
(2005) 01 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 5583 of 1999

Bijay Kumar Thakur

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-01-2005

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 89

Citation : (2005) 2 PLJR 60

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Mayanand Jha, for the Appellant; S.K. Ghosh and A.K. Chongdar for State, for the Respondent

Judgement

Narayan Roy, J.—Heard counsel for the parties. The petitioner by this application seeks direction upon the respondents to grant him regular promotion in junior selection grade and senior selection grade in Bihar Administrative Services with effect from the due date his juniors have been promoted.

2. It is contended by Learned Counsel for the petitioner that the case of the petitioner was considered for promotion to junior selection grade and senior selection grade alongwith his juniors in the month of December, 1998, but his case was kept in abeyance on account of pendency of a departmental inquiry. It is further contended that till date the State authorities have not taken any decision pertaining to promotion of the petitioner on untenable grounds, though one post has been reserved for him. It is also submitted by Learned Counsel for the petitioner that the departmental inquiry, which was initiated against the petitioner in the month of March, 1998 pertaining to the affairs of the District of Dhanbad, which fell within the jurisdiction of the State of Jharkhand after coming into force of the Bihar Reorganisation Act, 2000 (hereinafter referred to as "Act") and till date the petitioner is serving in the State of Bihar and, therefore, for all practical purposes, it would be deemed that the departmental proceeding initiated against the petitioner stood closed.

3. Learned Additional Advocate General No. II, appearing on behalf of the respondents, on the contrary, submitted that it is not true that the proceeding initiated against the petitioner has been closed, rather the same is still continuing, as the matter has been referred to the State of Jharkhand to enquire against the petitioner u/s 89 of the Act and till date the departmental inquiry is continuing against him.

4. It is not in dispute that the departmental proceeding initiated against the petitioner vide resolution No. 2976 dated 21.3.1998 is still pending. It is also not in dispute that the pending proceeding against the petitioner has been transferred to the State of Jharkhand under the provisions of section 89 of the Act and till date no decision has been taken in the matter.

5. Now a question arises as to whether the proceeding, which stood transferred to the State of Jharkhand by virtue of section 89 of the Act, will be concluded by the State of Bihar, within whose jurisdiction the petitioner is serving or by the State of Jharkhand, where the alleged misconduct is reported, which was within the territory of the State of Bihar before the appointed day as per the Act.

6. From annexure 15 to the supplementary affidavit filed on behalf of the petitioner, it appears that the State of Bihar sought for clarification from the Union of India regarding the management of State cadres pending bifurcation between Bihar and Jharkhand States. Issue No. 1 of the query reads as follows:

"There is no clarity as to which State, Bihar or Jharkhand, will pursue cases of disciplinary proceedings, allegations, vigilance enquiries, etc. in respect of the State services posted in Jharkhand State."

7. In response to Issue No. 1, the Central Government clarified in clause (b), which reads as follows:

"Where an enquiry is under way and has not been concluded before the appointed day:

In such a case, it would be desirable that the State of Bihar finalise the enquiry started at its end before the appointed day, even if it means that the enquiry officer may have to visit the other State to complete the process."

8. From the clarification, issued by the Union of India, as referred to above, it is manifest that the enquiry, which was under way pertaining to the petitioner, could not be completed before the appointed day, and the same is to be completed by the State of Bihar.

9. In view of the aforementioned facts, submission of Learned Counsel for the petitioner that the proceeding initiated against the petitioner since has been transferred u/s 89 of the Act, the same amounted to its closure, appears to be wholly misconceived. However, it appears from the pleadings of the parties that the case of the petitioner for promotion was kept in abeyance and one post was kept reserved on account of pendency of the departmental proceeding against

the petitioner. It further appears that the proceeding initiated against the petitioner in the year 1998 is still continuing and, thus, claim of the petitioner for promotion is being jeopardised.

10. In the given facts and circumstances of the case, it would be desirable for the State authorities to conclude the proceeding by the earliest possible.

11. Under the circumstances, the respondent authorities are directed to conclude the departmental proceeding, which is pending against the petitioner since 1998 within a period of six months from today and in case, it is not so done, the case of the petitioner shall be considered for promotion, for which one post has been kept reserved, under sealed cover procedure, which is a well established concept in service jurisprudence, within a further period of three months. With the direction/observation aforesaid, this application is disposed of.