempt was made by the Government to misinterpret the order passed in the appeals. So, it cannot be said that it constitutes a deliberate and wilful disobedience in implementation of the orders of this Court.

6. As regards the placement of the petitioner in the appropriate promotional post, consequent to the fixation of seniority of the petitioner, Shri B. B. Singh has given an undertaking on behalf of the State Government and we record the same. We have no doubt that the State Government would give due promotion to the petitioner within 15 days from today.

7. Contempt petitions are accordingly disposed of.