

BALKRISHNA PANDEY
v.
STATE OF BIHAR AND ORS.

DECEMBER 14, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law—Right to promotion—Deputationist—Not entitled even though the post held by him is made permanent—Promotion of permanent incumbent—Held valid—Difference between permanent post and permanent incumbent.

Appellant was a Junior Statistical Supervisor in the Department of Statistics and he was appointed to the temporary post of Senior Statistical Assistant in the Directorate of Special Employment and Planning. First respondent was promoted and appointed to the said post when it was made permanent. Appellant was reverted to his parent Department.

Appellant challenged the reversion by filing a Writ Petition, which was dismissed by the High Court and the appellant has preferred the present appeal. However after reversion, appellant was promoted as Senior Statistical Assistant in his parent Department.

It was contended on behalf of the appellant that appointment of the appellant was by selection and therefore his appointment must be deemed to be on regular basis in the Directorate of Special Employment and Planning. And once the post was made permanent, the appellant must be deemed to have been absorbed to the permanent post and he was entitled to be considered for promotion. It was further contended that the fifth respondent was promoted twice overlooking the claim of the appellant, and therefore appellant's reversion was bad in law.

Disposing of the appeal, this Court

HELD : 1. An employee on temporary promotion would continue to hold the lien in his substantial post until it is duly terminated. He cannot hold two substantive posts simultaneously. [672-C]

2. Appellant was appointed to a temporary post on deputation in the Department of Special Employment and Planning and his name was

A rightly not shown in the seniority list of that Department. He continued to hold his lien and seniority as Junior Statistical Supervisor in the parent department. On reversion, he came back to his post of Junior Statistical Supervisor and in his own right he was promoted as Senior Statistical Assistant. [672-D]

B 3. There is no illegality in the promotion of the fifth respondent by the State, since the fifth respondent happened to be permanent incumbent in the Directorate of Special Employment and Planning his promotion as Senior Statistical Assistant was not bad in law. [671-G]

C 4. Although the appellant continued in Directorate of Special Employment and Planning due to interim direction granted by both the High Court and this Court, he must be deemed to have continued to hold his lien as a Senior Statistical Assistant in the parent Department and he would be entitled to all the rights and to further promotion if any, in that department according to rules. [672-F-G]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2927 of 1979.

From the Judgment and Order dated 13.4.79 of the Patna High Court in C.W.J.C. No. 754 of 1979.

E L.R. Singh for the Appellant.

D. Goburdhan for the Respondents.

The following Order of the Court was delivered :

F This appeal by special leave arises from the order of Patna High Court made in C.W.J.C. No. 754/79 on 13.4.1979. The admitted facts are that the appellant was appointed as a Junior Statistical Supervisor in the Department of Statistics. When a temporary post of Sr. Statistical Assistant fell vacant in the Directorate of Special Employment and Planning (for short 'S.E.P.'), it would appear that on an application made by him and forwarded by the parent department, the appellant came to be appointed to the temporary post as Senior Statistical Assistant by order dated 12.7.1973 and he joined the post on 1.9.1973. It would appear that the post was made permanent on 1.1.1978. On 16.8.1977, when the gradation list of the Senior Statistical Assistants (for short, "S.S.As.") in the Directorate of

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S.E.P. was prepared, the name of the appellant was not shown therein. The appellant thereon made a representation dated 26.9.1977. By proceedings dated September 28, 1977, Arun Prasad Mandal, the fifth respondent herein, came to be promoted initially as S.S.A. followed by further promotion as Senior Research Assistant (for short, "S.R.A."). The appellant was reverted to the parent Department by proceedings dated 23.2.1979. The appellant challenged the reversion and the High Court dismissed the writ petition as stated earlier. After reversion, he was promoted as S.S.A. in the parent department. These facts are not in dispute.

Shri L.R. Singh, the learned counsel appearing for the appellant, contended that since the order of appointment shows that he was appointed by selection, in other words, by consideration of comparative merits according to the procedure, his appointment must be deemed to be on regular basis in the Directorate of S.E.P. Though initially the post was temporary, once it was made permanent on 1.1.1978, he must be deemed to have been absorbed to the permanent post and thereby he is entitled to be considered for the post of promotion as a S.S.A. Instead of considering his case, the fifth respondent came to be promoted twice overlooking the claim of the appellant for S.R.A.; and, therefore, the reversion is bad in law.

In the counter-affidavit dated 13.8.1979 filed by the State it was mentioned that the appellant came to be appointed as a S.S.A. to a temporary post on deputation; his lien as a Junior Statistical Supervisor in the parent department, namely, statistical Department, continued to exist; on his reversion to the parent department he was promoted in his own right as S.S.A.; the fifth respondent had his initial appointment in the Directorate of S.E.P. and as he is a permanent incumbent to the post, he came to be promoted in his own right. When the post of S.S.A. fell vacant, he being the permanent incumbent of the department came to be promoted to the said post. Since the appellant was only a deputationist, he cannot claim his right to promotion in the Directorate of S.E.P. In his own right he had his promotion as S.S.A. in his parent department. Therefore, there is no illegality in the action taken by the Government. The High Court, therefore, was right in dismissing the writ petition.

The question, therefore, is whether the promotion of the fifth respondent as S.S.A. is valid in law. It is rather unfortunate that despite filing of the counter affidavit as early as on 13.8.1979, no rejoinder-affidavit was

- A filed nor any unimpeachable documentary evidence has been placed on record to establish the nature of his appointment as S.S.A. in the Directorate of S.E.P. In that state of things, we are necessarily driven to accept the uncontroverted averments made by the State in the counter affidavit. It gets corroboration from the seniority list prepared and maintained by the parent department of the appellant, namely, Statistical Department.
- B Therein it was shown in item 9 that the appellant was continuing in the Directorate of S.E.P. on deputation.

- It is settled law that an employee on temporary promotion would continue to hold the lien in his substantive post until it is duly terminated.
- C He cannot hold two substantive posts at the same time. Once it is concluded that the appellant is a deputationist working in the Directorate of S.E.P., his name was rightly not shown in the seniority list of that Department. Therefore, he continued to hold his lien and seniority as Junior Statistical Supervisor in the parent department. On reversion, he came
- D back to his post as a Junior Statistical Supervisor and in his own right he was promoted as S.S.A. Since the fifth respondent happened to be a permanent incumbent in the Directorate of S.E.P., he was promoted as S.S.A. When further vacancy in the higher ladder, namely, S.R.A., had fallen vacant, he was considered and promoted in that vacancy. Under those circumstances, the High Court is well justified in refusing to interfere with the matter and we do not find any justification warranting interference.
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- We are informed that pursuant to the interim directions granted by the High Court and also by this Court the appellant has continued to work in the Directorate of S.E.P. Though he was continuing in the Department, he must be deemed to have continued to hold his lien as a Senior Statistical Assistant in the parent department, namely, Statistical Department and he will be entitled to all the rights and to further promotion, if any, in that department according to rules.
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The appeal is accordingly disposed of with the above observations. No costs.