

(1999) 09 PAT CK 0051
In the Patna High Court
Case No : C.W.J.C. No. 9627 of 1996

Bimal Kumar Niyogi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-09-1999

Acts Referred:

Bihar Regional Development Authorities Act, 1981 — Section 6(3)

Citation : (2000) 1 PLJR 96

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Ganesh Prasad Sinha, Anisur Rahman and B.K. Dubey, for the Appellant; G.P. Roy for the State and M/s. Rajendra Pd. Singh and M.P. Jaiswal for the P.R.D.A., for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioner who was in the services of Respondents Patna Regional Development Authority (P.R.D.A. for short), has moved this Court with three fold prayer, namely, (a) to direct the Respondents to issue appropriate order of approval and concurrence relating to promotion of petitioner to the post of Superintending Engineer with effect from 17th November" 88 and to provide consequential monetary benefit to the same; (b) to direct the Respondents to pay in the post of Chief Engineer (sic) (c) to direct the Respondents to pay interest on arrears and the arrears of Provident Fund with interest accrued therein. As the case can be disposed of on a short point, it is not necessary to discuss all the facts, except the relevant one.

2. The petitioner was initially appointed as Assistant Engineer on 1st June, 1956 and confirmed to the said post on 9th January, 1957. At that stage, it was known as Patna Improvement Trust, now known as Patna Regional Development Authority.

3. Under Sub-section (3) to section 6 of the Bihar Regional Development Authority Act, 1981, the post having minimum salary of Rs. 500/- is required to be filled up on the advise of the Bihar Public Service Commission, the authority is

empowered to appoint a person on any post carrying salary of Rs. 500/- after approval of the State Govt., but total period cannot exceed here than six months.

4. Admittedly, the higher post of Executive Engineer was vacant under the P.R.D.A. and petitioner being one of the senior most Assistant Engineer become eligible for promotion to the said post. It appears that the matter was referred to the State of Bihar and Bihar Public Service Commission (B.P.S.C.) and in anticipation, working arrangement was made by P.R.D.A. on 23rd December" 75. By the said order, it was communicated that the P.R.D.A. decided to promote the petitioner to the post of Executive Engineer in the scale of Executive Engineer. However, it was made clear that till the approval of the State of Bihar and B.P.S.C. is obtained, he will not get the benefit of promotion, but can work as an incharge of the said post.

5. Subsequently, on receipt of the approval of the B.P.S.C. formal order was issued on 28th July" 96, by which the petitioner was given regular promotion as Executive Engineer with effect from 9th December" 75 and thereby provided the petitioner with the benefit of salary of the post of Executive Engineer from such retrospective date.

6. When the question of filling up the higher post of Superintending Engineer fell for consideration, the case of the petitioner was considered along with another. This time, again the P.R.D.A. decided to promote the petitioner and others to the post of Superintending Engineer with effect from 17th Nov. "88, in the then scale of Rs. 1200-2000/-, but it was made clear that the benefit of such promotion will not be granted till the approval and concurrence of B.P.S.C. is obtained and/or concurrence of the State of Bihar. The petitioner, till such decision will be functioning as Incharge of the higher post of Superintending Engineer. Such order was issued on 18th March" 89.

7. It appears that in absence of regular Chief Engineer/I/C. Chief Engineer, the petitioner was also given charge of the higher post of Chief Engineer, which he held from 5.1.91 to 30.9.91 and on the said date (30.9.91) retired from service.

8. The grievance of the petitioner is that the authorities have neither paid salary of the higher post of Superintending Engineer on promotion, as granted vide order dated 18th March" 89 nor given salary of the post of Chief Engineer in respect of period, he performed such duty. Further, according to the petitioner, on his retirement, he has been provided with Provident Fund, but lesser amount has been paid, statutory interest having not been granted in accordance with law.

9. The respondents P.R.D.A. and its authorities appeared and filed counter affidavit. According to their counsel, the benefit of regular promotion cannot be granted without concurrence of the B.P.S.C. as per provisions of section 6(3) of the Bihar Regional Development Authority Act, 1981. It is stated that the amount to which the petitioner was entitled on his retirement has already been paid including Provident Fund amount, no further amount is payable to the petitioner.

10. In the counter affidavit filed on behalf of the State of Bihar, while they have taken similar plea that promotion cannot be granted without the concurrence of the State and/or B.P.S.C., stated that there is no such decision taken in favour of the petitioner till date.

11. From the facts aforesaid, it will be evident that the petitioner was given promotion by P.R.D.A. to the post of Executive Engineer in 1975 and on receipt of approval of the B.P.S.C., the benefit of such promotion was provided after 11 years (1986), giving effect to the order of promotion with effect from 1975. It will be further evident then though such decision was taken for promotion of petitioner to the next higher post of Supdt. Engineer with effect from 17th November" 88, vide order dated 18th March" 89, subject to approval of B.P.S.C, but no further order has been issued till date on receipt of recommendation of B.P.S.C. The stipulation made in the order dated 18th March" 89 has not yet given its finality.

12. In the facts and circumstances, I direct the authority of P.R.D.A. to forward the name of the petitioner to the B.P.S.C. for promotion to the post of Supdt. Engineer in terms with office Order No. 126/89 dated 18th March" 89 within one month from the date of receipt/production of a copy of this order. They will bring to the notice of the P.R.D.A. that the Court has desired that the B.P.S.C should clear the matter in one or other way within two months from the date of receipt of such requisition.

The B.P.S.C. is required to communicate the decision within two months from the date of requisition whereinafter, the authorities of P.R.D.A. are required to issue appropriate order/notification taking into consideration the recommendation of the B.P.S.C. and the order aforesaid dated 18th March" 89 in respect of such promotion to the post of Superintending Engineer with effect from 17th November" 88.

13. Final decision, in this respect, be taken and communicated to the petitioner within a period of four months from the date of receipt/production of a copy of this order.

14. It is needless to say that if such benefit is provided, the petitioner will be entitled for consequential monetary benefit, including arrears of salary on such promotion.

15. So far as claim of petitioner for salary of the post of Chief Engineer is concerned, I reject the claim, as the petitioner was merely made Incharge of the Post with clear stipulation that he will be getting his own salary.

16. So far as Provident Fund is concerned, I merely direct the authorities of P.R.D.A. to provide the petitioner with a chart showing the details of calculation in respect of payment of provident fund amount of petitioner, as already made, the deductions as made from time to time and statutory interest allowed therein, be reflected in the chart, the same be communicated to the petitioner on his

request within a period of two months from the date of receipt of such representation.

17. On receipt of such chart, if there remains any grievance, the petitioner may bring the same to the notice of the Vice Chairman P.R.D.A. The writ petition stands disposed of with the aforesaid observations and directions. There shall, however, be no order, as to costs.