

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18199 of 2008

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1. Birendra Upadhyay Son of Sri Jagdish Upadhyay Resident of Village- Mahuat, Police Station- Sonhan, District- Kaimur(Bhabua).
 2. Most. Reshma Devi, W/o Late Baban Singh, aged about 68 years Resident of Village- Sadokhar, Police Station- Chenari, District- Rohtas(Sasaram).

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Home(Police) Department, Government of Bihar, Patna.
2. The Director General of Police-Cum-Inspector General of Police, Bihar, Patna.
3. The Additional Director General of Police Armed Forces, Bihar, Patna.
4. The Deputy Inspector General of Police, Central Zone, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Singh No.4, Adv.
For the Respondent/s	:	Mr. Chittranjan Sinha, Sr. Adv, PAAG-2
		Ms. Ratna Kumari, AC to PAAG-2

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 09-05-2018

Heard learned counsel for the parties.

In the present case, the petitioners are challenging the order vide Memo No. 1346 dated 19.7.2003 by which the claim of the petitioners has been rejected giving its reason that their position in the merit list is below to the Suryakant Singh as well as he cannot compare himself with Gandhi Jee Singh and others. Further prayer has been made that the writ of mandamus should be issued directing the respondents to promote the petitioners to the post of Sub-Inspector from 1.7.1979 from the date the juniors or



similarly situated persons have been granted the benefit of promotion.

At the earliest in Bihar Police Force, there were two cadres, one for the general cadre and another for the literate and both cadres have their own seniority list and this arrangement was entirely departmental arrangement. Those who were appointed as literate constable, they would be promoted next post of Hawaldar but, in that cadre, the condition of having completed the SPC training was not essential whereas those in the general cadre, before getting promotion to the next higher post of Hawaldar was required to complete the training of SPC.

A writ application, C.W.J.C. No. 360 of 1971 (Jai Prakash Vs. State of Bihar) was filed before this Court and this Court held that both are the common cadre, they cannot be separated to each other, both cadres were merged together and an integrated merit list was prepared, the basis of seniority was the date of grant of promotion, those who have been made Hawaldar without clearance of SPC training were ranked senior to those who were made Hawaldar of general category candidate after passing the examination, were ranked junior. This practice continued from 1971 to 1980 and till 1.7.1979 the promotions were given to the next higher grade of Sub-Inspector. Those who were senior rank in



the Hawaldar were promoted earlier. In the year 1980, another writ application 2434 of 1980 (Sri Shankar Thakur Vs. State of Bihar) was filed. In that case, this Court held that the person who has cleared the SPC training would rank senior and, in pursuance thereof, the Department has issued a notification vide Memo No. 3486 dated 16.12.1983 and, accordingly, the seniority list was redrawn, ranking in seniority list was fixed on the basis of passing of SPC examination, treating the person would rank senior to those who have passed SPC examination earlier than those who would rank junior, who passed the SPC training later, that created a lot of anomalies as those who were earlier shown senior on account of being literate constable, promoted earlier as Hawaldar, could not pass the training of SPC were shown junior vice versa those who passed the SPC examination but, promoted to the post of Hawaldar later were shown senior and even those who could not be promoted to Hawaldar were senior and one of the matter was brought to the notice that one Surya Kant Singh, as he was a member of literate constable, was Hawaldar and certain persons, who rank senior to him, on account of passing the examination, were still holding the post of Constable. The person who is below in the seniority list such as Surya Kant Singh was holding the post of Sub-Inspector and those who were senior in the seniority list



were still holding the post of Constable. To remove the anomaly, they were promoted to the next higher grade as because no one ranking higher in the seniority list would remain Constable to those who ranked junior were holding the post of Hawaldar/Sub-Inspector, the cut off date was treated as 1.7.1979. So all those who have been ranking senior to Suryakant Singh in the seniority list were promoted to the next higher grade of Sub-Inspector with effect from 1.7.1979.

In the present case, the petitioner Kanhaiya Tiwary, Hansraj Singh and Baban Singh they are claiming that even though they are senior to Suryakant Singh having not been granted the benefit of post of Sub Inspector from 1.7.1979, they approached to the respondents but, could not get a favourable consideration which compelled the petitioner and all other persons to approach this Court in C.W.J.C. No. 202 of 2003 (Annexure-6) and this Court issued a direction for consideration of the representation and take a decision in accordance with law, whereafter, the present order has been passed.

In the present case, Kanhaiya Tiwary is not a party. He had filed a separate writ application before this Court being C.W.J.C. No. 4868 of 2009 (Annexure-12) unsuccessfully vide order dated 17.4.2009 which was challenged before this Court in



appeal vide L.P.A. No. 693 of 2009. In this judgment, the Court has taken into consideration that certain persons, who were junior to the Kanhaiya Tiwary, were promoted from 1.7.1979 but, this treatment was not given to Kanhaiya Tiwary and the Division Bench has mentioned the name of certain persons and, on that score, this Court has held that Kanhaiya Tiwary should be given the benefit of promotion from 1.7.1979. While considering the case of Kanhaiya Tiwary, it has been recorded that he had also passed the SPC examination training earlier and, on that score, relief has been given and he was not facing any departmental proceeding. In the present case, the petitioner no.1 Birendra Upadhyay was initially appointed as Constable on 13.11.1966 in the Bihar Military Police 2 and he passed the junior physical training course and senior physical training course i.e. JPC and SPC in the year 1975 and 1977 respectively and he was promoted as Hawaldar on 1.7.1979 and, subsequently, promoted to the post of Sub-Inspector on 15.10.1996. He has already superannuated from service from the post of Inspector BMP 2, Dehri, Rohtas. Baban Singh, petitioner no.2, was initially appointed as Constable on 1.2.1968 in the Bihar Military Police 2, he passed the JPC and SPC in the year 1975 and 1977 respectively, promoted as Hawaldar on 1.7.1979, later on promoted as Sub-Inspector on



15.10.1996. He has also superannuated from service. At the same time, Baban Singh, petitioner no.2, has died and in his place, his wife has been made as a party to the present writ application.

A supplementary counter affidavit has been filed by the State and seniority list of 1983 and 1990 has been produced before this Court on its perusal, in the list of 1983, Kanhaiya Tiwary is senior to Birendra Upadhyay and Baban Singh but, in the 1990 seniority list, Birendra Upadhyay is at serial no. 497 whereas Kanhaiya Tiwary is at 502 and Baban Singh is at 512. Admittedly, Birendra Upadhyay, the petitioner no.1, is senior to Kanhaiya Tiwary and Baban Singh is senior to Devendra Nath Singh who has been also granted the benefit of post of Sub Inspector from 1.7.1979 and this fact has been taken into consideration by the L.P.A. Bench that Devendra Nath Singh who is at serial no. 521, Ritendra Singh at serial no.545 and Laxman Pandey at 548 having been granted the benefit and those who were senior to them having been deprived. On the strength of this proposition, learned counsel for the petitioner submits that the petitioners are entitled to the benefit of promotion from 1.7.1979.

Learned counsel for the State claims that the petitioners cannot claim the equality with Gandhi Jee Singh and others, they



were granted benefit of promotion earlier on account of sports quota and the petitioners do not fall in that category.

Having given anxious consideration of the fact that the two seniority lists were prepared, Kanhaiya Tiwary in 1983 list was shown senior to Birendra Upadhayay and Baban Singh but, in the 1990 list, Birendra Upadhayay has been shown to be senior than to Kanhaiya Tiwary and Kanhaiya Tiwary admittedly has been granted benefit of promotion from 1.7.1979. So, in that circumstances, it is very much clear that Kanhaiya Tiwary, who has been granted the benefit, at least those who are senior, cannot be deprived of the same and, that too, the relief has been granted by this Court.

In that view of the matter, this Court directs the respondents to grant relief to both the petitioners from the date the juniors to them have been granted the benefit of promotion.

With the aforementioned observations and direction, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
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