
(2006) 07 JH CK 0014

In the Jharkhand High Court

Case No : Writ Petition (5) No. 4139 of 2004 (R)

Arjun Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-07-2006

Acts Referred:

Citation : (2006) 4 JCR 355

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; J.C. to S.C. and Sanjiv Jha, for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Petitioner joined the Government service as Overseer on 16th of January, 1965 in the Road Construction Department. He claims to have passed the Hindi noting and drafting and also the Tribal Language Examination. Petitioner was granted Time bound promotion vide order No. 252 dated 23rd of June, 1986 in the pay scale of Rs. 850-1360/- with effect from 01.04.1981. Some of the Junior Engineers similarly situated filed writ petitions before the Patna High Court seeking revised scale of regular promotion to the post of Assistant Engineer. One such writ was preferred by Sheo Shankar Roy being C.W.J.C. No. 10793 of 1993. This writ petition was decided vide judgment dated 01st August, 1995 with a direction to pay full salary and other allowances on the post of Assistant Engineer with effect from the date of their promotion with interest @ 18 %. This judgment was followed in some other cases also. In a Letters Patent Appeal No. 505 of 1995, the judgment of the Single Judge was affirmed with the reduction in the rate of interest from 18 per cent to 12 per cent. Consequently the State of Bihar, Road Construction Department issued Memo. No. 10542 dated 03rd December, 1999 granting promotion to the Junior Engineers to the post of Assistant Engineers. Petitioner's name also figures at Serial No. 840 of the said list. Thereafter petitioner was given promotion as

Assistant Engineer by Notification dated 28th of September, 2000 in the pay-scale of Rs. 6500-10,500/-. This promotion has been made effective from the date of taking over of the charge and according to the respondents, petitioner took over the charge on 1st March, 2002 and he was given the financial benefit with effect from the said date. However, petitioner has claimed the financial benefit with effect from 1995. Various representations were made by the petitioner claiming this benefit. Petitioner retired from service on 31st of November, 2003 from the post of Assistant Engineer, from Quality Control, Road Division, Deoghar and his pay was fixed at Rs. 15,911/- for the purpose of pension. Petitioner also filed a representation dated 05th of April, 2004 seeking promotion under Assured Career Progression Scheme on the basis of his service record. Respondent No. 6 intimated the Deputy Secretary, Road Construction Department, Jharkhand that there is no allegation pending against the petitioner. The claim of the petitioner in the present writ petition is that in view of the direction passed by the Patna High Court in various writ petitions and consequential order passed by the State Government, he is entitled to promotion as Assistant Engineer with effect from 01" April, 1995 and, consequently the financial benefits from the said date of promotion as also the benefit of Assured Career Progression Scheme. Respondent No. 3 has denied the entitlement of the petitioner as Assistant Engineer with effect from 01.04.1995 and stated that in terms of the Notification dated 28th of September, 2000, petitioner is entitled to promotion with effect from the date, he took over the charge as Assistant Engineer i.e. on 01st of March, 2002 and his pay has been, accordingly, fixed with effect from the said date. It is, however, stated that actual promotion benefit can only be given by the Administrative Department of the petitioner and not the Finance Department. According to this Respondent, the anomaly in the effective date of promotion, if any, can only be decided by the Administrative Department. As far the affidavit of Under Secretary, Road Construction Department i.e. Respondent No. 2 is concerned, it is stated that promotion to the post of Assistant Engineer was granted by Road Construction Department, Patna and no promotion has been granted by the R.C.D., Jharkhand and even the order of finalisation has not taken place and thus the claim of the petitioner can only be considered by the State of Bihar. It is interesting that the State of Bihar in its counter affidavit has stated that in compliance to the direction of the High Court in C.W.J.C. No. 3113 of 1997 filed by the Subordinate Engineers Association, Bihar to extend all financial benefits to the Assistant Engineers promoted from Junior Engineer post, direction was issued for grant of benefit from the date of their promotion, mentioned against their names. It is further stated that name of the petitioner figures in the above order and hence petitioner is entitled to all consequential benefit.

2. On the basis of the aforesaid pleadings, the dispute can be thus summarized as follows:

Whether petitioner is entitled to promotion with effect from 01.04.1995 or from the 01st March, 2002?

3. It is not in dispute that direction was issued by the Patna High Court in various writ petitions including C.W.J.C. No. 3113 of 1997. Consequently the State of Bihar issued Memo. No. 10542 dated 03rd of December, 1999 allowing promotion to the post of Assistant Engineers and petitioner's name figures at Serial No. 840 of the said list. Copy of this order has been placed on record alongwith the date of promotion under column 6 of the aforesaid order. The date of promotion has been mentioned as 01.04.1995 against the name of the petitioner. The validity and existence of this order has not been disputed. The judgment having been implemented in other cases, as is clearly indicated in the counter affidavit, filed by the State of Bihar, petitioner cannot be deprived of the benefit of promotion to the post of Assistant Engineer in accordance with the directions of the Court and the order passed by the State of Bihar. Even the Finance Department of the State of Jharkhand has stated that the decision regarding the effective date of promotion is to be taken by the Administrative Department of the petitioner. No decision has been taken by the Administrative Department so far.

4. This writ petition is, accordingly, allowed with a direction to the Respondent-State and the Road Construction Department to consider the case of the petitioner for promotion to the post of Assistant Engineer with effect from 01.04.1995 and if similarly situated employees have been granted this benefit on the basis of the direction of the Court and the Notification dated 3rd December, 1999, petitioner be also granted the same relief. Petitioner's case for promotion under the Assured Career Progression Scheme be also considered and if he is eligible and there is no legal impediment, he may also be granted the benefit of the said Scheme in accordance with the Rules. Let the process of consideration be completed within a period of three months. If the petitioner is found eligible and entitled to the relief claimed, all consequential benefits be granted to him. Since the petitioner has already retired from service, his pensionary/retiral benefits be also determined and fixed taking into consideration the benefit of promotions as mentioned above.