

PETITIONER:
DR. RAM RAJ RAM

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 02/05/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
AHMADI A.M. (CJ)
RAMASWAMY, K.

CITATION:
JT 1996 (5) 393 1996 SCALE (4)259

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Punchhi. J.

This is an angular service dispute between Dr. Ram Raj Ram (hereafter referred to as to "Dr. Ram") on one side and Dr. Radheyshyam Sharma (hereafter referred to as "Dr. Sharma") on the other. Civil Writ Jurisdiction Case No.6230 of 1989 preferred by Dr. Sharma was allowed by a Division Bench of the Patna High Court on December 19, 1990 granting to him the sought for reliefs which affected Dr. Ram. Similarly, on the same day, the same Division Bench dismissed Civil Writ Jurisdiction Case No.6620 of 1989 preferred by Dr. Ram denying to him the mandamus sought on whatever achieved before-hand. Civil Appeal No. 1894 of 1991 has arisen from the former case and Civil Appeal No.1895 of 1991 from the latter; Dr. Ram being the common appellant herein; Dr. Sharma being a respondent common to both. Thus disposal of these appeals by a common judgment.

On April 11, 1935, the Government of Bihar and Orissa made Rules known as the Bihar and Orissa Veterinary Service Class-I, to regulate the conditions of service, pay, allowances and pension of members of the Service. A member of service was to mean a person appointed in substantive or officiating capacity under the provisions of the rules to a post in the cadre of service, but not including a member of the Indian Veterinary Service. Rule 16 thereof provided that the post of the Director of Veterinary Services shall remain outside the cadre of service but subject to the provisions of Rule 17, it may be filled at the discretion of the local government by a member of the Service. Rule 17 (with which we are not concerned presently) provides that a member of the Indian Veterinary Service borne on the cadre of Bihar and Orissa shall normally be appointed to the post of the Director, but if none is available, assistance of the Government of India was to be sought with a view to procuring a suitable selection from among the members of the

Indian Veterinary Service in other provinces before any other person was to be appointed to the post. Thus in a given situation, the post of the Director of the Veterinary Services could be filled by a member of the Service; the post all the same remaining outside the cadre of the Service. That was the mandate of the Rule. Recognizing the relevance of seniority in the context, Rule 14 provided that seniority in the service shall be determined by the date of the officer's substantive appointment to the service irrespective of the pay drawn by him.

The Rules above mentioned acquired, if not recognized, statutory character by exercise of the legislative power vested in the Governor by Government Notification reproduced hereafter:

APPOINTMENT DEPARTMENT

APPOINTMENT File No.3LS-27 of 1960
Rules under Article 309 of the
Constitution of India, 1949.
Notification No.3L-27/50-3555-A,
dated the 15th April, 1959, by the
Government of Bihar, Appointment
Deptt.

In exercise of the powers
conferred by the proviso to Article
309 of the Constitution of India,
the Governor of Bihar is pleased
to make the following rule,
namely:-

All enactments, rules and
orders, whether made under any
enactment or otherwise, which
regulated the recruitment and
conditions of service of persons
appointed to public service and
posts in connection with the
affairs which are now the affairs
of the State of Bihar and which
were in force immediately before
the 26th January, 1950, shall until
provision is made by or under an
act of the State Legislature to
regulate such recruitment and
conditions of service, be in force
as if they had been made by virtue
of the powers made under the said
proviso.

By order of the Governor
of Bihar

sd/

L.P. Singh,

Chief Secretary, Bihar"

Dr. Sharma was appointed in the Bihar Animal Husbandry Service Class-I (hereafter referred to as the "Service") by a Notification dated 6-7-1966 issued by the Department of Animal Husbandry. On the other hand, Dr. Ram, in the year 1972, was appointed in a Class-III post in the Animal Husbandry Service. On 7-6-1975, gradation list of the officers in the Service was notified in which the name of Dr. Sharma figured at serial no.37. Since on that date Dr. Ram was working in Animal Husbandry Service Class-III, his name could not and did not figure in the said gradation list. Dr. Ram was successful in obtaining in the year 1976 a reserved post in the Bihar Animal Husbandry Class-II Service on the recommendation of the Bihar Public Service Commission (hereafter referred to as the "Commission"). On June 1, 1977,

an advertisement was published by the Commission inviting applications from eligible scheduled caste candidates for appointment against the temporary post of Special Officer, Intensive Cattle Development Block in the pay scale of Rs.1060-1580 in the Bihar Animal Husbandry Service Class-I (Special) (hereafter referred to as the "Special Service"). Dr. Ram competed and emerged successful in obtaining that post as a direct appointee on 8-1-1978, which post he joined on 11-1-1978.

Before-hand the Government of Bihar had constituted a Committee of senior officers with a view to assess the problem of stagnation and for evolving methods to remove the same and affording opportunity for promotion. The Finance Department of Government of Bihar, taking into account the recommendations of the aforesaid Committee, published the decisions of the State Government on April 11, 1977 relatable to many Services, to pave the path of promotion. In so far as Bihar Animal Husbandry Service was concerned, it was decided that out of the sanctioned strength of cadre posts in the Service, promotional posts shall be (i) 15% posts in the pay scale of Rs.620-1415; (ii) 3% in the pay scale of Rs.1060-1580; and (iii) 2% posts in the pay scale of Rs.1340-1870 including the post of Director. The Government decision further was to make the decision effective in the Service from January 1, 1977, i.e. about 3-1/2 months prior to the announcement. Since numerical have been supplied by us to the promotional posts, we may leave a mark here to say that Dr. Ram's special post having pay scale of Rs.1060-1580 was comparable, if at all, with classification (ii) posts carrying the same pay scale.

Since Dr. Sharma was continuing in Bihar Animal Husbandry Service Class-I since the year 1966, he was recorded as promoted on 21-11-1985 for senior selection grade (classification iii) in the pay scale of Rs. 1575-2300 (as enhanced) with effect from 1-1-1977, with the concurrence of the Bihar Public Service Commission. Later by another Notification of 3-12-1987, the date of promotion was changed from 1-1-1977 to 1-2-1983. Yet another Notification was issued on 8-1-1988 changing the date of promotion from 1-2-1983 to 1-4-1981. These changes had ramifications because in the meantime service prospects of Dr. Ram were parallely being nurtured and fostered in the corridors of the bureaucracy.

Dr. Ram, as said before, was appointed on 9-1-1978 against the post advertised described as in the Special Service when neither any service of the name or cadre existed at the time, or any time thereafter. According to Dr. Ram this post was created which had a high scale of pay, i.e., of Rs.1060-1580 (classification ii), its effect being to create an intermediate stage between Class-I officers of the regular Service on one side and that of the Director on the other. The disparity in pay of Class I being Rs.620-1415 (for classification i), and for the special class being Rs.1060-1580, was brought to focus to assert his qualitative difference and hence superiority/seniority. Since Dr. Ram was appointed on 9-1-1978 in the Special Service and Dr. Sharma had been brought in the selection grade/promotional post in the regular Service with effect from 1-1-1977 which date was later changed to dates beyond 1978, it is in this arena that the bureaucracy of the State played an activist role by first ordering that the Special Service be known as the basic cadre in which shall amalgamate the Service, and secondly in this manner when Dr. Ram was appointed on 8-1-1978 he be graded as the senior-most in the department and to be in a position to stake claim to the post of the

Director; Dr. Sharma's induction in the promotional level of the Service being of 1-4-1981 and not on 1-1-1977.

As a step towards amalgamation, on November 21, 1985, by means of a Notification, Dr. Sharma and a few others were declared to be promoted to the Special Service with effect from 1-1-1977. Dr. Ram who had regarded himself as senior to Dr. Sharma challenged the retrospective promotion of Dr. Sharma as violating his seniority claim before the High Court of Patna. On 2-12-1986, his writ petition was disposed of by the High Court with certain directions, primary of which was to finalize the gradation list and the class to which Dr. Ram belonged, within three months from the date of the order. Since that direction was not complied with, Dr. Ram moved the High Court by way of a Contempt Petition. There the Government put forth the plea that final seniority list dated 3-12-1987 had been published whereby Dr. Ram was shown at serial no. 1 and Dr. Sharma at serial no.2. Challenging the final gradation list of 3-12-1987, Dr. Sharma approached the High Court and sought the relief of declaration that there was no service by the name Bihar Animal Husbandry Service Class-I (Special) and that it could not change places to be the 'basic service' and further that order dated 3-12-1987 changing the gradation list was beyond the powers of the Government and its bureaucracy when the Commission had held him entitled to promotion on 1-1-1977. The High Court on the pleadings of the parties and the stand taken by the Government opined that when no separate cadre known as Animal Husbandry Service Class-I (Special) had been created which is said to be superior to the regular Bihar Animal Husbandry Service Class-I, then the appointment of Dr. Ram on 9-1-1978 shall be taken to have been made in Bihar Animal Husbandry Service Class-I, in which Dr. Sharma had been appointed as early as on 6-7-1966 and consequently there could be no question of Dr. Ram being shown senior to Dr. Sharma in the purported exercise of notifying a gradation list of officers in the newly created cadre of Special Service. Emphasis was also laid by the High Court on the fact situation that Dr. Sharma had only been held entitled to selection grade (in classification iii) as concurred to by the Commission vide order dated 21-11-1985 effective from 1-1-1977, which date was later wrongly changed to 1-2-1983 and then brought back to 1-4-1981. The Commission, as is evident, had found Dr. Sharma entitled to selection grade with effect from 1-1-1977 and there could thus be no justification to change the date of his entitlement to selection grades of the three classifications; be they called promotions or otherwise. It is for such view taken that the High Court allowed the writ petition of Dr. Sharma and on that basis denied the prayer of mandamus of Dr. Ram seeking his appointment as Director.

There is no need to burden this judgment by elaborating the shifting stands adopted by the bureaucracy who had one line of thinking when one set of officers were in chair and another when came the other set. It only needs to be said that this tossing disclosed indeed loyalties to sectarian interests and not to law. Before the High Court, to begin with, the affidavit of the State put forward was to oppose the claim of Dr. Sharma but later the same was withdrawn and a fresh affidavit filed by another officer who gave out details to show how that Special Service was illegally created and how directions had been issued to have it subsequently withdrawn. It is the later affidavit which was accepted and made use of extensively by the High Court while allowing writ petition of Dr. Sharma in quoting passages therefrom in its judgment, absolving itself from examining

the question as to whether there ever existed a cadre of Bihar Animal Husbandry Service Class-I (Special), in which Dr. Ram was appointed by process of direct recruitment on 9-1-1978, and whether Dr. Sharma was promoted to that service with effect from 1-4-1981. Despite that the matter does not seem to rest, because in the affidavits received from the State Government in the special leave petition, the stand originally adopted, i.e., to oppose the claim of Dr. Sharma has been resorted to. It would rather if not for anything else, be better for the sake of prudence to leave aside the affidavits of the State given from time to time unless direly required, because of the bureaucracy shifting its loyalties and stances depending on the weather. Dr. Sharma in his additional affidavit dated 1-2-1992 has attributed malafide to a certain politician in power for promoting the cause of Dr. Ram, in whatever station of life he was in the past before being in such position, during which the controversy kept brewed in government quarters. It would not be worth its while to go into this question and pronounce on the issue. It would be better to go to the worth of the government documents whichever have appeared on the record.

But for the operating Bihar and Orissa Veterinary Service Class-I Rules, no other Rules are claimed to be existing governing the Service conditions of the members of the Service. It is otherwise not denied that the Department of Animal Husbandry is covered under the Veterinary Service. Since when Service in the Animal Husbandry Department got to be known as Bihar Animal Husbandry Service Class-I is left to obscurity except that when Dr. Sharma joined, this Service was existing in the year 1966. The appearance of Special Service is known to be born in January 1978 when its advertised post was filled. In the original counter affidavit filed by the State before the High Court, the Under Secretary to the Department of Animal Husbandry & Fisheries stated that Special Service cannot be meant to indicate that it was not a part of the Service and that the word 'Special' was used as a suffix to indicate a higher scale of pay in the Service itself. The word 'Special' was then explained to mean to identify the scale of pay. It was then not denied that all the posts in the Service, whether within or without the cadre, were Class-I posts under the Bihar Service Code. In the supplementary affidavit of the State, it was highlighted contrarily that the Bihar and Orissa Veterinary Service Class-I Recruitment Rules, 1935 were still applicable to the Animal Husbandry Department and that there was no provision in the said Rules to declare the Special Service as a basic cadre, and thus its constitution was not in accordance with the Rules. It was complained that its creation was rather rusted through without obtaining concurrence of the Personnel and Administrative Reforms Department, the Finance Department or even the approval of council of ministers. In view of this State of affairs, it would thus be safe to proceed on the basis that the old Rules of 1935 are the only statutory Rules available on the subject and that those Rules are applicable in the Department of Animal Husbandry. Those Rules permitting no such course a new service could not be established. The special post created in the Special Service proceeds on a fait accompli towards establishing such Service, clearly in violation of the Rules when regular service was existing in the Department in consonance with the Rules. Rule 14 specifically says that seniority in the Service shall be determined by the date of the officer's substantive appointment to the Service irrespective of the pay drawn by him. When the Government's stand initially, in the High

Court has been, as also here, that Special Service was nothing but a species of the regular Service and Special only in the sense to indicate a selection grade, it cannot for a moment then be swallowed that the latter of the two; i.e. the special service, was the basic cadre, to be put at the pedestal of superiority. The game of that section of bureaucracy which wanted to help Dr. Ram towards Directorship of the Department was firstly to create an artificial and separate service, and if not meaning to create one then to create a post which would fetch the promotional pay scale as due to Class-1 officers and then claim seniority for Dr. Ram on two grounds namely, he was on the date of his appointment in higher scale of pay than Dr. Sharma, and apart from that he was otherwise on the date of his appointment to the Service senior to him because Dr. Sharma got the promotional scale in the year 1981, and not in the year 1977. The argument conveniently forgets that the Service is one and the artificiality created by the Special Service is of no consequence, more so when both the versions of the bureaucracy of the State do not maintain the distinction, even though later a basic cadre was carved for the Special Service. The demarcation again was given a floating lesson for the future. If the Service is one then the date of entry into the service in substantive capacity is the determining factor for seniority irrespective of scale of pay, as envisaged by Rule 14. But if there are two Services as has been taken and hit by the High Court, the creation of the Special Service to plug in Dr. Ram at an advantageous position was a measure of naked manipulation, an unfair act, utterly unreasonable, in abuse of power, without resort to law and in the teeth of the Rules. It can never be said that Dr. Sharma on attaining of selection grade entered into a new service so as to subordinate himself to Dr. Ram who was allegedly an earlier entrant (though not holding so) to the service on the fortuitous circumstance of a side entry. Thus it becomes evident and bare that the entire game was played throwing to winds all sense of propriety and making the Rule of law a mockery.

Attention must now be diverted to notification dated November 21, 1986, issued by the Special Secretary to the Government to the Director, Animal Husbandry Department, Bihar, Patna which has been quashed by the High Court. It says "In relation to this Department's letter No.9043 dated 31-8-1978 on the subject mentioned above as directed, I have to state that the Government has taken a decision that the seniority list of the Bihar Animal Husbandry Service Class-1 (Special) be prepared separately. Simultaneously treating the Bihar Animal Husbandry Service Class-I Special as basic cadre, action may be taken to confirmation of the officers promoted from the lower scale and the officers appointed directly. This would be necessary for the future promotion." The Special Service by stroke of pen has been made a basic cadre, giving go-bye to the statutory Veterinary Services Class-I Rules 1935 which are applicable in the Animal Husbandry Department, Animal Husbandry as its progeny being a species of the Veterinary Services. We fail to appreciate how a service/cadre could be a basic cadre when it itself was born in 1978. How could rights created in the regular service/cadre in the Animal Husbandry Service Class-I be done away with or be trampled upon by the newly created service/cadre. And how could it apply retrospectively when the State itself made the policy applicable for future promotions being due after November 21, 1986. Earlier promotions were in any case protected. All the dates of promotion attributed to the cause of Dr. Sharma were prior

to November 21, 1986 and on which dates there was no question of any basis cadre coming on the scene to cast shadow thereon by an executive fiat. And yet notification dated 3-12-87, also quashed by the High Court, followed showing Dr. Ram to be the seniormost and Dr. Sharma next to him. Vested rights of Dr. Sharma could not be taken away in this manner, he being in the service from 1966 entitled to selection grade with effect from 1-1-1977 in his own service/cadre, as held by the High Court. There was no basis or occasion for Dr. Sharma's cadre being treated as subsidiary or secondary to a newly created cadre termed basic cadre. We, therefore, do not see any infirmity in the High Court's order

Thus the views above expressed, added to views expressed by the High Court, leads to the conclusion that no relief is due to the appellant in these two appeals. They are consequently dismissed without any order as to costs.