

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3532 of 1996

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1. Sursen Prasad Son of Late Umeshwari Prasad, resident of Mohalla Chand Chaura, Panchmahala, P.S. Civil Lines, District Gaya.
 2. Ganesh Yadav son of Late Bal Kishun Yadav resident of village & P.O. Sheotar, P.S. Atri, District Gaya.

.... Petitioner/s

Versus

1. The State of Bihar
2. Gaya Municipal Corporation, Gaya, through its Administrator, Gaya Nagar Nigam, Gaya.
3. Narayan Ram son of name not known to the petitioners.
4. Dwarika Ram son of name not known to the petitioners
5. Nandlal Chaudhary son of name not known to the petitioners.
6. Mahabir Ram son of name not known to the petitioners.
7. Baldevi Chaudhary son of name not known to the petitioners.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anjani Kumar Sinha

For the Respondent No. 2 : Mr. Ravindra Kumar Priyadarshi

For Respondent Nos. 3 to 7 : Mr. Sunil Kr.-2

For other Respondents : Mr. Ranjan Kumar

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

15 20-03-2015

It is submitted by the learned counsel for the petitioners that Ganesh Yadav, 2nd petitioner, died during the pendency of this writ petition.

Petitioner no. 1 Sursen Prasad was appointed as a Peon in the year 1961 whereas petitioner no. 2 was appointed in the year 1959 in the 2nd respondent Corporation. It is submitted that the service rules of the Corporation provide for promotion of Peon to the post of Clerk i.e. Class III post and though such promotion took place on 2nd May, 1995 both the petitioners were

denied the promotion but respondent nos. 3 to 7, who were juniors to them, were promoted. Challenging denial of promotion, the petitioners filed this writ petition.

Heard learned counsel for the petitioners and learned counsel for the respondents. The factual and legal position is not in dispute.

In this connection Rule 6 of the Rules for Regulating the Appointment, Duties, Discipline & Appeal of the Officers and Servants of the Patna Municipal Corporation becomes relevant. It reads :

6. "Promotion of an officer or servant of the Corporation to a higher post shall ordinarily be made according to seniority and no officer or servant of the Corporation shall be passed over unless, for reasons to be recorded in writing, the Chief Executive Officer or the Standing Committee or the Corporation, as the case may be, consider him to be unfit for promotion.

Provided that in case of promotion of Lower Division Assistant to post of Upper Division Assistants the candidate shall have to pass departmental examination conducted by the Chief Executive Officer in following papers :-

1. A paper on the Patna Municipal Corporation Act and Rules and Bye-Laws made thereunder including the Accounts Rule....100 Marks.

2. A paper on noting and drafting --- 100 Marks.

Pass marks in each paper shall be 50 percent of the total marks in each paper. "



Learned counsel for the petitioners has, in support of his submission, also placed reliance on a decision of this Court in the case of Kapildeo Prasad and four others Vs. The Patna Municipal Corporation through its Chief Executive Officer, reported in 1997(1) PLJR, 456.

The respondents have filed their counter affidavit opposing this writ petition. According to them, the minimum qualification for the post of Clerk Class III is pass in Matriculation and none of the petitioners possess that qualification.

Heard learned counsel for the petitioners and learned counsel for the respondents.

It is true that the petitioners were senior to respondent nos. 3 to 7 in the post of Peon. It is also not in dispute that the minimum qualification for promotion from the post of Peon to the post of Clerk Class III, is pass in Matriculation. Admittedly, the petitioners did not hold that qualification.

The question of following the seniority for promotion would arise only if the concerned candidates are eligible for promotion. Rule 6 of the aforesaid Rules is to the effect that whenever any provision is made for promotion of an employee to a higher post, the matter shall be strictly governed by the seniority and if the appointing authority intends to over look

the seniority of a candidate and promotes the one junior to him, the reasons therefor must be recorded.

The complaint as to overlooking a candidate would arise only when he is eligible to be promoted. If he is not eligible to be promoted, the appointing authority can bye-pass such candidate and promote the juniors. Such a consideration does not result in over looking the seniority at all. The judgment relied upon by the petitioners in the case of Kapildeo Prasad (Supra) did not deal with that aspect of the matter. The question of following the strict rule of seniority would arise only if all the candidates in the seniority list are qualified.

Therefore, this writ application is dismissed.

(L. Narasimha Reddy,CJ)

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