

KAMESHWAR PRASAD
v.
STATE OF BIHAR AND ORS.

SEPTEMBER 11, 1995

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

Service Law :

Small Pox Eradication Scheme—Appointment of Vaccinator—Disbanding of Scheme—Resolution to absorb surplus employees—Implementation of—Directions—Issued.

The appellant was appointed as a Vaccinator in Small Pox Eradication Scheme which was disbanded subsequently. Awaiting absorption on equivalent post in terms of Resolution No. 2215 dated February 11, 1985 he obtained an order from the High Court directing the Medical Officer to consider his case, further on a representation made by him, the District Medical Officer promoted him as Clerk subject to confirmation by the Director-in- Chief. However, the Director-in-Chief cancelled appellant's appointment on the ground that he was not properly appointed as Clerk in pursuance of the Resolution. The said order was unsuccessfully challenged before the High Court. Hence this appeal.

Allowing the appeal, this Court

HELD : Appellant was really required to be absorbed in an equivalent post because he was found to be a surplus Vaccinator. However, the principles laid down in Resolution were not followed. Therefore, on the basis of his order in the merit of surplus employees, he is required to be absorbed as soon as his turn comes. On his absorption according to the resolution and the entitlement on par with other candidates, his case is to be considered for promotion as Clerk. [522-H, 523-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8385-86 of 1995.

From the Judgment and Order dated 2.2.93 & 4.1.94 of the Patna High Court in C.W.J.C. No. 13022/92 and M.C.R. No. 42 of 1993.

A Ejaz Maqbool for the Appellant

B.B. Singh for the Respondents.

The following Order of the Court was delivered :

B Delay condoned.

Leave granted. We have heard learned counsel on both sides.

C Admittedly, the appellant was appointed as Vaccinator in a Small Pox Eradication Programme on May 6, 1975. The scheme was disbanded in 1985. Thereafter, a decision was taken on November 14, 1986 to retain 25 per cent of senior officers and to absorb the remaining 75 per cent in equivalent posts in regular cadres. In consequence, while awaiting his absorption, the appellant filed CWJC No. 2412/90 for a direction to consider his case. Accordingly, the High Court by order dated January 22, 1991 directed the Medical Officer to consider his case. A representation was made by the appellant to consider him for promotion as a clerk. Consequently, the District Medical Officer promoted him on May 7, 1991 as a clerk and he joined as such on May 9, 1991. The District Medical Officer had stated in the letter of appointment that his promotion would be subject to the confirmation by the Director-in-Chief.

E The Director-in-Chief in his proceedings dated December 10, 1992 cancelled the appointment following the Resolution No. 2215 dated February 11, 1985. It was stated there that any promotion made would be subject to the policy of confirmation according to the rules on the basis of seniority-cum-fitness and also observing rule of reservation. Since the appointment of the appellant was not made in pursuance of the resolution, it was observed that the appellant was not properly appointed as clerk. When he filed the CWJC No. 13022/92, by its order dated February 2, 1993 the High Court dismissed the same and a review petition filed subsequently was also dismissed on January 4, 1994. Thus this appeal by special leave.

G Though the learned counsel for the appellant contended that the District Medical Officer is the competent authority to appoint a clerk, he is required to follow the principles laid down in Resolution No. 2215 dated February 11, 1985, even if he be the appointing authority. Indisputably, he did not follow the procedure. The appellant was really required to be absorbed in an equivalent post because he was found to be a surplus

H

Vaccinator. The equivalent post is that of Vaccinator in other departments. A
Therefore, on the basis of his order in the merit of surplus employees, he
is required to be absorbed. As soon as his turn comes, the competent
authority is directed to absorb him. On his absorption, according to the
said resolution and the entitlement on par with other candidates, his case
would be considered for promotion as clerk. Since the appellant has B
already worked from May 8, 1991 till December 10, 1992 as clerk, he is
entitled to salary attached to the post of clerk for the said period.

The appeal is accordingly allowed to the above extent but, in the
circumstances, without costs.

T.N.A.

Appeal allowed. C