PETITIONER:
TEJ NARAIN TIWARY

Vs.

RESPONDENT:
STATE OF BIHAR AND ORS.

DATE OF JUDGMENT18/02/1993

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
RAY, G.N. (J)

CITATION:
1993 SCR (2) 11 1993 SCC Supl. (2) 623
JT 1993 (2) 353 1993 SCALE (1)651

ACT:
Regularisation-Date of-Appellant appointed as Special Officer by Bihar School Education Board on 6.8.69-Post abolished in April 1971-Suit filed by Appellant-An pursuance of compromise between the parties, Board appointed Appellant to regular post of Section Officer and regularised the appointment wef. 6.8.69.
Held, there was compulsory transfer from one post to the other, or alternatively, amalgamation of the two posts-Regularisation w.e.f. 6.8.69 justified.

HEADNOTE:
By an order dated 16th August 1969, the appellant was appointed by respondent 2 the Bihar School Examination Board as a Special Officer (Stores) for a period not exceeding six months in the pay scale of Rs. 300-20400-EB-20-500, with usual allowances. The services were, however, continued till 10th March, 1971, when it was intimated that the said post of Special Officer would be abolished with effect from 1st April 1971, and consequently his services were terminated. The appellant riled a suit and obtained an injunction against the abolition of the post and the termination of his services. In the suit, a compromise was arrived at between the Board and the appellant, whereby he was appointed as Section Officer in the General Cadre and his pay as Special Officer was to be protected. Pursuant to this compromise, the Board by order dated 20th March, 1972 appointed him on the vacant post of Section Officer, with a personal pay of Rs. 70 per month. Later, by an order dated 11.11.86, respondent No. 2 regularised the appointment from the date of his appointment as Special Officer viz. 16.8.69. However, respondent No. 5 promoted to one of the posts of Section officers on 27-8-70, contended that the seniority given to the appellant in the post of Section Officer w.e.f. 16-8-69, ie. from the date of his appointment as Special Officer was illegal. In the Seniority list of Section Officers prepared by respondent No. 2, the appellant was shown above respondent no. 5 and he was granted promotion to the post of Asstt. Secretary on 20th March, 1982, and to that of Deputy Secretary on 29.11.87.
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Against the said list of seniority, respondent No. 5 filed a writ petition in the High Court, formally challenging the order of dt 11th Nov., 1986 in terms of which the inter se seniority list was prepared. The High Court held that the post of Special Officer occupied by the appellant was a temporary post, which was abolished, and therefore, he would have to rank below respondent No. S. The appellant came to this Court.

Allowing the Appeal,

HELD: The approach of the High Court was not correct. The appellant was appointed in a higher post with a higher salary scale. He was in fact compulsorily transferred from that post to the post of Section Officer and after that transfer by the same order of 20th March, 1972, the post of Special Officer was abolished. The order is also capable of being interpreted as an order of amalgamation of the ex-cadre post of a Special Officer with the cadre post of Section Officer. [15H-G]

The consequence of both the interpretations of the said order is the same, viz. that the appellant would get seniority from the date of his appointment as Special Officer. [15G]

It is true that there is nothing on record except the order of 20th March, 1972, to show that in the temporary post of Special Officer which was created for the first time on 16th August, 1969, that the appointment of appellant was ever regularised and the appellant was appointed regularly to the same. However, on this aspect, we must go by the intention revealed in the resolutions and orders of the Board itself. The Board's intention is clear. It treated the post as regular. The appellant was appointed to it in a substantive vacancy and in accordance with the condition governing it. There is accordingly nothing, which militates against the seniority given to the appellant. [16A-D]

The Direct Recruit Class II Engineering Officers' Association and Ors. v. State of Maharashtra & Ors., AIR 1990 SC 1607 and State of Bihar& Ors. etc. v. Akhouri Sachindra Nath & Ors., [1991] Suppl.. 1 SCC 334, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 690 of 1993.

From the Judgment and Order dated 21.5.1992 of the Patna High

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Court in Civil Writ Jurisdiction Case No. 1317 of 1990.

A.K. Sen and M.P. Jha for the Appellant.

Uday Singh, A.K. Sinha and A. Sharan for the Respondents.

The following Order of the Court was delivered:

Leave granted.

The admitted facts in the present case are that by an order dated 16th August, 1969 the appellant was appointed by the respondent 2. Bihar School Examination Board ('Board') as a Special Officer (Stores) for a period not exceeding six months, in the pay scale of Rs. 300-20-400-EB-20-500 with usual allowances. His services, however, were continued till 10th March, 1971, when he was intimated that the said post of Special Officer would be abolished w.e.f 1st April, 1971 and consequently his services would stand terminated. The appellant filed a suit and obtained an injunction against the abolition of the post and the termination of his services. In the suit, a compromise was arrived at between the Board and the appellant whereby he was to be appointed

as Section Officer in the General Cadre and his pay as a Special Officer was to be protected. Pursuant to this compromise, the Board passed an Office Order on 20th March, 1972 which stated as follows:

> "Shri Tej Narain Tiwary who is at present working as Special Officer (Stores) on purely temporary basis, is appointed on the vacant post of Sectional Head (Section Officer) in the initial pay of the pay scale of Rs. 230-15350-EB-20-450 besides dearness allowance. Besides pay he is sanctioned reducible personal pay at the rate of Rs. 70 per month".

By the same order, another Special Officer (Vigilance) was also appointed to one more vacant post of Sectional Head (Section Officer) in the same pay with an additional reducible personal pay of Rs. 20 per month.

The order further stated as follows:

"As per the decision dated 18.12.1971 of the Board, the posts of Special Officer (Stores) and Assistant Vigilance Officer are abolished from the date of issue of this order:

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We are not concerned with the post of Special Officer (Vigilance).

What is obvious from the above order is that the appellant was working as Special Officer till that time and was appointed in one of the vacant posts of Section Officers with the protection of his pay. We do not know how the amount of Rs. 70 per month was arrived at. Read with the note put up by the Secretary of the Board, it is apparent that appellant's then pay as Special Officer was to be protected entirely. We presume that it was wholly protected. The point to note is that his pay could be protected, whether partially or fully, only if he was transferred from one post to another whether on account of the abolition of the former post or as a matter of compulsory transfer. Read with the Office Order dated 20th March, 1972, it appears that the Board had adopted the device of first transferring the appellant from the post of Special Officer to the post of Section Officer and then abolishing the post of the Special Officer. It is necessary to note this fact, since the Board has interpreted this device as amalgamation of the posts of Special Officer with that of the Section Officer and not as a compulsory transfer from the post of Special Officer to that of Section Officer. Further, whether it is construed as amalgamation or as compulsory transfer, the legal consequences are the same, viz., that the appellant would have to be absorbed in the post of Section Officer from the date of his appointment in the post of Special Officer. Since further the Board itself regularised the appointment from the date of appointment as Special Officer, viz., 16th August, 1969, as is evident from its Order of 11th November, 1986, no objection can be raised in that behalf However, respondents who was promoted to one of the posts of Section Officers on 27th August, 1970 has contended that the seniority given to the appellant in the post of Section Officer w.e.f 16th August, 1969 i.e., from the day on which he was appointed as Special Officer, was illegal. We may now deal with the said contention.

Respondent-5 was an Assistant in the Office of the Board and as stated above, was for the first time, promoted as Section Officer on 27th August, 1970. It appears that for the first time in 1983, a seniority list of Section Officers was prepared but not circulated. In that list respondents was shown at No. 23 whereas, the appellant was shown at No. 33. This was so because two representations made by the

appellant to give him seniority from 16th August, 1969 stood rejected on 20th April, 1977 and 13th March, 1978 respectively. It appears that it was for the first time that by the order
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dated 11th November, 1986, the appellant's representation was accepted and he was given seniority from 16th August, 1969. Against the said order, respondents filed a writ petition which was withdrawn by him on 22nd December, 1986 since the learned Advocate General appearing for the Board stated before the Court that by the order dated 11th November, 1986 the Board had merely given seniority to the appellant from 16th August, 1969 and that grant of this seniority to the appellant had nothing to do with the inter se seniority in the cadre of Section Officers which would be determined later.

It appears that, thereafter, & seniority list of Section Officers was prepared by the Board in which the appellant was shown above respondent-5 and was granted promotion to the post of Assistant Secretary on 20th March, 1982 and to that of Deputy Secretary on 29th November, 1989. Against the said list of seniority, the respondents filed the present writ petition in the High Court primarily challenging the order of llth November, 1986 in terms of which the inter se seniority list was prepared.

The High Court held that the post of Special Officer occupied by the appellant was a temporary post and was not a cadre post; since the said post was abolished and thereafter the appellant was appointed as a Section Officer on 20th March, 1972 he would have to rank below respondent-5 who was appointed as Section Officer on 27th August, 1970. The High Court also relied on the fact that the Board's case before it was that as a consequence of the abolition of the post, the appellant was appointed as a Section Officer.

We are of the view that the approach of the High Court is not correct. As stated above, the facts reveal that the appellant was appointed in a higher post with a higher salary-scale. He was in fact compulsorily transferred from that post to the post of Section Officer, and after the transfer, by the same order of the 20th March, 1972, the post of Special Officer was abolished. The order is also capable of being interpreted as an order of amalgamation of the ex-cadre post of Special Officer with the cadre posts of Section Officers. As stated earlier, the consequence of both the interpretations of the said order is the same, viz., that the appellant would get seniority from the date of his appointment as the Special Officer. That it is a case of a compulsory transfer or of the amalgamation of post is evident from the fact that the appellant's salary as Special Officer was
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protected on the said transfer. It is true that there is nothing on record except the order of 20th March, 1972 to show that the temporary post of Special Officer which was created for the first time on 16th August, 1969 with the appointment of the appellant to it, was ever regularised and the appellant was appointed regularly to the same. However, on this aspect, we must go by the intention revealed in the resolutions and the orders of the Board itself. It cannot be suggested that the Board could not regularise the post and the appointment retrospectively by passing resolutions which in the absence of rules and regulations are equally valid. The Board's intentions in that behalf are clear. It treated the post as regular. The appellant was appointed to it in a substantive vacancy and in accordance with the

conditions governing it. There is, therefore, nothing in the decisions relied upon by the learned Counsel for respondent-5, viz., The Direct Recruit Class-II Engineering Officers' Association and Ors. v. State of Maharashtra and Ors., AIR 1990 SC 1607 and State of Bihar & Ors. etc. v. Akhouri Sachindra Nath & Ors., [1991] Suppl. 1 SCC 334 which militates against the seniority given to the appellant.

We accordingly allow the appeal. There will be no order is to costs.

S.L.S. Appeal allowed.

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JUDIS