

DR. (CAPT.) AKHOURI RAMESH CHANDRA SINHA ETC.

v.

THE STATE OF BIHAR AND ORS. ETC.

JANUARY 2, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

Seniority—Temporary appointment during National Emergency—Commissioned Officer—After discharge appointed on regular basis as Civil Assistant Surgeon—Whether entitled to count seniority from date of temporary appointment in the Army—Held entitled to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1578 of 1996
Etc.

From the Judgment and Order dated 19.8.94 of the Patna High Court in C.W.J.C. No. 7049 of 1993.

R.K. Jain and Akhilesh Kr. Pandey for the Appellants.

Altaf Ahmed, Additional Solicitor General Basudeya Prasad, Ajit Kr. Sinha, Anil K. Jha, Rudreshwar Singh, R.P. Wadhvani and A.P. Madh for the Respondents.

The Order of the Court was delivered :

Leave granted.

We have heard the counsel on both sides. These appeals by special leave arise from the judgments of the Division Bench of the Patna High Court in CWJC Nos. 7049/93 and 1801/90 made respectively on August 19, 1994 and December 6, 1994. The question is vexed *inter se* seniority of the appellant and the respondent-employees in these cases. The appellant was admittedly appointed on temporary basis in March 1966 and thereafter he was drafted as a Commissioned Officer and served in the Army in defence of the country in national emergency. After discharge from the Army, he was appointed on regular basis on September 6, 1966. The respondent-employees

came to be appointed initially on September 29, 1964 on temporary basis and were then appointed on regular basis as Civil Assistant Surgeon w.e.f. July 15, 1974. The question is whether the appellant is entitled to his seniority w.e.f. September 6, 1966 and thereby would become senior to the respondent-employees though they were initially appointed on temporary basis w.e.f. September 29, 1964. Circular dated September 20, 1965 issued by the Government with regard to the entitlement of the Army Officers is found in Annexure VI. The relevant part reads thus :

"Besides the facilities in the Army, all temporary officers are allowed lien in service in accordance with Govt. order No. 7892(B) dated 10.12.62. It has further been accepted by Government that of the existing permanent vacancies would be reserved for the temporary assistant surgeons who volunteers to join the Army and they would be on probation with effect from the date on which they join the Army service and on completion of two years of satisfactory service, they will be confirmed in the State Medical Service."

As a consequence of the above circular, on appointment to the post and on completion of the probation for a period of two years, the candidate would be confirmed in the cadre as Civil Assistant Surgeon in the Bihar State Medical Service. It is settled law that on completion of the satisfactory probation, his confirmation would date back to the date of his initial appointment. Admittedly, he was regularly appointed on September 6, 1966. Consequently, he was regularly appointed as Civil Assistant Surgeon w.e.f. September 6, 1966.

It is true that the respondent-employees came to be appointed pursuant to the recommendations dated April 17, 1964 made by the Bihar State Public Service Commission and were appointed on September 29, 1964. But all the appointments are only to temporary posts though they were selected by the Bihar Public Service Commission on regular basis, They were admittedly confirmed w.e.f. July 15, 1974. Under these circumstances, the regular service for the purpose of seniority as regards the respondents would commence only from July 15, 1974, of course, for other benefits, their appointments would date back to the date of their initial temporary appoint-

ment. Consequently, the appellant becomes senior to them. Resultantly, he is entitled to all the consequential benefits except back wages.

The appeals are accordingly allowed and the order of the High Court is set aside . No costs.

Appeals allowed.