
(2005) 05 PAT CK 0044
In the Patna High Court
Case No : CWJC No. 8496 of 2003

Bhagwan Bhagat

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-05-2005

Acts Referred:

Citation : (2005) 2 BLJR 1442 : (2005) 3 PLJR 153

Hon'ble Judges : Chandramauli Kumar Prasad, J

Bench : Single Bench

Advocate : Tara Nath Jha, for the Appellant;

Judgement

Chandramauli Kumar Prasad, J.—This application has been filed for quashing the order as contained in memo dated 26th July 2003 (Annexure-4), whereby it has been directed that for the purpose of time bound promotion the date on which the petitioner had acquired the graduate trained qualification shall be reckoned. Petitioner's prayer is for grant of time bound promotion taking into account the date of his joining as Assistant Teacher on 19.10.1969.

2. Short facts giving rise to the present application are that the petitioner was appointed as Assistant Teacher and joined as such on 19.10.1969. Petitioner at the time of his joining possessed the qualifications of Bachelor of Arts and Master of Arts which examinations he passed in the year 1962 and 1964 respectively. Taking into account his date of joining as 19.10.1969 he was given the benefit of first time bound promotion with effect from 1.4.1981. The grant of first time bound promotion was found to be irregular in the adult report and accordingly, by order dated 10.7.1999 the direction was issued to recover the excess amount paid to the petitioner.

3. Petitioner aggrieved by the same preferred CWJC No. 3026 of 2000, Bhagwan Bhagat v. State of Bihar and Ors. before this Court inter alia contending that as he was appointed on 19.10.1969 he was rightly given the first time bound promotion taking into account the date of his initial appointment. This Court

found that the case of the petitioner to be covered by the decision of this Court in the case of Bharat Prasad Chourasia Vs. State of Bihar and Others, , particularly paragraphs 13 and 14 of the judgment and accordingly allowed the writ application and directed the Director. Secondary Education to consider the claim of the petitioner afresh in the light of the judgment of this Court in the case of Bharat Prasad Chourasia (Supra).

4. In the light of the aforesaid order of this Court petitioner filed representation and by the impugned order the time bound promotion given to the petitioner taking into account the date of his joining was directed to be modified from the date the petitioner obtained the graduate trained qualification and it has been directed that the excess amount paid to the petitioner on account of grant of time bound promotion taking into account the date of appointment as Assistant Teacher be recovered.

In spite of opportunity having been given to the respondent, they have not chosen to file the counter affidavit.

5. Mr. Tara Nath Jha appearing on behalf of the petitioner submits that the matter stands concluded by the judgment of this Court in the case of Bharat Prasad Chourasia (Supra) and while passing the impugned order the Director had not taken into account what has been said by this Court in paragraphs 13 and 14 of the said judgment. He points out that as the petitioner was appointed prior to 18.9.1972 qualifying period for time bound promotion will be computed from the date of his Initial appointment: He draws my attention to paragraphs 13 and 14 of the judgment-which read as follows :-

"But, then came letter, dated 27.4.1987 which substantially altered the position. The subject of this letter is the grant of time bound promotion to the teachers of nationalised high school and in paragraphs 2 and 3 it is stated as follows :-

2. Rajkiyekrit Madhiyamik Vidyalay Ke Sahayak Sikshiko Ko Kalbadh Pronnati Dene Ke Liye Vibhagiye Patrank-35, Dinak 13.1.86 Dwara Aadesh Diya Ja Ghoka Hai, Punah Ishka Aspastikaran Bhi Vibhagiye Patrank 481 Dinak 25.8.1986 Ke Dawara Diya Ja Choka Hai.

3. Jahan Tak 18.9.72 Ke Purwa Niyukti Aprsikshit Sikshako Ka Prashna hai We Bhi Awar Shereni Ke Sishak Mane Gaya Hai. Aiyse Sikshako Ko Do Vetanman Mil Rahe Hai. Jo Aprasikshit hai Unhe 730-1080 Aur Jo Prasikshit Ho Gaya Hain Unhe 850-1360 Rupiyе. Kalbadh Pronnaiti Dene Ke Liye Inki Sewa Ke Ganna Aprasikshit Sikshak Ke Roop Mein Unki Niyukti tithi Se Ki Gai Hai. Waise Aprasikshit Sikshak Jo Ab Prasikshit Ho Gaye Hain Unki Sewa Ki Ganna Bhi 18.9.1972 Ke Purwa Aprasikshit Sikshak Ke Roop Mein Unki Niyukti Tithi Se mani Gai Hai."

The contents of paragraph 3 leave no room for doubt that even in case of such of the Assistant teachers in the subordinate grade who were in the graduate trained scale of pay, the qualifying period for time bound promotion will be computed

from the date of their initial appointment as a graduate untrained teachers and seen in the light of this communication no exception can be taken to the promotions granted to the 43 petitioners, all of whom were appointed before 18.9.1972."

JC to Government pleader No. VIII appears on behalf of the State.

6. Undisputedly petitioner joined the service as Assistant Teacher on 19.10.1969 and therefore, appointed before 18.9.1972, In view of the decision of this Court in Bharat Prasad Chourasia petitioner's service for grant of time bound promotion has to be computed from the said date. The impugned order has been passed by the Director without taking into account the judgment of this Court in the case of Bharat Prasad Chourasia (supra). It is relevant here to state that while disposing of the earlier writ application filed by the petitioner this Court had clearly observed that the case of the petitioner shall be considered afresh in the light of the said judgment. The Director has apparently committed an error by not considering the case of the petitioner taking into account the paragraphs 13 and 14 of the said judgment. This vitiates its order.

7. I am of the opinion that petitioner shall be entitled for grant of first time bound promotion taking into account the date of his initial appointment as Assistant Teacher with effect from 19.10.1969. Accordingly, the respondents are directed to consider the case of the petitioner's for grant of first time bound promotion taking into account his initial appointment as graduate untrained teacher on 19.10.1969 and thereafter to consider the second time bound promotion in accordance with law.

8. Needless to state that on account of shifting of the date of first time bound promotion, in case the petitioner is entitled for second time bound promotion same shall be given to him with all consequential benefits.

Since the petitioner has already retired in case grant of those promotions shall entitle increase in the pensionary benefits petitioner shall be entitled for that also.

9. All these exercises be completed within a period of six months from the date of receipt/production of a copy of this order.

Application stands allowed in the aforesaid terms, but without any order as to cost.