

(2004) 12 JH CK 0022
In the Jharkhand High Court
Case No : L.P.A. No. 623 of 2003

Bijay Charan Gupta

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 BLJR 228 : (2005) 1 JCR 509

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : Ram Kishore Prasad, for the Appellant; Sheela Prasad, GP IV, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the appellant against the order dated 20th August, 2003, passed in W.P. (S) No. 4100 of 2003, whereby the learned Single Judge has dismissed the writ petition and refused to grant relief of time bound promotions to the writ petitioner (appellant herein) on the ground that the writ petition was barred by the principles of res judicata.

2. Brief facts of the case is that the appellant was in the services of the State and was not granted any promotion during his service period. Though he was entitled for time bound promotions; 1st time bound promotion with effect from 1.4.1981 and 2nd time bound promotion with effect from 1st April, 1986, his case was not considered as one departmental proceeding was pending against him. However, the proceeding was ultimately concluded in his favour in the year, 1993 and later on the retired in the year, 1998, but his case for time bound promotions was not considered. Thereafter, he having retired and no retiral benefits having been paid to him, moved before the High Court in CWJC No. 931 of 1999 for payment of retiral benefits. The said writ petition was disposed of on 14th March, 2001 with a direction to the State to pay the admitted retiral benefits and to release the increments to which he was entitled. Pursuant to such direction, the retiral

benefits, including other dues, have been paid. However, his case for time bound promotions was not considered. These facts have not been disputed by the State. It appears that the appellant preferred another writ petition being W.P. (S) No. 4100 of 2003 for a direction on the respondents to grant him 1st and 2nd time bound promotions with effect from 1st April, 1981 and 1st April, 1986 respectively, the same not having been granted to him. He also prayed for super time scale of Office Superintendent. The learned Single Judge by the impugned order dated 20th August, 2003 dismissed the writ petition on the ground that it was barred by the principles of res judicata.

3. Mrs. Sheela Prasad, learned Government, Pleader No. IV while supported the order, passed by the learned Single Judge, took similar plea that the 2nd writ petition was barred by the principles of res judicata. However, we do not agree with such submission as the earlier writ petition was preferred by the appellant for payment of retiral benefits whereas the 2nd writ petition i.e. the present one was preferred by him for grant of time bound promotions, to which he was entitled for consideration. Cause of action of both the cases being different and the reliefs, sought for in both the writ petitions, being separate, principles of res judicata can not be made applicable in the 2nd case.

4. Having regard to the facts and circumstances of the case, as the learned Single Judge has erred in holding that the 2nd writ petition i.e. W.P. (S) No. 4100 of 2003 was not maintainable, being barred by the principles of res judicata, such find being erroneous, the impugned order dated 20th August, 2003, passed by the learned Single Judge in W.P. (S) No. 4100 of 2003, is set aside. The case is remitted to the respondents with a direction to consider the case of the appellant and to find out as to whether he is entitled for 1st and/or 2nd time bound promotion (s) or not and if found entitled, to determine whether he is fit or not and the date from which he is so entitled. Decision in this regard in one or other way be taken and communicated to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

5. Needless to say that the appellant will be entitled for consequential benefits, such as, arrears of salary, revision of pension, gratuity, leave encashment etc., if he is allowed time bound promotion(s). This appeal is, accordingly, allowed with the aforesaid observations and directions.