

(1998) 12 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 9915 of 1994

Baidyanath Prasad Srivastava

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 PLJR 818

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : K.N. Keshava and Amresh Kumar, for the Appellant; Amit Prasad, for the Respondent

Judgement

S.N. Mishra, J.—In this writ application under Articles 226 and 227 of the Constitution of India the Petitioner has prayed for a direction to the Respondent to pay the post retirement benefits to the Petitioner, after taking into consideration the monetary benefits, arising out of the time bound promotion, which the Petitioner is legally entitled to during the period while he was in service.

2. Shortly, stated the facts of the case is, which are not in dispute, that he was appointed on the post of Lower Division Clerk on 17.12.63. It is alleged that the Petitioner was transferred to the CD. Block Garkha. The order of transfer was subsequently recalled due to duath of his son vide order dated 6.2.63, copy of which is made Annexure-1 to this writ application. It is alleged that the then Head Clerk made proposal for initiating a criminal case against the Petitioner. The Petitioner filed a representation before the District Magistrate on 29.10.63 stating, interalia, that he is being falsely implicated at the. instance of the Head Clerk. The copy of the said representation is made Annexure-2 to this writ application. However, three separate criminal cases were filed against the Petitioner in the year 1963 and he was placed under suspension by order dated 1.9.64. Subsequently on 14.12.68 the Petitioner was dismissed from service.

Accordingly, the Petitioner filed a suit being Title Suit No. 196/68 challenging the order of dismissal. Since the prayer for injunction was refused, the Petitioner filed Civil Revision application being Civil Revision No. 1277/69 wherein it was observed that the Petitioner will be fully compensated if he succeeds in the suit as it appears from the order as contained in Annexure-3 to this writ application. The trial court by order dated 14.3.70 has held that the order of discharge passed against the Petitioner is illegal and inoperative but unfortunately the suit was dismissed on the ground of non-service of notice u/s 80 of the Code of Civil Procedure. The Petitioner thereafter, filed a fresh suit, after service of notice in terms of Section 80 of the CPC which was registered as Title suit No. 13/70 and the aforesaid Title suit was compromised and pursuant to the compromise decree the Petitioner was paid full wages for the period of suspension with effect from 1.9.64 to November, 1972. Since the criminal cases filed earlier remained pending the Petitioner was ultimately acquitted in all the aforesaid three cases as it appears from the judgment and order contained in Annexure-5 series to this writ application. Thereafter Petitioner retired from service on 31st of May, 1992.

3. The grievance of the Petitioner in this writ application is that even after service of more than 38 years not a single time bound promotion was given although the Petitioner is legally entitled to two time bound such promotions. The further prayer of the Petitioner is for grant of compensation for malicious prosecution of the Petitioner continuously for twenty three years. As stated above the aforesaid facts are not in dispute.

4. In this case a counter affidavit has been filed on behalf of the State Respondents wherein inter alia it is stated that since the Petitioner has not passed the final _ Accounts examination conducted by the Board of Revenue and as such, he is not entitled to the time bound promotion as claimed by the Petitioner. In this case the Petitioner has also filed reply to the counter affidavit wherein, inter alia, it is stated in paragraph 4 which reads as follows:

That the submissions made in para- graphs No. 5 to 9 of the counter affidavit under reply are not correct. The Petitioner has already completed more than 25 years of the service before 1.1.81. Large number of persons of the Petitioner's rank who had completed 25 years of service or more were given both the time bound promotions i.e. in junior Selection grade and Senior Selection grade even without passing the Departmental Examination. Whose time bound promotion before 1.9.1983 without passing the Departmental Examination and the Government has decided that they could not be demoted for non-passing the examination. It was due to pendency of three criminal cases in which the Petitioner was acquitted in the year 1987. He was entitled to all promotional benefits which was wrongly denied to the Petitioner with effect from 1.1.1981 and prior to 1.9.1983, the Government notification of 1985 could not be bar for the Petitioner for his promotion with effect from 1.1.1981.

In this connection a reference may be made to the Government decision dated 13.2.95, copy of which is made Annexure-8 to the reply to the counter-affidavit.

A mere perusal of the Government decision as contained in Annexure-8 it appears that the stand taken in the counter affidavit is not tenable in the eye of law, inasmuch as, when the similarly situated employee has been granted time bound promotion on the basis of the Government decision itself.

5. Learned Counsel for the Petitioner submits that due to the pendency of the criminal cases the time bound promotion was not given to the Petitioner. Ultimately, as stated above, he was acquitted of the criminal charges and, as such, it is submitted that the Petitioner is entitled to the monetary benefits arising out of the two time bound promotions from the due date i.e. 1981. The submission of the learned Counsel is well founded. The first time bound promotion which is due with effect from 1.4.1981 should not have been withheld and/or denied on the ground of non-passing of the final Accounts examination conducted by the Board of Revenue. Since the Petitioner has completed 25 years of service on 1.4.1986 he is entitled for second time bound promotion as well. The Petitioner has now retired, he is entitled to the monetary benefits arising out of two time bound promotions which are legally due with effect from the date mentioned above and accordingly his pension and gratuity has to be refixed on the basis thereof. The Petitioner is also entitled for payment of the difference of salary on the basis of such promotion with effect from the due date as mentioned above including the payment of unutilised leave encashment on the basis of last pay drawn after taking into consideration the aforesaid two time bound promotions.

6. Learned Counsel for the State however, submits that substantial amounts by way of pensionary benefits has already been paid to the Petitioner in the year 1995 itself. Accordingly, this writ application is allowed to the extent indicated above with a direction to the Respondent authority to re-calculate the pension and the gratuity amounts including the revised salary legally payable to the Petitioner after taking into consideration the monetary benefits arising out of the two time bound promotions and pay the same as early as possible preferably within three months from the receipt and production of a copy of this order failing which the Petitioner will be entitled to the interest at the rate of 18% per annum from the due date of payment including cost assessed at Rs. 10000/-.