

SUPREME COURT OF INDIA

Rajni Kant Ojha

Vs.

State of Bihar

C.A.No. 7147 of 2008

(Jagdish Singh Khehar and R.Banumathi,JJ.,)

07.10.2015

JUDGMENT

Jagdish Singh Khehar,J.,

1. The Bihar State Subordinate Selection Board (hereinafter referred to as the 'BSSSB') issued an advertisement on 10.09.1981 advertising posts of Assistant Probation Officers, Labour Inspectors, Investigators and Industrial Extension Officers, all belonging to Class-III service. Before initiating the process of selection in furtherance of the advertisement dated 10.09.1981, the BSSSB issued another advertisement on 26.12.1981 advertising the posts of Senior Auditor, Block Statistics Supervisors, Enumerators in the Industries Department, Commercial Tax Inspectors, Welfare Inspectors and Industrial Extension Officers, all these posts were also in Class-III service.

2. A combined written test was held on 1.3.1982, for selection to the posts advertised on 10.09.1981 and 26.12.1981. A joint result of the aforesaid test, was published on 11.3.1983. The appellants before this Court came to be appointed as Supply Inspectors in the Food, Supply and Commerce Department, Bihar on 14.11.1983. The appellants were amongst 138 appointments initially made on 14.11.1983.

3. The private respondents before this Court were appointed much later on 10.02.1986, as Assistant Consolidation Officers, in the Revenue and Land Reforms Department, Bihar. At this juncture, it would be essential to notice, that the delayed appointment of the private respondents was on account of an acknowledged mistake, committed by the BSSSB. The delayed appointment of the private respondents cannot be attributed to their lower position in the merit list.

4. As a matter of fact, it is not disputed, that the private respondents appointed on 10.02.1986, from out of the same process of selection, were placed at positions above the appellants in the merit list. It is in the above view of the matter, that learned counsel for the appellants very fairly states, that he has no objection to the acceptance of the proposition, that the private respondents may be deemed to have been appointed on the same date as the

appellants, namely, on 14.11.1983. In the above view of the matter, we shall proceed with the assumption, that the private respondents, as well as the appellants, were appointed to their respective posts, in their respective departments on the same day, i.e., 14.11.1983.

After the appointments of the appellants, they continued to discharge their duties as Supply Inspectors in the Food, Supply and Commerce Department, Bihar, whereas the private respondents continued to discharge their duties as Assistant Consolidation Officers in the Revenue and Land Reforms Department. Both the aforesaid posts admittedly belong to independent cadres in independent departments.

5. It seems that during 1995, the State Government decided to suspend a part of the consolidation activities in the Revenue and Land Reforms Department, as such, the private respondents would have been rendered surplus from the Revenue and Land Reforms Department. In order to accommodate 101 surplus Assistant Consolidation Officers of the Revenue and Land Reforms Department, a common order dated 21.4.1995 was issued.

6. The text of the aforesaid order reveals, that the private respondents "...were appointed temporarily on adjustment basis, on the posts of Supply Inspectors, carrying the scale of Rs.1600-50-2780, under the Administrative Control of the Food, Supply and Commerce Department, Bihar, from the date of their joining on the posts...".

7. For the present controversy, paragraph 4 of the letter of appointment dated 21.4.1995 is relevant, and is being extracted hereunder:

"4. The inter-se seniority of Supply Inspectors in the department shall be determined later." In a similar fashion, as has been expressed hereinabove, on 31.12.1996, 86 Assistant Consolidation Officers who were likewise declared surplus, "...were appointed temporarily on adjustment basis, on the posts of Supply Inspectors, carrying the scale of Rs.1600-50-2780, under the Administrative Control of the Food, Supply and Commerce Department, Bihar from the date of their joining on the posts...". On this occasion, on the subject of seniority, the letter of appointment recorded as under:

"3. In the department the seniority will be determined in the cadre of Supply Inspectors from the date of joining on the post of Supply Inspectors. The seniority will be determined after the already working Supply Inspectors on the basis of gradation list received from the Consolidation Directorate. The date of joining on the post of Assistant Consolidation Officers will not create claim for seniority in the cadre of Supply Inspectors." From the letter dated 31.12.1996, it is apparent, that by the time the instant letter was issued, the State Government had taken its decision on how to fix the seniority of the Assistant Consolidation Officers of the Revenue and Land Reforms Department, Bihar, on their transfer to the Food, Supply and Commerce Department, Bihar, as Supply Inspectors. Paragraph 4 of the letter dated 21.4.1995, for all intents and purposes, will have to be read as paragraph 3 of the letter dated 31.12.1996. The same process was adopted for the third time when 34 surplus declared Assistant Consolidation Officers, were similarly appointed as Supply

Inspectors in the Food, Supply and Commerce Department, Bihar, through a letter dated 7.5.1999, wherein it was clearly mentioned, that they "...were appointed temporarily on the post of Supply Inspectors, with pay scale of Rs.5000-150-8000, under the Control of department of Food, Supply and Commerce, Government of Bihar...". At this juncture also, paragraph 3 which was similar to the one in the letter dated 7.5.1999 was made a part of the express conditions, for the determination of their seniority. The final gradation list of Supply Inspectors in the Food, Supply and Commerce Department was published on 26.09.1995 in consonance with the terms and conditions of letters dated 21.4.1995, 31.12.1996 and 7.5.1999. The respondents were placed at the bottom of the gradation list. The instant action of the authorities in placing the respondents at the bottom of the gradation list, was sought to be assailed by the private respondents herein, by approaching the Patna High Court by preferring C.W.J.C. No.9263 of 2002. It would be relevant to mention, that the aforesaid writ petition was disposed of with, inter alia, the following directions: "In the facts and circumstances of this case, this court has no option but to quash Annexure-12 and direct the respondents authorities to proceed first by publishing the provisional gradation list in view of the directions as made above and call for objections and after considering and disposing of the same publish a final gradation list in accordance with law as laid down and after following the directions of the Supreme Court and this Court."

8. A perusal of the aforesaid directions reveals, that the authorities were required to follow the directions expressed by this Court. In order to understand the tenor of the aforesaid direction, it is relevant to record, that the Supreme Court had passed certain directions in Civil Appeal No.1606 of 1987 on 10.04.1997 (State of Bihar vs. Kaushal Kishore Singh and others). The challenge before this Court had arisen as a consequence of decision rendered by the Patna High Court while disposing of C.W.J.C. No. 686 of 1984, vide order dated 17.02.1986. Vide the above order, the High Court had identified the grievance of the parties before the High Court as under:

"...The grievance of these petitioners is that persons who had obtained less marks than them were given supply Department where they have been appointed as supply Inspectors. The petitioner say that since there was no guideline nor any norms were fixed for allotment of the department, the authorities acted arbitrarily. It is said that the petitioners having obtained higher marks should have been allotted the supply Department where they could be appointed as supply Inspectors..." And while addressing the above grievance, the High Court had directed as under: "...

9. Having considered the matter, therefore, I quash all the recommendations and subsequent appointments of Supply Inspectors made after the interim order was passed on 23rd on March 1984 and also the appointments of these petitioners. The commission will now ask for options of department from the petitioners and also from the persons whose appointments have been quashed and will thereafter re-allot departments to the affected person keeping in view their position in the merit list and the options claimed." It is only relevant to mention, that the conclusions drawn by the High Court in C.W.J.C. No. 686 of 1984 were set aside by

this Court in Civil Appeal No. 1606 of 1987. In other words, this Court had recorded the conclusion, that neither inter se merit, nor option of the candidates concerned, was relevant for the allocation of the department, consequent upon their having been selected through a common process of selection.

10. It would be relevant to mention, that in order to claim seniority on the basis of the merit determined by the BSSSB, the private respondents had approached the High Court by preferring C.W.J.C. No. 9263 of 2002 (Ashok Kumar and others vs. State of Bihar and others), as has already been narrated hereinabove. The said petition was allowed, whereupon challenge to the order passed in C.W.J.C. No. 9263 of 2002 was raised by the appellants herein before a Division Bench of the High Court, by preferring Letters Patent Appeal No. 753 of 2003 (Rajni Kant Ojha vs. State of Bihar and others). The aforesaid challenge having been declined, the appellants have approached this Court by preferring the instant appeals. The question that arises for consideration before us is, whether the High Court was justified in arriving at the conclusion that the private respondents were entitled to a determination of their seniority in the Food, Supply and Commerce Department, on the basis of their merit, in the process of selection held in furtherance of the written test conducted on 1.3.1982?

11. While the contention of the learned counsel for the respondents is, that the appellants and the private respondents having been appointed on the basis of a common selection process, they were entitled to the benefit of the merit, and on account of their being placed higher in the merit list in the selection process, they were entitled to a higher position in the seniority list.

12. Insofar as the instant aspect of the matter is concerned, learned counsel representing the private respondents have placed reliance on the Supply Inspector Cadre Recruitment Rule, 1993 (hereinafter referred to as the '1993 Rules'). For the proposition under consideration, reliance was placed on Rule 18 of the 1993 Rules, which is being extracted hereunder:

"18. SENIORITY:

(1) Seniority of direct recruit shall be decided on the basis of the merit list by the Commission as per Sub-rule (3) of Rule (13).

(2) Inter se Seniority of the persons appointed through the limited Competitive Examination shall be decided on the basis of the merit list prepared.

(3) The person appointed on the basis of the limited Competitive Examination under rule 11 shall rank senior to those of the persons appointed through direct recruitment during one transaction in the calender year."

13. It was the vehement contention of the learned counsel for the private respondents, that the mandate of Rule 18 requires the determination of inter se seniority of direct recruitments, to be determined on the basis of their merit, prepared by the BSSSB at the time of their selection. And since, the private respondents were admittedly placed higher in the merit list,

in the common selection process, they ought to be placed higher in the seniority list, in the cadre of Supply Inspectors, in the Food, Supply and Commerce Department, Bihar.

14. When confronted with the issue that Rule 18 of the 1993 Rules was applicable only to determine the inter se seniority of direct recruits, whereas the private respondents were not inducted into the service of the Food, Supply and Commerce Department as direct recruits, the contention of the learned counsel for the appellants was, that Rule 21 of the 1993 Rules, would come to the aid and assistance of the private respondents. Rule 21 aforementioned, is reproduced hereunder:

"21. All other Rules, Regulations, circulars, and Orders issued by the State Govt. shall apply mutatis mutandis for matter not covered by this rule governing the affairs of the members of this cadre." Whilst relying on Rule 21, learned counsel for the private respondents placed reliance on Government Instructions dated 26.8.1972, and invited this Court's attention to paragraphs 3(iii) thereof, which reads as under:

"(iii) Where an incumbent is transferred from one service to another on his own request, services rendered by him in the previous posts shall not count for seniority. But in case such transfer follows a policy decision taken by Government, his services in the previous post shall count for seniority." The submissions advanced at the hands of the learned counsel for the private respondents is vehemently contested by the learned counsel for the appellants. It was the submission of the learned counsel for the appellants, that the private respondents being not direct recruits, could not claim the determination of their seniority under the 1993 Rules."

15. It is also the vehement contention of the learned counsel for the appellants, that the seniority of the private respondents was liable to be determined in terms of the orders dated 21.4.1995, 31.12.1996 and 7.5.1999.

16. It was asserted, that all the private respondents were substantively appointed as Assistant Consolidation Officers in the Revenue, and Land Reforms Department, Bihar. Having been declared surplus in the said department, they were inducted into the Food, Supply and Commerce Department, Bihar on temporary basis. Their appointment could therefore not be described as direct recruitment in the Food, Supply and Commerce Department, and their appointment was only based on a policy decision taken by the State Government to accommodate them in the Food, Supply and Commerce Department, rather than to render them surplus, and therefore remaining unemployed.

17. More particularly, reliance was placed by the learned counsel for the appellants on paragraph 4 of the letter dated 21.4.1995, and paragraphs 3 of the letters dated 31.12.1996 and 7.5.1999, wherein the surplus employees holding the posts of Assistant Consolidation Officers, who were temporarily adjusted as Supply Inspectors in the Food, Supply and Commerce Department were expressly informed, that they would not be entitled to any benefit of their past service in the Revenue and Land Reforms Department. In fact, the letters of their appointment in the Food, Supply and Commerce Department were express and

categoric, to the effect that their date of joining as Supply Inspectors in the Food, Supply and Commerce Department, would be taken into consideration for assigning them seniority in the Food, Supply and Commerce Department.

18. Having given our thoughtful consideration to the rival submissions advanced at the hands of the learned counsel, we are satisfied, that the private respondents cannot claim any benefit for determination of their seniority under the 1993 rules. Rule 18 of the 1993 Rules, relied upon, could have been invoked if the rival parties were direct recruits to the same cadre in the same department. Even though, originally the appellants and the private respondents were direct recruits from a common process of selection, but they were engaged in different cadres of different departments. After the appointment of the private respondents as Assistant Consolidation Officers, in the Revenue and Land Reforms Department, they ceased to have any nexus with the Supply Inspectors appointed to the Food Supply and Commerce Department. Having been so appointed, there remained no connectivity between the two, insofar as the issue of seniority is concerned.

19. The issue of seniority only emerged when the private respondents were declared surplus from the post of Assistant Consolidation Officers in the Revenue and Land Reforms Department. At that juncture, they were temporarily accommodated as Supply Inspectors in the Food, Civil and Commerce Department, with the express condition that their seniority would be determined from the date of their joining the posts of Supply Inspectors.

20. The aforesaid condition expressed in the letters of their appointment in the Food, Supply and Commerce Department was never assailed by the private respondents and therefore has to be considered as binding on them. We are satisfied, that their inter se seniority in the Food, Supply and Commerce Department was bound to be based on the condition expressed in paragraph 4 of the letter dated 21.4.1995, and paragraphs 3 of the letters dated 31.12.1996 and 7.5.1999. Thus viewed, we have no doubt in our mind, that the seniority of the private respondents in the Food, Supply and Commerce Department would be regulated on the basis of their appointment in the said department, and not on the basis of their merit, determined by the BSSSB, at the time of their selection.

21. We are also satisfied, that the instructions dated 26.8.1972 relied upon by the learned counsel for the private respondents in conjunction with Rule 21 of the 1993 Rules, is not applicable to the facts and circumstances of the case. Normally, the above instructions will apply to persons transferred from one cadre to another, in the same department, while holding the same post. Herein, not only were the posts held by the private respondents different from the posts to which they were appointed, their transfer also envisaged their movement from one department of the Government, to another.

22. For the reasons recorded hereinabove, the instant appeals are allowed. The impugned orders of the High Court are set aside.

23. The State Government is directed to re-determine the seniority of the appellants and the private respondents based on "... the date of joining on the post of Supply Inspectors...

" The private respondents will not be entitled to seniority from "The date of joining on the post of Assistant Consolidation Officers will not create claim for seniority in the cadre of Supply Inspectors". The private respondents would therefore, not be entitled to the benefit of their position in the merit list, prepared by the BSSSB, based on which they were appointed as Assistant Consolidation Officers."

ORDER

The appeals are allowed in terms of the signed judgment, which is placed on the file. As a sequel to the above, pending applications, if any, are also disposed o