

b0

C.A.No. 7227 OF 2001

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7227 OF 2001

RAJ KUMAR YADAV.....APPELLANT(S)

VERSUS

STATE OF BIHAR & ORS.....RESPONDENT(S)

O R D E R

The challenge in this appeal is to the legality of the judgment rendered by a Division Bench of the Patna High Court. The starting point of the dispute seems to be the promotion given to the appellant, Raj Kumar Yadav on an out of turn basis. Such out of turn promotion was questioned by Shambhu Shankar Thakur, Respondent No.7 in the present appeal. According to him by wrongly applying Rule 660 C of the Bihar Police Manual, 1978 (in short, 'the Manual') the promotion was given and out of turn promotion is not sanctioned in law. Reference was made to several other Rules, for example, Rule 645, Rule 646 and Rule 724A of the Manual read with Part 2 of Appendix 71. A learned Single Judge dismissed the Writ Petition filed holding that the case of out of turn promotion from Inspector to Dy.S.P.

-2-

was also covered by Rule 660C. The matter was taken in a Letters Patent Appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna. The stand taken before the learned Single Judge was reiterated. By the impugned judgements, the Division Bench accepted the plea advanced by Shambhu Shankar Thakur. The High Court took the view that not only was the promotion from Inspector to Dy.S.P. irregular, similar was the position with regard to appellants' promotion from Sub-Inspector to Inspector.

Learned Counsel appearing for the appellant submitted that the High Court was not correct in holding that Rule 660C has no application to the facts of the case. Out of turn promotions are intended to be incentives to people who have excelled in the enumerated categories. With reference to the amended Rule 660C, it was pointed out that the earlier position which required a cumulative consideration of criteria was not present in the present Rule. It was also submitted that de hors the rules the State Government has the sovereign power to give out of turn promotion in appreciation of excellence. It was further submitted that the State Government and the Bihar Public Service Commission (in short, 'the Commission') accepted the position before the High Court that the out of turn promotion given to the present

-3-

appellant was in accordance with the Rules. Strangely before this Court, a different stand has been adopted by the State Government.

In response, Mr. B.B. Singh, learned Counsel appearing for the State of Bihar submitted that after promulgation of the Bihar Police Recruitment Rules, 1953 (in short, 'Recruitment Rules'), the provisions in the Manual which were framed under Section 7 and 12 of the Police Act, 1861 (in short, the 'Police Act') were rendered irrelevant so far as they were repugnant to the specific provisions made in the Recruitment Rules. In any event, the Manual does not have statutory force and at the most it is a compilation of administrative instructions. It was pointed out that a bare reading of the scheme of the Rules in the Manual shows that Rule 660C relates only to out of turn promotions from Sub-Inspector to Inspector and not to a higher post like Dy.S.P. For the purpose of giving out of turn promotion of Sub-Inspector to Inspector, the Selection Committee is headed by the Inspector General of Police. On the contrary, for promotions to the higher post like Dy. S.P., the Departmental Promotion Committee (in short, 'the DPC') makes the recommendation which may or may not be accepted by the State Government and the Chairman of the Commission is a party to this Selection Committee. That being so, it was submitted that impugned judgement of the High Court does not need any interference.

-4-

Learned Counsel appearing for the respondent-Shambhu Shankar Thakur submitted that the High Court on analysis of the relevant rules has come to the correct conclusion about the interpretation of Rule 660C and the modalities to be adopted for promotion from Inspector to Dy. S.P. Though questions of substantial importance have been raised, we find that ultimately the question is one of seniority of the appellant vis-a-vis Shambhu Shankar Thakur. It is on record th

at in the meantime, he (Shambhu Shankar Thakur) has been promoted as Dy.S.P. In the fitness of things, therefore, the promotion which was given to the appellant as Dy.S.P. need not be disturbed while clarifying the position that as Dy.S.P. Shambhu Shankar Thakur will rank senior to the appellant. On the peculiar facts of the case we are giving this direction leaving the questions of law raised by the parties open to be decided in appropriate cases. The appeal is disposed of accordingly.

No order as to costs.

.....J.
(ARIJIT PASAYAT)

.....J.
(C.K.THAKKER)

NEW DELHI;
SEPTEMBER 22, 2004
ITEM NO.102

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
Record of Proceedings

Civil Appeal No.7227 of 2001

Raj Kumar Yadav Appellant (s)

VERSUS

State of Bihar & Ors. Respondent(s)

(With prayer for interim relief)

Date : 22/9/2004 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant (s) Mr.P.S.Mishra, Sr.Adv.
Mr.G.P.Singh, Sr.Adv.
Mr.Rakesh K. Khanna, Adv.
Mr. Thatagat Harshvardhan, Adv.
Mrs. Ritu Jalali, Adv.
Mr.S.Chandra Shekhar, Adv.
Mr. Manu Shanker Mishra, Adv.

For Respondent (s) Mr.S.Wasim A.Qadri, Adv.
Mr. Ravi Prakash, Adv.
Mr. Chandra Prakash, Adv.
Mr. Mohd. Saud, adv.
Mr. L.R.Singh, Adv.

Mr.Navin Prakash, Adv.
Mr. G.Singh, Adv.
Mr. Anurag Sharma, Adv.
Mr. Rituraj Biswas, Adv.

Mr.B.B.Singh, Adv.

UPON hearing counsel, the Court made the following
O R D E R

The Appeal is disposed of in terms of the signed order.

No order as to costs.

(SUKHBIR PAUL KAUR)

COURT MASTER

((VIJAY AGGARWAL)

COURT MASTER

(Signed Order is placed on the file)