

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10240 of 2013

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1. Lakshmi Narayan Mandal S/O Late Nagendra Prasad Mandal R/O Mohalla-Khajpura, Deopuri, P.O.- B.V. College, Police Station- Shastrinagar, District-Patna
.... Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary Govt. Of Bihar, Patna
3. The Principle Secretary Finance Department, Govt. Of Bihar, Patna
4. The Principle Secretary Animal Husbandry And Fishery Resources Department, Govt. Of Bihar, Patna
5. The Special Secretary Animal Husbandry And Fishery Resources Department, Govt. Of Bihar, Patna
6. The Deputy Secretary Animal Husbandry And Fishery Resources Department, Govt. Of Bihar, Patna
7. The Director, Animal Husbandry Department, Govt. Of Bihar, Patna
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. R.K. Sinha,
Mr. Umesh Kumar Verma, Advocates.
For the State : Mr. Partha Sarthy, GA 4
Mr. Apurwa Kumar, AC to GA 4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 19-11-2016

Heard learned counsel for the petitioner and learned counsel for the State.

In the present writ petition, petitioner is challenging letter no. 3269 dated 27.12.2012 issued by the Deputy Secretary Animal Husbandry and Fishery Resources Department, Government of Bihar, Patna placing reliance on the letter no.7020 dated 24.12.2005 and further claim has been made that he should be allowed promotional benefits with effect from 1.1.1977 i.e. the date from which one Dr. Radhey Shyam Sharma



has been granted promotion on the post of Class I service on the direction of this Court.

As per claim of the petitioner, he has entered in the service of the State Government on 17.8.1955 as Assistant Veterinary Surgeon Class II post. Subsequently, vide letter no. 613 dated 16.1.1967 was promoted from Class II service to the Assistant Professor of Parasitology, Bihar Veterinary College, Patna temporary in the Bihar Animal Husbandry Service Class I with effect from the date of his joining until further ordered as Professor of Food Hygiene and Dairy Science in the same College with headquarters at Patna. The State Government vide memo no. 4467 dated 21.5.1985 was promoted to the special post in Class I Bihar Veterinary Service for six months in anticipation of recommendation of Bihar Public Service Commission. In the list Dr. Harisharan Sinha is first, second person is Dr. Radhey Shyam Sharma and third one is Dr. Laxmi Narayan Mandal (petitioner). Forth person is Dr. Shambhu Sharan Mishra and last person in item no.14 was Dr. Sukul Murum Thakur. Bihar Public Service Commission granted the approval for substantive promotion and in pursuance thereof petitioner was promoted substantively vide letter dated 21st November, 1985 along with 11 persons in which the name of petitioner is at sl.no.3 with effect



from 1.1.1977. Dr. Ram Raj Ram is not there in the notification of 21st May 1985 and 21st November, 1985. Later on the Government issued another Office order no.10669 dated 3.12.1987 there the date of promotion of the persons in the list were changed as the date of promotion of Radhey Shyam Sharma has been shifted to 1.2.1983, date of promotion of the present petitioner has been shifted to 1.2.1984 and on the same date another notification was issued by Government of Bihar vide memo no.10667 dated 3.12.1987. In the said notification the name of Dr.Ram Raj Ram has been shown as a first person in the cadre of Special Category of Class I service and Dr. Radhy Shyam Sharma including the petitioner have been shown to be below in the merit led to heart burning to Dr. Radhey Shyam Sharma as well as to Laxmi Narayan Mandal (petitioner). The Court issued another notification vide Memo No. 250 dated 8.1.1988 where the date of promotion of the petitioner and Radhey Shyam Sharma was again changed to 1.4.1982 in the Special Category.

This action of the Government was challenged before this Court in C.W.J.C. No. 6230 of 1989 by Dr. Radhey Shyam Sharma challenged the seniority of Dr. Ram Raj Ram. Dr. Ram Raj Ram had taken a stand that he had come in the service in



Bihar Veterinary Service through the Bihar Public Service Commission against advertisement dated 1.6.1977 against the temporary post of Special Officers, Intensive Cattle Development Block in the pay scale of Rs.1060-Rs.1580 in the Animal Husbandry Service Class I Special Category reserved for members of the scheduled caste. In the said writ petition, petitioner has taken a plea that there is no cadre of Special Officer and his entry was much subsequent to that petitioner (Radhey Shyam Sharma) and later on, notification dated 21.11.1986 was issued by the department stipulated that Bihar Animal Service Class I category shall be deemed to the basic cadre and after that another notification dated 3.12.1987 was issued by the said department purporting to prepare a gradation list of six Officers in the Bihar Anil Husbandry Service Class I (Special Category). Amongst six officers mentioned in the notification the name Dr. Ram Raj Ram was mentioned at sl. no. 1 whereas Dr. Radhey Shyam Sharma was shown at sl.no.2. In that proceeding Radhey Shaya Sharma has submitted that notification dated 21.11.1986 and 3.12.1987 were issued illegally and that too without concurrence from the Department of Personnel and Administrative Reforms and the approval of the council of the Ministers. It was further argued that for creation of



the basic cadre, approval of the Finance Department and the Cabinet was must but the same was not complied with. It was further said that Ram Raj Ram was appointed on 9.1.1978 against a post which was advertised in the Bihar Animal Husbandry Service Class I (Special Category). In fact no such service or cadre existed in the year 1978 or any time thereafter.

The issue which was framed for the decision whether Bihar Animal Husbandry Service Class I (Special Category) constitute the part of the basic cadre, during the proceeding the Animal Husbandry Department filed separate affidavit where the stand was taken that such cadre cannot be created without following due process as before of such issuance, concurrence of Personnel and Finance Department and approval of the Council of Minister was must. The Personal and Administrative Department filed the counter affidavit took the stand that Animal Husbandry Department has neither taken prior approval from the Personnel and Administrative Department nor from the Finance Department nor from the Council of Ministers before creating a cadre of Animal Husbandry Service Class I (Special Category) by the aforesaid letter dated 21.11.1986 which was under challenge by Dr. Radhay Shyam Sharma.

This Court has quoted the counter affidavit in verbatim and



held that Animal Husbandry Service Class I (Special Category) was not created properly that too to the superior to Bihar Animal Husbandry Service Class I. In such circumstances appointment of Dr. Ram Raj Ram on 9.1.1978 was deemed to be in the Bihar Animal Husbandry Service Class I in which Sr. Radhey Shyam Sharma was appointed as early as on 6.7.1966. In such circumstances the Court has held that Dr. Ram Raj Ram in no way can become senior to Dr. Radhey Shyam Sharma and accordingly the claim of Dr. Radhey Shyama Sharwas was allowed and notification dated 21.11.1986 and 3.12.1987 were quashed and directed to make necessary correction in the date of promotion of Dr. Radhey Shma Sharma.

The said order of Division Bench was finally came for consideration before Hon'ble Supreme Court in the case of Dr. Ram Raj Ram and the same was decided which has been reported in (1996) 9 SCC 178 (Dr. Ram Raj Ram v. State of Bihar and others) and the Court has considered the judgment of this Court, did not find any fault and accordingly SLP was dismissed and thereafter the Government having found no way out corrected the date of promotion of Dr. Radhey Shyam Sharma.

Government has issued notification on 13.12.1996 whereby the date of promotion of Dr. Radhey Shyam Sharma



was modified to the extent of shifting the date of promotion to 11.1.1984 and later on again the Government has issued another notification of the same date vide memo no. 6916 dated 13.12.1996 thereby modified date of his promotion to 1.1.1977.

The grievance of the petitioner is that as he has already superannuated from service there is no rivalry with Dr. Ram Raj Ram only he has claimed that as he is just below to Dr. Radhey Shyam Sharma and when he has been given the benefit from 1.1.1977 then he cannot be deprived from the same benefit as has been given to him and repeatedly he has sent representation without any result but his representation was rejected vide memo no.224 dated 19.1.2011 and memo no.3269 dated 27.12.2012 and which are under challenge before this Court.

Learned counsel for the State has taken a plea that basically Dr. Radhey Shyam Sharma was given the benefit of promotion as the post was available for him, as no second post was available for him, he cannot be given the benefit and for that chart has been attached by the State. There the position of the post and the name of person occupying seat has been mentioned. First chart is dated 1.1.1977. There neither the name of the petitioner nor the name of Dr. Radhey Shyam Sharma is there nor the name of Ram Raj Ram name is there in the list. But list dated



1.1.1978 reflects eleven posts. The name of Dr. Ram Raj Ram is there but neither the name of Dr. Radhey Shyam Sharma nor the present petitioner are there and in the list dated 1.1.1981 the name of Dr. Radhey Shyam Sharma is at sl.no.5 and below him Dr. S.K. Mukherjee and the name of the petitioner is at sl. no. 3 in the list dated 31.3.1981 and above Dr. J.J. Tigga. From the list which is submitted by the State appears that it suffers from the wrong fact. Reason is that all through in Annexurea 2, 3 and 4 the name of present petitioner was just below the name of Dr. Radhy Shyam Sahrma and between Ram Raj Ram and Laxmi Narayan Mandal there is no other person but the chart which has been submitted itself shows defects in the seniority list reason is that service of Ram Raj Ram has been brought below present petitioner and Radhey Shyam Sharma and in between two there was no other person, name of petitioner cannot below to S.K. Mukherjee and J.J. Tigga.

In such view of the matter, the document itself discloses that petitioner was just below to Radhey Shyam Sharma and judgment of this Court has been approved by Hon'ble Supreme Court. The ground that has been assigned that post is not available is not acceptable to this Court and in such view of the matter the position of the petitioner in the Animal Husbandry is



just below to Radhey Shyam Sharma as has been shown that Dr. Radhey Shyam Sharma has been given benefit of promotion from 1.7.1977. Equally petitioner cannot be deprived from the said benefit. It will not be equitable to grant him any difference of salary but petitioner cannot be deprived in the matter of granting the retiral dues. State is directed to make necessary correction and calculate the difference of retirement dues, if any, to the petitioner and the same should be paid without unnecessary delay preferably within a period of six months from the date of receipt/production of a copy of this order.

With the aforesaid observation and direction this writ application is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.12.2016
Transmission Date	NA

