

(2003) 02 PAT CK 0038
In the Patna High Court
Case No : C.W.J.C. No. 1065 of 2001

Ashok Kumar Gupta

APPELLANT

Vs

Bihar State Agriculture Marketing Board and Others

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Citation : (2003) 2 PLJR 216

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Mihir Kumar Jha and Namrata Mishra, for the Appellant; K.P. Yadav and Rajeshwar Prasad, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of certiorari quashing the order dated 2.12.2000 (Annexure-15) whereby the Petitioner, instead of being promoted to the post of Executive Engineer had been granted the scale of pay equivalent to the post of Executive Engineer with effect from 14.2.1997 with further stipulation that the scale of pay and post of the Petitioner shall be that of an Assistant Engineer. Further prayer made by the Petitioner is to issue a writ in the nature of mandamus commanding the Respondents to promote him to the post of Executive Engineer at least from the date his juniors have been promoted.

2. Shorn of unnecessary details, facts giving rise to the present application are that the Petitioner earlier filed CWJC No. 1697 of 1995 (Ashok Kumar Gupta v. Bihar State Agriculture Marketing Board and Ors.) before this Court inter alia, praying for a direction to the Respondents to grant him promotion on regular basis to the post of Executive Engineer. In the said writ application further prayer made was to quash the order dated 6.7.1993 whereby while granting promotion to the Petitioner to the post of Executive Engineer, he was deprived of financial benefit admissible to that post. Prayer of the Petitioner in the said writ application was resisted on many counts including the plea that no post of

Executive Engineer has been sanctioned and although the State Government was requested to accord sanction for creation of the said post, no such post has been sanctioned. This Court by order dated 14.2.1997 disposed of the writ application with the following direction:

Therefore, in the background of the facts noticed above I am of the view that the matter be re-examined by the Board afresh with reference to the relevant requirements. But since other Assistant Engineers, though junior to the Petitioner were already promoted and the Board also having appreciated such complication has already assigned him the post of Executive Engineer, therefore, the Respondents are directed to make him payment of regular salary and other emoluments, as available against such post until final decision is taken in the matter.

3. While handing over the aforesaid direction, this Court took into consideration the plea of the Petitioner in regard to nonsanction of the post by the State Government and it observed as follows:

From the facts noticed above, there appears no dispute that other Assistant Engineers although junior to the Petitioner but have been granted promotion. This fact has also been accepted by the Respondents while assigning job of Executive Engineer to the Petitioner, but with a condition that he would not be entitled for financial benefit. This has also been noticed that the Board in a meeting itself dated 19.6.1995 had taken a decision to create three additional works division and decision was also taken on the same day for creation of separate electrical division. At the same time, one post of Assistant Engineer was also upgraded to the post of Executive Engineer (Technical Secretary to the Chief Engineer). Therefore, it is not clear how at one hand Board was competent to take independent decision as indicated above, but for granting promotion to the Petitioner, a request was made to the State Government to accord approval for creation of electrical division.

4. Respondent-Bihar State Agriculture marketing Board aggrieved by the aforesaid order of this Court preferred L.P.A. No. 356 of 1997 (The Bihar State Agricultural Marketing Board and Ors. v. Ashok Kumar Gupta and Ors.). A Division Bench of this Court by order dated 11.8.1997 (Annexure-6) dismissed the appeal. Respondent-Board aggrieved by the same preferred SLP "before the Supreme Court vide CC 3110 of 1998 and the same was dismissed by order 6.4.1999. Thereafter the case of the Petitioner was placed for consideration in the meeting of the Board held on 14.6.2000 and the prayer of the Petitioner for promotion as regular Executive Engineer has been rejected and Petitioner by the impugned order has been informed that although Petitioner shall hold substantive post and scale of Assistant Engineer but shall get salary in the scale of pay equivalent to the Executive Engineer. It is difficult to understand what Respondents meant by this. Be that as it may, one thing is clear that Petitioner has not been promoted to the post of Executive Engineer.

5. Mr. Mihir Kumar Jha appearing on behalf of the Petitioner submits that in view of the order of this Court dated 14.2.1997 (Annexure-5) Respondents are under an obligation to consider the case of the Petitioner for promotion as Executive Engineer on regular basis. He points out that the prayer of the Petitioner has been turned down on the same very pleas which were raised by the Respondent-Board in the earlier writ application and as such the action of the Board in not promoting the Petitioner as Executive Engineer on regular basis is illegal and the order impugned is fit to be quashed. He further submits that it is a fit case in which the Respondents be directed to consider the case of the Petitioner for promotion as Executive Engineer at least from the date his juniors were promoted. Mr. Rajeshwar Prasad, however, appearing on behalf of Respondents 1 to 3 submits that while disposing of the writ application this Court directed the Respondent-Board to consider the case of the Petitioner and in the light of the said direction the case of the Petitioner was considered and finding that no post of Executive Engineer had been sanctioned, Respondent-Board has no option than to turn down the prayer of the Petitioner. He emphasises that there being no post of Executive Engineer sanctioned by the State Government, prayer made by the Petitioner is fit to be rejected.

6. Having appreciated the rival submission I find substance in the submission of Mr. Jha. It is relevant here to state that in the earlier writ application filed by the Petitioner the plea of non-sanction of the post of Executive Engineer was taken and from paragraph 10 of the order of this Court, referred to above, it is evident that the same did not find favour with this Court. Once it is held so, the Respondents are bound by the order of this Court, which has been affirmed by the Division Bench in appeal and the SLP filed against the said order has also been dismissed by the Supreme Court. It is well settled that when this Court directs any authority to consider the case of an employee, it has to bear in mind the observation made in the order. It is evident that while considering the case of the Petitioner, Respondents have not taken into account the observation made by this Court. This itself vitiates the impugned order.

7. In the result, the writ application is allowed, impugned order dated 2.12.2000 (Annexure-15) is quashed and the writ in the nature of mandamus is issued commanding the Respondents to consider the case of the Petitioner for promotion to the post of Executive Engineer, at least from the date his juniors were promoted bearing in mind the observation made in the order dated 14.2.1997 passed in CWJC No. 1697 of 1995 and the order passed today. The aforesaid exercise must be done within three months from the date of receipt/production of a copy of this order. In the facts and circumstances of the case, there shall be no order as to costs.