

(2016) 02 PAT CK 0047

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16366 of 2015

Birendra Kumar Rai and Ors.

APPELLANT

Vs

State of Bihar through the Principal Secretary, Home
Department and Ors.

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Citation : (2016) 2 PLJR 291

Hon'ble Judges : Ajay Kr. Tripathi, J.

Bench : Single Bench

Advocate : P.K. Singh, SC-12, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J. (Oral)- Before coming to the merits of the matter raised by the petitioners in the present writ application, the Court would like to refer to the affidavit of the Principal Secretary, General Administration Department, Government of Bihar, which has been filed pursuant to the direction plus adjournment granted on the request made by the Principal Secretary on 8.2.2016. The Principal Secretary has very categorically stated in his affidavit that the State Government is not in a position to withdraw the order dated 12/8/2014, issued by the Department putting a ban on consideration for promotion across the board in the State of Bihar till the final outcome of an SLP which has been moved by the State of Bihar, in the case of Sushil Kumar Singh originating out of CWJC No. 19114 of 2012.

2. To set the records straight, the State of Bihar issued Resolution No. 11635 dated 28.01.2012, giving benefit to SC/ST candidates even in promotion and seniority, which was challenged by certain Government servants, led by Sushil Kumar Singh and others. Since the learned Single Judge passed an order of stay against the resolution, the order dated 12/8/2014, which is Annexure-2 to the writ application, was issued by the General Administration Department putting on hold all consideration for promotion. Learned Single Judge after hearing the

parties including the State quashed the resolution holding it to be unconstitutional. The said decision was upheld by the Division Bench of this Court as well an SLP thereafter came to be filed against the decision of the Division Bench, which affirmed the learned Single Judge's order but nothing tangible has emerged.

3. Naturally with a blanket ban imposed by the General Administration Department on all and sundry, even in the cases where the Departmental Promotion Committee had made recommendation for grant of promotion to Government servants, it was not being implemented or acted upon. Obviously, a substantive right granted in favour of a Government servant was put on hold, if not frustrated. Many of these persons so recommended were either on the verge of superannuation or have even superannuated. It was in this background that a series of writ applications started being filed looking for a direction or a mandamus upon the respondents to act upon the recommendation of the DPC, if not consider their right for promotion as such.

4. This Court has been burdened enough. It has been giving indulgence to the State to obtain some kind of stay order or direction from the Hon'ble Apex Court. Since August, 2015, no substantive order or order of stay has been passed by the Hon'ble Apex Court in SLP filed by the State of Bihar, except issuance of notice. Legally as of today, Resolution No. 11635 dated 21.08.2012, issued by the State of Bihar, is non-existent. Whatever the administrative problems which have been explained to the Court by the learned Principal AAG, are matters of administration and governance, if not for some other consideration the State would not like to act, despite judicial declaration as of today.

5. The Court is neither impressed by the stand of the Principal Secretary, Department of General Administration, or the stand taken by the Principal AAG as to why the order dated 12/08/2014 should be allowed to continue.

6. Since things have come to a stand still since August, 2014 in matters of grant of promotion and further since the Court does not find any judicial reason to allow the General Administration Department to continue with the order dated 12/08/2014 to occupy the field, the Court is left with no option but to quash the order No. 11218 dated 12/08/2014.

7. The Court makes it absolutely clear that the order of the General Administration Department will not come in the way for either consideration or implementation of the recommendation of the DPC or other claims of promotion by a Government servant of the State of Bihar, if they are otherwise eligible for such consideration.

8. The Court, however, does observe that in case a decisive order or declaration of law emerges from the Apex Court, it will surely occupy the field in terms of the decision, which may be rendered by the Hon'ble Supreme Court.

9. Coming to the present state of facts raised in the present writ application, it is the petitioners' case that they are working as Assistant Superintendent in various jails in Bihar and are not getting promotion to the post of Deputy Superintendent despite recommendation made by the DPC in its meeting dated 4/06/2014(Annexure-1). This recommendation also has gone in abeyance because of the General Administration Department's circular/order. The State has been selectively implementing this recommendation only after a judicial order or direction which is being issued in different writ applications. This, in turn, is leading to unnecessary litigations and putting uncalled for burden on the judicial system, if not the administration.

10. Keeping in mind what the Court has opined in the earlier part of the order with regard to the General Administration Department's order dated 12/08/2014, the Court does direct the IG (Prison) as well as the Secretary, Home (Special) Department, Government of Bihar to ensure that the benefit of Annexure-1 and the recommendation of the DPC is implemented in letter and spirit and the petitioners derive benefit of promotion within a period of three months from the date of production of a copy of this order.

11. It is clarified that any promotion granted in view of the above to any of the Government servants will not be a substantive promotion and will not create a right in their favour and it will surely be subject to the law to be declared by the Apex Court in the SLP of the State.

12. Writ application stands allowed in terms of the above.