

Equivalent Citation: AIR1984Pat323

**IN THE HIGH COURT OF PATNA**

**FULL BENCH**

Civil Writ Jurn. Case No. 149 of 1979

Decided On: 09.07.1984

Appellants:**Yogendra Das and Ors.**

**Vs.**

Respondent:**State of Bihar and Ors.**

Constitution of India- Article 311

Transfer and reversion of employees

Issue is the seniority of those employees who have been promoted to the UDC (Upper division clerk) from the LDC (lower division) in pursuant to their passing the departmental examination.

The matter is referred to three judge bench.

The decision of Tripit Narayan Jha vs. State of Bihar in civil writ jurisdiction case no- 1099/1978 is overruled.

**The decision of Umesh Chandra Das vs. State of Bihar** : civil writ jurisdiction case no-1092/1973 was affirmed.

[Para-8 and 9]

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Appellants:**Yogendra Das and Ors.**  
**Vs.**  
Respondent:**State of Bihar and Ors.**

**Hon'ble Judges/Coram:**

*S.S. Sandhawalia , C.J., Udai Sinha and S.S. Hasan , JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Rajeshwar Dayal and Rakeshwar Dayal, Advs.*

*For Respondents/Defendant: J.P. Shukla, Govt. Pleader No. 2*

**JUDGMENT**

**S.S. Sandhawalia, C.J.**

**1.** A headlong conflict on precedent pertaining to the interpretation of the circular of the Finance Department dated the 24th August, 1955, for promotion of Lower Division Assistants to the Upper Division and the determination of their seniority inter se has necessitated this reference to the Full Bench.

The 6 petitioners claim to have been promoted as Upper Division Clerks consequent upon their passing the departmental examination of accounts in accordance with the circular of the State Government No. G/C-1-1046/61-257 dated (sic) March, 1961 (Annexure '2'). It is averred that as a consequence of the promotion of the petitioners as temporary Upper Division Clerks, who were junior to the petitioners and others were reverted on the (sic). Aggrieved by the reversion, the said persons had preferred Civil Writ Jurisdiction Cases Nos. 4125 of 1978 and 4351 of 1978, in which these petitioners were also made respondents. The High Court, in the said writ petitions stayed the reversions, but, it is the claim of the writ petitioners that this in no way affected the order of their promotion as Upper Division Clerks. To the chagrin of the writ petitioners Respondent No. 2 is stated to have transferred the writ petitioners to different places as Lower Division Clerks, allegedly, in violation of the principles of natural justice and Article 311 of the Constitution. The petitioners pray that the impugned orders of their transfer and reversion to the Lower Division Clerk be quashed.

**3.** On the 25th January, 1979, the Motion Bench directed to maintain status quo as regards the reversion and transfer of the writ petitioners herein, and, when the matter came up for final hearing on the 30th April, 1984, it was directed that the case be placed for hearing before a larger Bench, along with Civil Writ Jurisdiction Case No. 4351 of 1978 and Civil Writ Jurisdiction Case No. 4125 of 1978, in which identical questions had arisen for determination. In the latter set of cases, the referring Division Bench noticed a direct conflict in Civil Writ Jurisdiction Case No. 1092 of

1973 (Umesh Chandra Das v. State of Bihar) and Civil Writ Jurn. Case No. 1099 of 1978 (Tripit Narayan Jha v. State of Bihar), with regard to the interpretation of the impugned circular of the Finance Department. To resolve the same the matter was referred to a Full Bench.

**4.** It will appear that Civil Writ Jurn. Case No. 4125 of 1978 came to be dismissed in default for non-prosecution. Learned Counsel for the petitioners in Civil Writ Jurn. Case No. 4351 of 1978 prayed for the withdrawal of the said writ application, apparently, because of the passage of time and the same was accordingly dismissed as withdrawn. The present writ petition, in this set of cases thus alone survives for adjudication.

**5.** Learned Counsel for the parties were wholly agreed before us that the solitary issue herein is a narrow one with regard to the correctness or otherwise of the divergent views expressed in the judgments of this Court in the case of. Umesh Chandra Das (C.W. J. C. No. 3092 of 1973), and the case of Tripit Narayan Jha (C. W. J. C. No. 1099 of 1978).

**6.** Now it is common ground that the matter of the promotion of Lower Division Assistants to the Upper Division and the issue of their seniority inter se is not governed by any statutory rule and has to be determined entirely on the basis of the Government circular dated the 24th August, 1955. This is in the following terms:--

"The undersigned is directed to refer to Memo No. E2-205/51-10551-F, and III-E2-2011/54-8326-F dated the 17th October, 1952, and the 28th July, 1954, respectively, in which it was laid down that substantive promotion to Upper Division posts involving supersession of meritorious Lower Division Assistants, who had not passed the Upper Division examination, should be deferred till the publication of the results of the Upper Division examination held in May, 1954. The results of this examination were published on the 30th September, 1954. It has now been decided that the permanent vacancies in the Upper Division may henceforth be filled on a substantive basis, even though it may involve the supersession of senior Lower Division Assistants, who have not passed the Upper Division examination.

**2.** Some of the assistants who were officiating in the Upper Division without passing the Upper Division examination had to revert to the Lower Division on account of their failure to pass the last Upper Division examination. Such an assistant will be eligible for promotion to the Upper Division, if he subsequently passes the Upper Division examination.

**3.** If there is a vacancy in the Upper Division such an assistant will, if he is otherwise fit for promotion, be promoted to the Upper Division against this vacancy. But, if there is no existing vacancy and an assistant Junior to him in the Lower Division has been officiating from an earlier date, after having passed the Upper Division examination, the question arises whether the junior assistant will be liable to be reverted to the lower division in order to set free a vacancy in the Upper Division for the senior assistant. After a careful consideration of all aspects of the matter, it has been decided that the junior assistant will be liable to reversion to the Lower Division> if the senior assistant is successful at an Upper Division examination held within two years following the date on which the senior assistant was temporarily superseded by the junior assistant. After two years the junior assistant will

not be liable to be reverted on ground that a superseded senior assistant had since passed the Upper Division examination and was awaiting the occurrence of a vacancy.

This principle will apply to all future cases of officiating or temporary promotion to the Upper Division.

**4.** Promotion to the Upper Division will continue to be governed strictly by the principles enunciated in Rule 2-4 of the Secretariat Instructions as amended by Correction Slip No. 38."

**7.** The question of the true interpretation of the somewhat obscure terms of the aforesaid circular had come up earlier in 'Umesh Chandra Das' case (supra). The Division Bench presided over by S. Sarwar Ali, J., considered the matter in considerable depth. A reference was made to earlier Division Bench judgment in the case of Dineshwar Pra-sad v. State of Bihar (Civil Writ Jurn. Case No. 117 of 1969), decided on the 28th April, 1972. Thereafter it was concluded as under:--

"If the reversion of the petitioners was not necessary then in view of the decision in Dineshwar Prasad's case (supra), it has to be held that the petitioners would be senior to those subsequently promoted assistants. In such a situation it is obvious that the petitioners would be senior to even respondents 3 to 11. But, if factually, the number of vacancies of U. D. Assistants was such as to require reversion of the petitioners and it was by mistake only that the reversion of the petitioners had not taken place, the petitioners cannot claim to be senior to the subsequently promoted assistants. In that case, their continuance as U. D. Assistants would not clothe them with like right to be reckoned as senior to the Lower Division Assistants who having passed final accounts examination within two years of the promotion of the petitioners were promoted as the Upper Division Assistants. In such a case the "position would be that they could be treated to have been legally promoted only when the vacancy or vacancies occurred."

**8.** Now, it appears that later, the identical question came up before another Division Bench in Tripit Narayan Jha's case (supra). Therein it was observed almost as a dictum that in case a Lower Division Assistant passes the final examination in Accounts earlier, he would ipso facto rank senior to all those doing so subsequently, irrespective of their seniority. Now it is apparent from the very brief judgment recorded that even the circular of the Finance Department, which, admittedly, is the Magna Charta for the determination of this question, was not even referred to, far from the same being either quoted or its being closely interpreted. Learned Counsel for the parties were apparently a remiss in not drawing the pointed attention of the Bench to the fact that the issue had to turn primarily and indeed wholly on the particular paragraphs of the said circular and its true interpretation and not merely on the fortuitous pleadings of the parties. Again the earlier judgment of the Division Bench in Dineshwar Prasad's case (supra) and Umesh Chandra Das' case (supra), which squarely, covered the field were not even referred to far from being considered, The issue was patently taken as one of first impression, under a misapprehension that the point was res integra. It was consequently decided somewhat summarily, no reasoning having been given, nor any principle or precedent cited. The observation in Tripit Narayan Jha's case (supra) is thus in plain conflict with the earlier reasoned views in Umesh Chandra Das's case (supra), which in turn rested on the decision in Dineshwar Prasad's case (supra). Learned Counsel in

attempting to support the judgment in Tripit Narayan Jha's case (supra) found great difficulty in sustaining its view. With the greatest respect, therefore, we are inclined to hold that the decision in Tripit Narayan Jha's case running plainly counter to the earlier precedent is not sound law and is hereby overruled. The observations and the views in Umesh Chandra Das's case (supra) are hereby affirmed.

**9 .** Now once the legal issue aforesaid is settled, we find herein also that the pleadings and the stand of the parties are somewhat brief and obscure. As already noticed, the merits of the case have been rendered somewhat academic, because the primary issue sought to be challenged was the transfer and the reversion of the writ petitioners, which were stayed by way of interim relief. Having clarified the law, we, therefore, direct that the respondents should decide afresh the question of seniority inter se in accordance with the rule laid down in Umesh Chandra Das's case (supra).

**10.** The writ petition is disposed of in these terms. There will be no order as to costs.

**Udai Sinha, J.**

**11.** I agree.

**S.S. Hasan, J.**

**12.** I agree.

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