

VINAY KUMAR VERMA AND OTHERS

v.

THE STATE OF BIHAR AND OTHERS

APRIL 6, 1990

[KULDIP SINGH AND V. RAMASWAMI, JJ.]

Bihar Engineering Service Rules, 1939: Rule 4—Cadre of District Engineers created by executive order—Merger of with statutory cadre of Executive Engineers—Validity of.

Rule 4 of the Bihar Engineering Service Rules, 1939 provided for recruitment to the cadre of Executive Engineers in the Bihar Public Works Department by (i) direct recruitment, and (ii) promotion from Class II Service. The State Government by a memorandum dated February 18, 1977 merged with the cadre of Executive Engineers of the Public Works Department, the cadre of District Engineers functioning under the Rural Engineering Organisation. The latter cadre was constituted by the State in 1965 by integration of the Rural Engineering Cell of the Public Works Department and the cadre of District Engineers created by the erstwhile District Boards under the Government District Engineers Service Rules, 1957 framed under ss. 36(a) to 36(f) of the Bihar and Orissa Local Self Government Act, 1885.

The appellants-Assistant Engineers assailed the said merger before the High Court on the ground that it adversely affected their chances of promotion, that the District Engineers' Service was constituted under the 1957 Rules framed under the 1885 Act whereas the cadre of Executive Engineers in the Public Works Department was created by the 1939 Rules, and, as such the two cadres having been created under their respective statutory rules the same could not be merged by an executive order, and that since under rule 4(i) and 4(ii) of the 1939 Rules recruitment to the cadre of Executive Engineers could only be by direct recruitment and by way of promotion, the merger of District Engineers' cadre with the Executive Engineers was contrary to the 1939 Rules. The High Court negated their contentions.

Dismissing the appeal, the Court,

HELD: 1. The appellants, who were Assistant Engineers in the Bihar Engineering Service, Class II were not affected adversely by the merger in any manner. The District Engineers were merged in the

cadre of the Executive Engineers along with the permanent posts which they were holding on the date of merger. The cadre of the Executive Engineers was thus enlarged with the result that more vacancies would become available in future to be filled by way of promotion from the cadre of Assistant Engineers. The merger would thus operate to their advantage rather than disadvantage. [378E-F]

2. The provincialised cadre of District Engineers under the District Boards was constituted by the 1957 Rules but in the year 1977 when merger took place the District Engineers constituted an entirely different cadre which was created in the year 1965 as a part of Rural Engineering Organisation. It did not have any statutory framework. Since the cadre of District Engineers under the Rural Engineering Organisation was created by the State Government by an executive order the State Government could further merge the same with any other cadre by an executive fiat. The Executive Engineers were governed by the 1939 Rules which are statutory. Their statutory character has not been interfered with. The District Engineers were being merged with Executive Engineers and not the *vice versa*. [378H, 379B, 379D]

3. Rule 4(i) and 4(ii) of the 1939 Rules do not come into picture at all. It was not a question of appointment of an individual to the Service. A group of persons similarly situated in respect of rank and pay scale was sought to be brought into the Service along with their posts. The State Government could always increase the number of posts in the cadre of Executive Engineers. The conditions of service of the existing members of Service are not being altered or affected to their prejudice in any manner. [379E-F]

4. The merger order being a policy decision is in a way supplemental to the Rules and does not go contrary to any of the provisions of the Rules. [379F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4008-09 of 1985.

From the Judgment and Order dated 26.9.1983 of the Patna High Court in C.W.J.C. No. 1634 of 1977.

WITH

C.M.P. Nos. 5513-14 and 19577-78 of 1988.

A Shanti Bhushan and P.D. Sharma for the Appellants.

Tapesh Chandra Ray, D.P Mukherjee, R.P. Singh and S.N. Jha for the Respondents.

M.P. Jha for the Intervener.

B The Judgment of the Court was delivered by

C **KULDIP SINGH, J.** The question for our consideration in these appeals is whether by an executive order the Bihar State Government can merge the cadre of District Engineers which is a part of "Rural Engineering Organisation" with the cadre of Executive Engineers governed by statutory rules called the Bihar Engineering Service Rules, 1939 (hereinafter called the 1939 Rules).

Necessary facts to determine the above question are as under:-

D The cadre of District Engineers was created by the erstwhile District Boards in the State of Bihar. The recruitment and conditions of service of the said cadre were governed by the Government District Engineers Service Rules, 1957 (hereinafter called the 1957 Rules) which were framed under the Bihar and Orissa Local Self Government Act, 1885 (hereinafter called the Act). Apart from the District Engineers, a Rural Engineering Cell of the Public Works Department

E was also functioning in the rural areas. Bihar Government by an order dated February 9, 1965, integrated the two into one organisation called "Rural Engineering Organisation" (hereinafter called REO).

F The REO was an entirely new department headed by a Chief Engineer with the powers of Inspector of Local Works under the Act. Two posts of Superintendent Engineers, 19 posts of District Engineers and number of other subordinate posts were created under the Chief Engineer. In the new set-up the cadre of District Engineers created under the 1957 Rules became almost extinct and assumed a new shape under the REO.

G On the other hand, the cadre of Executive Engineers in Bihar Public Works Department was governed by the 1939 Rules. Rule 4 thereof is as under:

H "4. Sources of recruitment—Recruitment to the service shall be made—

(i) by direct recruitment, and

(ii) by promotion from the Bihar Engineering Service, Class II”

The Bihar Government by a Memorandum dated February 18, 1977, decided to merge the cadre of District Engineers belonging to the REO with the cadre of Executive Engineers of the Public Works Department. The operative part of the order is as under:

“Therefore, in the public interest, the Government has decided that the cadre of the District Engineers be merged with the equivalent/parallel cadre of Executive Engineers of Public Works Department.”

Vinay Kumar Verma and others, who were working as Assistant Engineers in the Bihar Engineering Service, Class II, challenged the above-mentioned merger-order before the Patna High Court on the following grounds:

(i) Under the 1939 Rules Assistant Engineers are eligible for promotion to the posts of Executive Engineers. By merging the cadres, the chances of promotion of the Assistant Engineers are likely to be adversely affected and as such merger order is arbitrary and is liable to be quashed.

(ii) That the District Engineers' service was constituted under the 1957 Rules framed by the State Government in exercise of the powers under Sections 36(a) to 36(f) of the Act. The cadre of Executive Engineers in the Public Works Department was created by the 1939 Rules. The two cadres having been created under their respective statutory rules, the same cannot be merged by an executive order. The composition of cadres created by the statutory rules cannot be changed by an executive order.

(iii) Under Rule 4(i) and 4(ii) of the 1939 Rules, recruitment to the cadre of Executive Engineers can only be by direct recruitment and by way of promotion. The merger of the District Engineers cadre with the Executive Engineers is thus contrary to the 1939 Rules and as such cannot be sustained.

The High Court found that the chances of promotion of the

A Assistant Engineers were in no way adversely affected by the merger as the District Engineers came to the cadre of Executive Engineers along with their posts. The High Court further held that the Assistant Engineers who were in the lower cadre could not challenge the merger specially when the same did not affect their rights in any manner.

B On the other two points the High Court relied on Rule 56 of the Bihar Service Code, 1952 which is in the following terms:

“56(a) The State Government may transfer a Government servant from one post to another”

C The High Court held that the Government has the power under the above quoted rule to transfer a Government servant from one cadre to another. According to High Court even though the merger is not explicitly under rule 56(a) but since the power is there the District Engineers be deemed to have been transferred to the Public Works Department in terms of the said Rule. The High Court dismissed the writ petitions of the Assistant Engineers. This is how these two appeals by way of special leave are before us.

E Mr. Shanti Bhushan, learned Senior Advocate, appearing for the appellants has reiterated the above mentioned three points in his arguments before us.

F We agree with the High Court that the appellants, who were Assistant Engineers in Bihar Engineering Service, Class II, were not affected adversely by the impugned order in any manner. The District Engineers were merged in the cadre of the Executive Engineers along with the permanent posts which they were holding on the date of merger. The cadre of the Executive Engineers was thus enlarged with the result that more vacancies would become available in future to be filled by way of promotion from the cadre of Assistant Engineers. The merger would thus operate to their advantage rather than disadvantage.

G The second point as projected by Mr. Shanti Bhushan does not arise in the facts and circumstances of the present case. It is no doubt correct that initially the cadre of the District Engineers was constituted by the 1957 Rules which were framed under the 1885 Act, but by the time the impugned order was issued in the year 1977, it was operating

as an entirely different cadre created in the year 1965 as a part of REO. The REO, which was new department, consisted of a Chief Engineer, two Superintending Engineers, 19 posts of District Engineers, number of Assistant Engineers and Overseers. The District Engineers were no longer a provincialised cadre under the District Boards as created by the 1957 Rules but was a new cadre operating under the REO. We are, therefore, of the view that the cadre of District Engineers under the REO was created by the State Government by an executive order and as such the State Government could further merge the same with any other cadre by an executive fiat.

The third limb of the argument based on Rule 4(i) and 4(ii) of the 1939 Rules may now be examined. It is not disputed that the District Engineers were equivalent in rank to the Executive Engineers. The pay-scales were also identical. The two equivalent and parallel cadres were operating in two different fields. To achieve administrative efficiency the State Government wanted to merge these cadres. The Executive Engineers were governed by the 1939 Rules which are statutory, whereas the District Engineers created by Government order dated February 9, 1965 did not have any statutory frame-work. The statutory cadre of Executive Engineers has not been interfered with. It is operating under the 1939 Rules. The District Engineers are being merged with Executive Engineers and not the *vice versa*. Rule 4(i) and 4(ii) of the 1939 Rules do not come into picture at all. It is not a question of appointment of an individual to the service. A group of persons similarly situated is sought to be brought into the service. The State Government can always increase the number of posts in the cadre of Executive Engineers. What is being done by the impugned order is that the incumbents of the posts are also being brought into the cadre along with the posts. The conditions of service of the existing members of service are not being altered or affected to their prejudice in any manner. In fact none of the Executive Engineers has challenged the impugned order. After merger the District Engineers would also be governed by the 1939 Rules. The impugned order being a policy decision is in a way supplemental to the Rules and does not go contrary to any of the provisions of the Rules.

We therefore see no force in the arguments of Shri Shanti Bhushan.

The view which we have taken to uphold the impugned order, we

A do not wish to express any opinion on the applicability and interpretation of Rule 56 of the Bihar Service Code, 1952 on which the High Court has relied.

The appeals fail and are dismissed with no order as to costs. The Civil Miscellaneous Petition Nos. 5513-14 of 1988 and 19577-78 of 1988
B are also dismissed as having become infructuous.

P.S.S.

Appeals dismissed.