

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 566 of 2022

In

Civil Writ Jurisdiction Case No.127 of 2020

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Rishi Raj son of Late Harish Chandra Sinha, resident of Flat No. 401, Block A-Arpana Mansion, Tilak Nagar, Rukanpura, P.S.-Rupaspur, District-Patna, Pin Code-800 014.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Energy Department, Bihar, Patna.
2. Bihar State Power (Holding) Company Limited through the General Manager, Human Resource and Administration.
3. Chairman-cum-Managing Director, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Patna.
4. Managing Director, Bihar State Power Transmission Company Limited, Vidyut Bhawan, Patna.
5. General Manager, Human Resource and Administration, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Patna.
6. Deputy General Manager, Human Resource and Administration, Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Patna.

... .. Respondent/s

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AAppearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate

For the Respondent/s : Mr. Y. P. Sinha, AAG-7

Mr. Anand Kr. Jha, Advocate

Mr. Ashok K. Karna, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 26-11-2024

The appellant is aggrieved with the impugned judgment of the learned Single Judge which declined grant of *inter-se* seniority in accordance with the guidelines regulating such seniority between direct recruits and promotees. The claim of the appellant was declined by the learned Single Judge on the ground of delay and laches and non-impleadment of affected parties; who continued as seniors of the appellant when the issue was alive before this Court and even before.

2. On brief facts, it is to be noticed that the appellant was appointed as an Accounts Clerk on compassionate grounds, on the death of his father. Subsequently, the respondent, the Bihar State Power (Holding) Company Limited (hereinafter referred to as 'respondent-company') brought out two advertisement Notices bearing Nos.4 of 2007 and 5 of 2007 respectively for promotion and direct recruitment. The petitioner appeared in both the selection process, first in the internal process and then in the direct recruitment, which is termed as external. Relying on the dismal performance of the petitioner in the



written test, his promotion under the internal recruitment process against the 2% quota, was declined. The petitioner challenged the same and obtained an order directing promotion to the post forthwith by a learned Single Judge of this Court. An appeal filed by the respondent-company, stood rejected after which the appellant was appointed to the post. In the meanwhile, years had passed and the appellant was assigned seniority below that of the direct recruits; when the rule provided for *inter-se* seniority to be determined, with the internal candidates being given seniority above the external candidates when such selection and appointment is made under the same transaction.

3. The learned Counsel appearing for the petitioner would contend that the petitioner was not at fault and has always agitated his cause diligently and there was no reason to find delay and laches on his part. The petitioner's Counsel referred to the minutes of the respondent-company itself, as enclosed in Annexure-7 series, dated as early as on 15.12.2009, wherein the two internal candidates including the petitioner, who had applied for the post of Assistant Electrical Engineer were found to be eligible for



consideration, without putting a rider of minimum qualifying marks.

4. Despite the recommendation made, the internal candidates were not promoted and this petitioner was made aware of the recommendation only later and he immediately approached this Court with a writ petition which was disposed of by Annexure-8 directing consideration. The Board, by its office order dated 16.01.2012, declared both the petitioners unfit for appointment which was challenged in another writ petition, in which Annexure-11 judgment dated 08.01.2013 was passed directing appointment to the post forthwith.

5. Despite this, there was no appointment made and only after a contempt case was filed, Annexure-14 appointment order was issued on 04.11.2015. By that time, the others were treated as seniors and hence, the appellant made a representation dated 20.06.2017, produced along with Annexure-18. It is the case of the appellant that it was not due to his fault that he was not appointed at the time when the direct recruits were appointed; despite he having applied under a selection by promotion which was in pursuance of



the very same transaction in the year 2007. It is also submitted that in assigning seniority, none others would be affected; if it is done notionally.

6. We also heard the learned Counsel appearing for the respondent-company who sought to sustain the order impugned.

7. The rule regarding *inter-se* seniority is extracted; from clause 1 (क) as available in Annexure-25 of the writ petition, in paragraph 7 of the judgment. The rule indicates that when workers are recruited by promotion and direct recruitment, simultaneously, the promoted workers would get preference over the directly recruited workers, with respect to seniority. The note also defines the word 'simultaneously' as 'in one transaction'; which word 'transaction' has further been explained as, the decision determining the post to be filled up by direct recruitment and promotion. The procedural delays for making actual appointments would also not efface the seniority which is conferred on the promotees, if the decision regarding filling up of vacancies, on direct recruitment and promotion, has been taken on the same date.



8. Admittedly, both the notifications were issued in 2007 pursuant to a single decision which makes the appointments to be under the same transaction and the promotees definitely would be assigned seniority above the direct recruits. In the present case, admittedly, despite the note pointed out by the appellant from Annexure-7, the observations therein, of consideration for promotion without putting a rider of minimum qualifying marks, was not accepted by the appointing authority. The appellants were not appointed and the direct recruits were appointed in the year 2009. At the time of appointment of the direct recruits, the appellant did not raise any challenge.

9. It was in 2011, after two years, that the appellant along with another similarly situated person, approached this Court *vide* C.W.J.C. No. 4397 of 2011 which stood disposed of on 02.12.2011. It has to be noticed from the judgment in the said case produced at Annexure-8, even then it was not disputed that the petitioner did not qualify for CLT and other tests against the internal advertisement of the Bihar State Electricity Board, which was the predecessor in interest of the respondent-company. The Counsel appearing



for the respondent-Board in the writ petition had submitted that the process of selection would be completed and the petitioners interviewed and a final decision taken. The writ petition was disposed of directing completion of the selection process of the petitioners and to take a final decision in accordance with law.

10. The Board passed an order dated 16.01.2012 declaring both the writ petitioners unfit for the post of Assistant Electrical Engineer/Assistant Executive Engineer, which was challenged by both the petitioners in C.W.J.C. No. 18382 of 2011. It was specifically contended by the petitioners that no condition of written test or interview was provided in Employment Notice No.04 of 2007, which was to fill up the 2% posts reserved for under-employed; meaning those who are employed in the Board, the internal candidates aspiring for promotion as distinguished from direct recruitment. The process of selection entrusted to the National Power Training Institute, Faridabad, for direct recruitment of Assistant Electrical Engineer and Assistant Executive Engineer, according to the petitioners, were not applicable to the internal promotions and the performance of



the petitioners in the test conducted by the NPTI, Faridabad, was inconsequential.

11. The learned Single Judge, who considered C.W.J.C. No. 18382 of 2011 found that there is no question of clubbing of the Notices issued as 04 of 2007 and 05 of 2007, which was for internal promotion and external direct recruitment. As far as Notice No.04 of 2007 is concerned, the selection of the petitioners was to be merely considered on the basis of interview; especially when the petitioners were the only two eligible candidates for the available vacancies. The petitioners having obtained 30% marks was eligible for appointment and finding also that the opinion of the Advisor-cum-Additional Chief Secretary of the Board, that no minimum marks has been fixed as eligible criteria was approved; the petitioners were directed to be appointed to the higher post. This should have normally granted the appellant herein *inter-se* seniority on the basis of the rule.

12. It is admitted by the petitioner that only after an appeal filed by the Board was rejected and a contempt case was filed that the petitioners were appointed, which appointment was as per Annxure-14. The L.P.A. filed was



dismissed by Annexure 13 judgment on 21.07.2015 and the appointment was made by Annexure-14 dated 04.11.2015. It was categorically specified in the appointment order (Ann:14) as clause 6 that '*inter-se seniority will be effective from the date of joining on the post. No end benefit before the date of joining will be entertained*' (sic). The appellant joined without demur and continued in the promoted post while the direct recruits admittedly appointed in the year 2009, continued as seniors. A representation was submitted to the respondent-company by Annexure-18, after about 3 years from the appointment, on 22.08.2018. And then the writ petition was filed in the year 2020; which led to the impugned judgment.

13. True, the *inter-se* seniority between direct recruits and promotees is to be determined on the basis of the rule, when appointments are made simultaneously pursuant to the same transaction, when the promotees are to be granted seniority over the direct recruits. This rule is applicable irrespective of the time when appointments are made and normally when the appointment of the petitioner was made, under Notification No.04 of 2007, it ought to have



conferred *inter-se* seniority on the appellant as a promotee above the direct recruits. However, the order issued dated 04.11.2015 clearly indicated that *inter-se* seniority will be effective only from the date of joining on the post. This restriction on the *inter-se* seniority is clearly against the rule; which ought to have been challenged by the appellant.

14. The appellant before the learned Single Judge had also argued that the appellant was not in a bargaining position when the offer of appointment was granted and he had no option other than to join, as per the appointment letter. However, this cannot take away his right to challenge the order of appointment, after his joining, challenging the determination of *inter-se* seniority, which was clearly against the rule. The appellant, but for filing a representation after about 3 years, did nothing. The appellant also approached this Court for the first time only by C.W.J.C. No. 127 of 2020, 5 years after the appointment of the petitioner and more than 11 years from the date of appointment of the direct recruits.

15. We find that the learned Single Judge was perfectly right in having found that the appellants claim is



stale for reason of having slept over his rights. The learned Single Judge has also rightly relied on the decision of Hon'ble Supreme Court in ***Chennai Metropolitan Water Supply and Sewarage Board v. T.T. Murali Babu*** reported in ***(2014) 4 SCC 108***.

16. We also find absolutely no reason to accept the contention of the appellant's counsel that none will be prejudiced by granting him seniority. We find that the non-impleadment of the direct recruits appointed in 2009 would stand against the petitioner; which ground was also a reason for the dismissal of the writ petition. The learned Single Judge had found that 83 persons were directly recruited as on 2009. The petitioner could have sought for consideration to be appointed retrospectively, even notionally, with effect from 2007 or atleast 2009; when the direct recruits were appointed, when the writ petition filed against the refusal to promote, was allowed directing appointment forthwith. The petitioner also could have independently urged that claim in the contempt case filed or challenged the specific clause in the appointment letter; which regulated his *inter-se* seniority from the date of joining, even after joining the higher post. In



either of these cases there would have been no requirement to implead the direct recruits, since the petitioners claim was independent, in so far as his right to be promoted under Notification No. 4/2007, as an internal candidate and his claim for *inter-se* seniority was in accordance with the rule position and none directly recruited could have claimed prejudice. But when he approached this Court after 11 years of the appointment of direct recruits; and more importantly five years of his joining the promoted post, the petitioner ought to have impleaded those who had continued with settled seniority over him for long years.

17. We find the appeal to be devoid of merit and dismiss the same, leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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