
(2007) 07 PAT CK 0184
In the Patna High Court
Case No : CWJC No. 7417 of 2005

Binod Kumar Pathak

APPELLANT

Vs

Bihar State Scheduled Caste Co-operative Development
Corporation Limited and Others

RESPONDENT

Date of Decision : 23-07-2007

Acts Referred:

Citation : (2007) 07 PAT CK 0184

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Ashok Kumar Choudhary and Amit Prakash, for the Appellant; R.S. Pradhan and Rajeev Lochan for the Corporation, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the parties. By virtue of an earlier promotion order dated 28.4.1998 petitioner was appointed on the post of Inspector-cum-Recovery Officer under the Corporation. He was granted a higher pay-scale also in this regard. After almost six years, by virtue of Annexure-7 dated 9.11.2004 petitioner was reverted back to the original post of Clerk-cum-Typist. In the present writ application petitioner has challenged this order of reversion as being arbitrary and being in conflict or contrary to the resolution which has been earlier taken by the Board of Directors as contained in Annexure-8.

2. It is being stated for record that petitioner has been compulsorily retired from the Corporation by a subsequent order. He had filed an interlocutory application challenging that order also but this Court vide earlier order dated 14.5.2007 rejected the interlocutory application giving liberty to the petitioner to challenge the same in a separate writ application. Petitioner submits that this order of reversion has had a direct effect on his other entitlements even though he has been removed from service compulsorily, therefore, the present writ application ought to be decided on its own merits in the given facts of the case.

3. The pointed submission of counsel for the petitioner is that vide a decision taken by the Board of Directors on 18.11.1986 in its 33rd meeting, decision was taken as per Resolution no. 18 to grant promotion to persons working as Accounts Assistant or people with similar pay of Rs. 730-1080 to be promoted to the post of Inspector-cum-Recovery Officer. It was in this background that subsequent orders granting promotion to a large number of persons came to be issued by the Corporation in the year 1998. Petitioner was one of the beneficiaries of this decision but after more than six years all of a sudden the Managing Director vide his order dated 9.11.2004 decided in his wisdom to revert the petitioner to the post of Clerk-cum-Typist. Petitioner further points out that there is discrimination also which has been meted out against him because in an identical situation another employee, namely, Shri Lallan Ram Swapach has been given back his promotion and the order of reversion passed against him has been withdrawn by the Managing Director This Court granted opportunity to the respondents to explain the true position by way of filing a supplementary affidavit if so required.

4. Learned counsel for the respondents submits that the decision of the Board taken in the year 1986 was wrongly interpreted and benefits of promotion were granted to the likes of the petitioner. When the Managing Director in his wisdom discovered the fact the decision to revert similarly promoted persons were taken. He has also submitted in a supplementary counter affidavit that the case of Mr. Swapach was reconsidered because he belonged to the Scheduled Caste category and to that extent his case is different from the case of the petitioner. The same position and stand has been reiterated in many paragraphs and that is the justification which has been given by the respondent Corporation for restoring Mr. Swapach back to the post of Inspector-cum-Recovery Officer.

5. Learned counsel for the petitioner in view of the clear cut pleadings of the respondents has complained of hostile discrimination as well as arbitrariness in the decision on the face of it. He submits that there are no Rules or Regulations which gives any benefit to a Scheduled Caste employee in matter of such promotion. The channel of promotion being common and was issued in light of the earlier decision taken by the Board, the decision of the Board has to be applied uniformly in favour of all the employees.

6. Learned counsel for the petitioner seems to be correct in his submission. Promotions to the post of Inspector-cum-Recovery Officer was made/granted in the year 1998 and after more than six years this was sought to be undone by the Managing Director in a most arbitrary fashion. Unless the earlier resolutions of the Board was undone or clarified the interpretation which is being sought to be given now is not available to him. Certain right had already accrued in favour of the petitioner and other employees which cannot be denied to them at the whims and fancies of the subsequent management.

7. This Court also gets an impression that the decision of the Managing Director is based more on his whims and fancies and personal likes and dislikes rather

than by any settled conditions of Rules in this regard. In absence of any regulations or rules which entitles an employee belonging to scheduled caste to an accelerated condition of promotion or cancellation of his earlier order of reversion by virtue of being a scheduled caste, there cannot be any discrimination merely because the petitioner belonged to the general category. The distinction which has been made in the counter affidavit cannot be accepted because that does not enforce the rule of law and the equality before the law in any manner. The action is positively discriminatory to the petitioner. Two identical employees are being treated separately by the management.

8. This being the factual and legal position in the present case, this Court has no option but to interfere with the order of reversion which has been passed against the petitioner contained in Annexure-7. It is accordingly quashed with a direction upon the Managing Director to issue an order restoring the position of the petitioner to the post of Inspector-cum-Recovery Officer from the date of his reversion till the date of his compulsory retirement. Needless to say that petitioner, if the Rules so permit, will be entitled to the benefits which may accrue because of the said restoration of his position on his earlier promoted post. This order, however, does not give him any advantage so far as the merit of the order of compulsory retirement is concerned since that is a separate issue which will have to be decided in case the petitioner challenge the same in a separate writ application. This writ application stands allowed to the extent indicated above.