

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.746 of 2017

In
Civil Writ Jurisdiction Case No.10240 of 2013

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1. The State of Bihar.
 2. The Chief Secretary, Govt. of Bihar, Patna.
 3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
 4. The Principal Secretary, Animal Husbandry and Fishery Resources Department, Govt. of Bihar, Patna.
 5. The Deputy Secretary, Animal Husbandry and Fishery Resources Department, Govt. of Bihar, Patna.
 6. The Director, Animal Husbandry Department, Government of Bihar, Patna.
 7. Special Secretary, Animal Husbandry and Fishery Resources Department, Govt. of Bihar, Patna.

... .. Appellant/s

Versus

Lakshmi Narayan Mandal, son of Late Nagendra Prasad Mandal, resident of mohalla – Khajpura, Deopuri, P.O. - B.V. College, P.S. - Shastrinagar, District – Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Utsav Kumar
For the Respondent/s : Mr. Umesh Kumar Verma

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 20-06-2018

Writ Application of the private respondent was allowed by the learned Single Judge vide his order dated 19.11.2016. He assailed the decision dated 27.12.2012 issued under the signature of Deputy Secretary, Animal Husbandry and Fishery Resources Department, Govt. of Bihar by which his



claim for grant of promotion on the post of Class I service similar to one Dr. Radhey Shyam Sharma be considered and granted. Dr. Radhey Shyam Sharma was granted that benefit by the State Government with effect from 1.1.1977 and there is a long history of litigation behind grant of benefit to Dr. Radhey Shyam Sharma with one of his rival then Dr. Ram Raj Ram.

The matter relating to seniority travelled right up till the Hon'ble Apex Court and since the seniority which Dr. Ram Raj Ram was claiming or was eyeing was not granted to him, therefore, Dr. Radhey Shyam Sharma, being senior in service, came to be given the benefit of promotion initially from 11.01.1984 but later on it was modified to 01.01.1977.

The reason for grievance of the private respondent before the Writ Court was that there was deliberate discrimination. He was placed immediately below Dr. Radhey Shyam Sharma and he too was entitled to the benefit based on his seniority. There was no reason whatsoever to discriminate him vis-a-vis Dr. Radhey Shyam Sharma.



A plea was also taken that no second post was available, which could be offered to the private respondent. However, the learned Single Judge on perusal of the evidence and material had this to say ;

“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.”

The finding of facts being what they are and obviously since it was a deliberate effort made on behalf of the department to discriminate one employee vis-a-vis the other in matter of grant of benefit, coupled with the fact that the learned Single Judge only notionally allowed the benefit of promotion from the same day as Dr. Radhey Shyam Sharma and only revision in the pension etc. for the purpose of post-retiral dues, there is no occasion as to why the order can be said to be erroneous or bad in law.

We have heard learned counsel for the State. Nothing glaring has emerged from the order and decision of the learned Single Judge, either in relation to the facts or the legal questions. In fact, the finding establishes that there was violation of Articles 14 and 16 of the Constitution of India. Therefore, the direction given by the learned Single Judge to bring the private respondent at par in relation to the promotional benefit with Dr. Radhey Shyam Sharma cannot be said to be erroneous.



We do not find any infirmity in the decision of the learned Single Judge which requires rectification. Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

sk/Ragini

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