
(1995) 12 PAT CK 0053
In the Patna High Court
Case No : C.W.J.C. No. 6219 of 1995

Braj Nandan Kumar Sinha and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

Citation : (1995) 12 PAT CK 0053

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In this case, the main question involved is as to whether an employee of the State Government is entitled for time bound promotion after counting the period rendered in the Work-Charge Establishment or not? Further, if such time bound promotion is granted, after counting the period rendered in the Work Charge Establishment, whether such employee is entitled for full salary from the date, he is so promoted on such time bound promotion or not?

2. There are 44 (forty four) Petitioners in this case, who have challenged the common order dated 3rd July, 1995, as contained in Annexure-6. By the said impugned Annexure-6, the time bound promotions which were granted earlier in favour of the Petitioners and Ors. with effect from 1-4-1981, the same has been cancelled and it has been ordered to send the records for reconsideration of cases of such persons for the first/second time bound promotion.

3. The brief facts of the case are, as follows:

Under the Respondents-State, in its Water Resources (Irrigation) Department, there is Work Charge Establishment, apart from Regular Establishment. The Petitioners were initially appointed on Muster Roll basis in the Work Charge Establishment of the said Department. Subsequently, in between the years 1962 and 1971, all the Petitioners were appointed in the regular scale of pay against Class-III and/or Class-IV posts, in the Work Charge Establishment of the Water Resources (Irrigation) Department. The State Government decided to bring the employees of Work Charge Establishment in the Regular Establishment of the

State of Bihar. It was decided, as back as in the year 1981, that the employees who had completed five years of satisfactory service in the Work Charge Establishment, as on 1st of April, 1977, they along with their posts be brought to the regular establishment. It is on the basis of such decision of the State Government, one order was issued by the Respondents on 20th August, 1981 (Annexure-2). The Petitioners, all of them, had completed five years of service in the Work Charge Establishment by 1st of April, 1977. It is for the said reason, the Petitioners along with other similarly situated persons, they were brought to the Regular Establishment along with their posts by the said order, as contained In Annexure-2.

The recommendation of the 4th Pay Revision Committee was accepted by the Finance Department of State of Bihar, vide Resolution dated 30th December, 1981 (Annexure-3). By the said resolution, for the first time, the principle of time bound promotion was laid down. It was decided that if the State Government employees complete ten years of service and have not been granted any promotion to the higher post, in that case, on completion of such ten years of service, the next higher grade is to be provided by way of time bound promotion. Similarly, it was stipulated that on completion of 25 years of service, if a State Government is not provided with any second promotion, in that case, on completion of such 25 years of service, such person should be granted the second time bound promotion i.e. second higher grade of scale to that of the basic pay. Such pay revision of the State Government was also made applicable with respect to the employees of the State Govt. who were appointed and posted in the Work Charge Establishment.

On the basis of the aforesaid Resolution of the State Government, the Selection Committee considered the cases of Petitioners for time bound promotion. They recommended to the authority to grant first time bound promotion in favour of the Petitioners and Ors. , on completion of ten years period or with effect from 1-4-1981, whichever is later, the ten years" period was counted after taking into account the period rendered by Petitioners and Ors. in the Work Charge Establishment, against regular posts with the regular scale of pay. Accordingly, different notifications were issued granting promotions in favour of Petitioners and Ors. to the next higher grade scale of pay with effect from 1-4-1981, vide different orders issued in the year 1986, as contained in Annexures-5 series. The Petitioners had completed more than ten years of service by the said date (1st of April, 1981), in the Work Charge Establishment.

Subsequently, the Respondents have come out with the impugned order dated 3rd May, 1995 (Annexure-6). By the impugned order, all the aforesaid time bound promotions which were granted in favour of Petitioners and Ors. , counting the period rendered by the Petitioners in the Work Charge Establishment, the same has been cancelled. Hence the instant writ petition.

4. The Counsel for the Petitioners submitted, while referring the Resolution of the State Government dated 30th December, 1981 (Annexure-3), that the said

Resolution was applicable with respect to all employees of the State Government, Irrespective of the fact that whether they were appointed in the Work Charge Establishment and/or Regular Establishment. It is submitted that the Respondents cannot discriminate, vis-a-vis, the employee appointed in the Work Charge Establishment and the employees appointed in the Regular Establishment. It is further submitted that the purport of the Resolution (Annexure-3) cannot be interpreted in any other manner than the Resolution itself, by one subsequent order, as has been done by the Respondents. Further, according to the Counsel for the Petitioners, on completion of ten years of service, the Respondents are liable to pay the arrears of salary on such basis, which has rightly been granted in favour of the Petitioners. It is further contended that the impugned order as contained in Annexure 6, has been passed by the Respondents without giving any show cause notice to the Petitioners, in complete violation of rules of natural justice.

5. A Counter affidavit has been filed on behalf of the Respondents State. According to the State Counsel, though the Resolution dated 30th December, 1981 (Annexure-3) was made applicable with respect to the Work Charge employees, but the same was only applicable for the purpose of revised scale of pay. It is contended that such Resolution (Annexure-3), so far as it relates to time bound promotion, was never made applicable in the cases of employees who were in the Work Charge Establishment. He also relied on a Resolution of the State Government dated 27th March, 1987, as contained in Annexure-A, as well as letter dated 21st September, 1992, as contained in Annexure-B to the counter affidavit. It is contended on behalf of the State that for the first time, by the Resolution dated 27th March, 1987 (Annexure-A), the time bound promotion policy was made applicable in the cases of employees of Work Charge Establishment. By the said Resolution dated 27th March, 1987 (Annexure-A), while it was decided to count the period of an employee rendered under the Work Charge Establishment, for the purpose of calculation of post retirement benefits, it was also decided to count the said period, rendered under the Work Charge Establishment, for the purpose of time bound promotion, with clear stipulation that on Such time bound promotion, the arrears is to be paid from the date of issuance of the Resolution i.e. 27th March, 1987, vide Annexure-A. According to the State Counsel, in such a situation, though the Petitioners are entitled for time bound promotion, after counting the period rendered under the work Charge Establishment, but such time bound promotion can only be granted and arrears of salary can be paid with effect from 27th March, 1987, and not from an earlier date, as was given in the cases of Petitioners. It is for the said reason, according to the State Counsel, by impugned Annexure-6, the promotions which were granted with effect from 1.4.1981, has been cancelled and it has been ordered to reconsider the cases of Petitioners for time bound promotion.

6. For the purpose of adjudication of this case, paragraph Nos. 11 and 12 of the Resolution dated 30th December, 1981 (Annexure-3), are necessary to be quoted. They are as follows:

11. With regard to time bound promotion, the Fourth pay Revision Committee have made the following recommendations:

(i) Personnel management should envisage providing atleast two promotions to each and every employee in Government service, the first by the end of ten years of service and the second by the end of 25 years of service.

(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 grade at the end of the tenth year.

(iii) If an employee, although otherwise found fit for a second promotion, has not been able to secure a second promotion by the 25th year of the 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 senior selection grade at the end of the 25th year.

(iv) The aforesaid facilities should be extended to all employees whether they belong to any formally constituted service of cadre, or not and including employees holding isolated posts. In their case, the pay scale immediately higher than the pay scale prescribed for the basis post should be considered as the pay scale for the junior selection grade, and the pay scale immediately higher to that of the aforesaid junior selection grade should be deemed to be the pay scale for the senior selection grade.

(v) The aforesaid scheme of time bound promotion will not be applicable to services, cadres and posts of which the maximum of the pay scale of the basic grade exceeds Rs. 2,000.

(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 upgradation. 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.

(viii) The aforesaid scheme is obviously not intended to deny any employee earlier promotion that comes in his favour in the usual course.

The above recommendations have been accepted by Government subject to the condition that the benefit of time-bound promotion over and above the selection grade quota of posts as envisaged in paragraph 10, will be allowed to eligible employees only after first exhausting the possibility of accommodating such employees against the vacancies available in the selection grade.

12. The benefits of the Revised scales of pay are admissible to the members of work-charged establishments and to contingent staff in whole-time employment and holding posts in the time scale of pay.

7. From the aforesaid Resolution (Annexure-3), it will be manifest and clear that the time bound promotion policy has been laid down by the Respondents-State with respect to the State Govt. employees. No distinction has been made vis-a-vis, the employees who are working in the Regular Establishment and the employees who and working in the Work Charge Establishment Paragraph-12 of the Resolution aforesaid further makes it clear that the said revision of scale of pay was made applicable even with respect to the employees of the Work Charge Establishment, who were employees on full time basis against a post in the time scale of pay. Though in the matter of time bound promotion, the word "promotion" is being used, but for all purposes, the word "promotion" is redundant. A person is neither given any higher rank and/or, merely on completion of certain years of service, such person is provided with the next higher scale of pay. It is for the said reason, according to me, on completion of a particular years of service (ten years in this case), a person is merely entitled to receive the next higher grade in the revised scale of pay. As the revised scale of pay has been equally made applicable with respect to the employees of the Work Charge Establishment, they are also entitled for the next higher grade on completion of ten years of service in terms with paragraph-11 of the Resolution dated 30th December, 1981 (Annexure-3).

8. Apart from the same, if the Resolution of the Finance Department dated 23rd March, 1987 (Annexure-A) is taken into account, then the position will be like this. The Petitioners having completed more than ten years of service, their date of time bound promotion will be fixed to 1st of April, 1981, in accordance with Annexure-A, but in that case they will be paid the arrears of salary only with effect from 27th March, 1987.

9. In the cases of Smt. P. Grover Vs. State of Haryana and Another, and Dr. Paras Nath Prasad Vs. State of Bihar and Others, , the Supreme Court and this Court consistently held that if a person is granted promotion from a retrospective date, in that case, he is also entitled for arrears of (sic)salary on such promotion. I do not understand, as to when in terms with the Resolution dated 27th March, 1987 (Annexure-A), the employees like the Petitioners will be entitled for time bound promotion, on completion of ten years of service, after counting the period rendered in the Work Charge Establishment (1-4-1981 in the present case), how the Respondents can limit the payment of arrears of salary from 27th March, 1987. The aforesaid decision taken by the Resolution dated 27th March, 1987

(Annexure-A) is against the principles laid down by the Supreme Court and this Court, as already cited above.

10. For the reasons stated above, I hold that the Petitioners were rightly granted first time bound promotion with effect from 1-4-1981, and the impugned order dated 3rd July, 1993 (Annexure-6) is completely illegal and arbitrary. Accordingly, set aside the said impugned order dated 3rd July, 1995 (Annexure-6), so far as it relates to the Petitioners.

11. The writ petition is allowed with the aforementioned observations.