

(2010) 04 PAT CK 0023
In the Patna High Court
Case No : CWJC No. 10267 of 2005

Bishwa Nath Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2011) 59 BLJR 1647 : (2011) 2 PLJR 136

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard Mr. Prabhat Ranjan Singh for the Petitioner, Mr. Krishna Kant Singh, Assisting Counsel to G.P. 5 for the State and Mr. Sudhir Singh, learned Central Government Counsel for the Accountant General.

2. With the consent of the parties, the matter has been taken up for disposal at the stage of admission.

3. The Petitioner was appointed as a Junior Accounts Clerk in the office of the Executive Engineer on 21.12.1973 and Accounts Clerk in the year 1978. The Petitioner passed his Hindi Noting and Drafting Examination in the year 1977 and also passed Additional Accounts Training Examination in the year 1984. The Petitioner was granted first time bound promotion vide letter No. 1021 dated 2.7.1985 in the light of the Government Resolution No. 10770 dated 30.12.1981 with effect from 21.12.1983 and was confirmed vide office order dated 6.11.1987 (Annexure-2). The Petitioner superannuated while holding the post of Accounts Clerk in the year 2005.

4. During the processing of his post retrieval benefits, an objection was raised by the Accountant General that the Petitioner not having passed the departmental accounts examination, had incorrectly been granted the first time bound promotion and which had resulted in an excess payment of Rs. 1,37,000/-. The said information was provided by the Executive Engineer, Road Construction

Department to the Superintending Engineer requesting him to issue guidelines as the Petitioner had retired on 28.2.2005. The letter is dated 4.3.2005 (Annexure-3) i.e. after the retirement of the Petitioner. Nothing further happened in the matter. The Petitioner on non-payment of his dues filed the writ petition in question seeking direction for payment of his dues without effecting any recovery in the light of the objection raised by the Accountant General.

5. It so appears that following the objection of the Accountant General and acting upon the request of the Executive Engineer as contained in the letter dated 4.3.2005 (Annexure-3), the pension of the Petitioner was initially fixed on the basis of Rs. 6,300/- as his basic salary vide memo dated 17.2.2006 (Annexure-5) of the rejoinder. Subsequently another order of fixation of pension was issued contained in Memo No. 431 dated 5.7.2006 (Annexure-6) revising the pension of the Petitioner on the basis of salary of Rs. 7,125/- although the Petitioner superannuated while drawing the salary of Rs. 7,375/-. Apart from that, the gratuity amount of Rs. 1,93,818/- though sanctioned by the Accountant General has not been paid to the Petitioner.

6. A counter affidavit was filed on behalf of the State and its authorities enclosing an order dated 16.3.2005 (Annexure-D) issued by the Superintending Engineer directing the Executive Engineer for effecting recovery of the excess amount drawn by the Petitioner by reason of the time bound promotion to the extent of Rs. 1,37,000/- in the light of the Finance Department's circular dated 12.8.1992. A counter affidavit has also been filed on behalf of the Accountant General expressing similar opinion as expressed by the State authorities.

7. Thus, the issue which requires determination is, whether the Respondent authorities of the State have acted within their jurisdiction in withdrawing the time bound promotion granted to the Petitioner with effect from 1983 on pretext of not passing the departmental accounts examination.

8. Learned Counsel for the Petitioner submits that there are no prerequisites to a grant of time bound promotion and which primarily has been designed to bail out an employee from the stagnation faced by him in absence of promotional avenues. It is submitted that the said Scheme was framed under the resolution of the Finance Department No. 10770 dated 30.12.1981 and which merely required the employee concerned to be otherwise fit for promotion.

9. Learned Counsel in support of his contention relies upon the following decisions of this Court, namely-

- (1) Abdul Qayum Ansari Vs. The State of Bihar and Others, ;
- (2) Ramjee Prasad Singh Vs. State and Others, ;
- (3) 2007 (Supp) P.L.J.R. 260 (Bindeshwari Prasad Sharma v. The State of Bihar and Ors.) and;
- (4) Kamla Kant Das Vs. State of Bihar and Others, .

(10) In all the above noted cases, the orders withdrawing the time bound promotion on ground of non-passing of the departmental examination, was struck down and it was held that there was no requirement of passing any examination for grant of time bound promotion save and except that the employee concerned was to be declared otherwise fit for promotion.

11. Mr. Krishna Kant Singh, learned Counsel representing the State relies upon the resolution itself in opposing the prayer of the Petitioner and submits that the stipulations of the resolution was not taken into consideration by the Court while deciding the issue. He relief, upon Clause-ii and Clause-vi of the Scheme dated 30.12.1981 which are reproduced herein-below together with Clause-vii thereof, for ready reference.

(ii) If an employee who is otherwise fit for promotion and has not been able to get a single promotion by 10 years of service notwithstanding the fact that a specified percentage of the cadre is already provided in the different, levels of promotion inclusive of the selection grade, he should be promoted to the junior selection grade at the end of the tenth year. (emphasis supplied by me)

(vi) The other conditions the rules and procedures meant for usual promotion should be followed in case of the aforesaid time bound system also.

(vii) Since the aforesaid scheme is meant as an anti-stagnation measure, it should be applicable in case of only such employees who have not been able to get the first or the second promotion, as the case may be. In other words, the benefit of the time bound system should be extended to those who are stagnating in the same pay scale to which they were appointed or its corresponding revised pay scale. The benefit should not be made applicable to such employees who, after once joining Government service have, for any reason, been elevated to a higher pay scale, by promotion, merger or even up gradation. This should require issue of specific orders in case of every employee which should obviously be done only after a careful examination of his service records.

12. He, thus, submits that the stipulations made in Clause-ii and Clause-vi itself requires an employee to be not only otherwise fit for promotion but the promotion would also be subject to the conditions rules and procedures followed for usual promotion. He proceeded to canvas that as in usual case of promotion an employee is required to undergo and pass a departmental examination for consideration of his case for promotion, hence, in a case of time bound promotion also, the employee concerned would be required to clear the said pre-condition. He thus submits that since admittedly the Petitioner did not pass the departmental accounts examination, hence he was not entitled to the time bound promotion and which has since been withdrawn and the excess salary drawn by the Petitioner has been sought to be recovered from the gratuity amount admissible to the Petitioner.

13. I have heard learned Counsel appearing on behalf of the parties and perused

the materials on record and also examined the resolution No. 10770 dated 30.12.1981 prescribing the revision of pay scales under the 4th Pay Revision Committee recommendations.

14. Paragraph-11 of the said resolution deals with the Scheme of time bound promotion. Clause-i of the said paragraph in no uncertain terms prescribes that the personal management should envisage providing promotions to each and every employee in Government service, at the end of 10 years and second by the end of 25 years of service. Clause-ii requires the employee concerned to be otherwise fit for promotion and having not secured a single promotion in the 10 years of service notwithstanding that a specified percentage of the cadre was provided at different levels of promotion. Clause-iii similarly provides for the second time bound promotion upon completion of 25 years of service and requires the employee to be otherwise fit for promotion. Clause-vi relied upon by the counsel for the State simply requires that the conditions, rules and procedures meant for usual promotion, also be followed in the time bound system but it does not prescribe any specific examination to be undergone by the employee concerned. In fact Clause-vii is an explanation to Clause-vi and which prescribes that the Scheme was an anti stagnation measure to be made applicable only in cases where an employee has neither secured a first or second promotion in his career. Thus the moment a person secures a promotion in his career he becomes disentitled for consideration of his case for time bound promotion. As the Petitioner did not secure regular promotion(s) hence following the stipulations of the Scheme, he was granted the first time bound promotion on the post of the Accounts Clerk after more than 10 years of service vide notification dated 2.7.1985.

15. A plain reading of the Scheme in no uncertain terms demonstrates that it was designed to remove stagnation of an employee serving against a particular post. The Scheme was in fact separately provided in the resolution extendable to such of the employees who for some reason or the other were not provided with any promotion(s) in past 10 years and 25 years of service. The moment a specific time frame is provided in the Scheme for grant of promotion being 10 years and 25 years with stipulation of an employee being otherwise found fit for promotion, it by itself envisages an automatic promotion without going through any rigors or any further pre-conditions. The condition being introduced by the State for grant of such time bound promotion viz. passing of departmental accounts examination and the like is not found under the Scheme for Time Bound Promotion.

16. In fact there is a startling difference between a time bound promotion which has been separately dealt in paragraph-11 of the resolution dated 30.12.1981 and a regular promotion to the selection grade(s) as set out in paragraph-10 of the resolution, and that is;

(a) Junior Selection Grade posts would constitute 20% of the cadre, and

- (b) Senior Selection Grade posts would be 10% of the total cadre;
- (c) The qualifying service for promotion to Junior Selection Grade is 5 years;
- (d) Until such time fresh posts are created in the Junior and Senior Selection Grade, promotions would be provided by conversion of the existing posts.

17. Thus, undoubtedly the grant of promotion to the extent of 20% of the cadre posts, constituting the Junior Selection Grade is conditional upon passing a departmental examination by an employee possessing a qualifying service of 5 years, but in my opinion such of the employees who fail to secure the said promotion at that stage, for whatever reason, have been provided with an answer found at paragraph-11 of the resolution, at the expiry of 10 years and 25 years. The only pre-condition common in both forms of provisions being that the employee concerned is to be otherwise found fit for promotion. The said position is manifest from a conjoint reading of Clauses (ii), (vi) and (vii) of paragraph-11 of the resolution dated 30.12.1981.

18. I am in complete agreement with the view expressed under the Single Bench decision cited by the Petitioner on the issue and have no hesitation to hold that there is no requirement for an employee to undergo any examination for confirmation of the time bound promotion except that he should otherwise be found fit for promotion.

19. In that view of the matter, I find no reason to uphold the decision of the authorities in withdrawing the time bound promotion of the Petitioner. In fact except the letter dated 16.3.2005 of the Superintending Engineer requiring the Executive Engineer to issue a show cause notice to the Petitioner against the proposed recovery, no follow up action was taken by the Respondents as neither any show cause was issued nor any order was passed for withholding the amount in question and the same is being withheld by the authorities most illegally.

20. In the circumstances, the writ petition is allowed and the Respondents are directed to forthwith release the entire gratuity of the Petitioner and fix the pension of the Petitioner on the basis of last salary drawn and re-calculate and pay the arrears arising there from within a period of three months from the date of receipt/ production of a copy of this order.