

(2013) 06 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 11935 of 2006

Chandra Choor Pandit and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Citation : (2014) 2 PLJR 62

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioners for the following reliefs:--

(i) For a direction on the respondents to consider the case of petitioners for promotion with all consequential benefits to the post of Live Stock Supervisor w.e.f. 19.3.1991 and subsequent promotion to the post of Live Inspector w.e.f. 20.4.2000 and still subsequent promotion to the post of Assistant Fodder Development Officer/Assistant Technical Officer w.e.f. 19.3.2001 i.e. the date juniors to the petitioners have been given such promotions.

(ii) For a direction on the respondents to pay the petitioners difference of arrear of salary on account of aforesaid promotions alongwith 10% interest from due date of payment to actual date of payment.

I.A. No. 7670 of 2012 has been filed by the petitioners for amending the reliefs claimed in the writ petition in the terms stated hereinbelow. The said interlocutory application had been allowed by this Court vide order dated 10.1.2013.

(iii) For a direction on the respondents to produce the final gradation list of the posts of Live Stock Assistants containing the names from Serial No. 1 to 3601.

(iv) For a direction on the respondents to produce the orders cancelling promotion to the juniors of the petitioners who are in service and who stood

retired.

(v) For quashing of reasoned orders contained in Memo Nos. 638 and 924 dated 25.5.2012 and 11.7.2012 respectively by which the claim of similarly situated to the petitioners for promotion to the higher post were wrongly rejected on incorrect facts.

2. The claim of the petitioners is that after following the prescribed recruitment procedure, they were initially appointed on different posts in the then Bihar State Dairy Corporation Limited (hereinafter referred to as "the Corporation" for the sake of brevity) and their services were regularized against different Class-III posts vide order dated 7.11.1977. However, when the Corporation did not prove to be a profitable venture the State Government decided to close the same and to transfer its assets and liabilities to Bihar State Cooperative Milk Producers Federation. Limited (hereinafter referred to as "the Federation" for the sake of brevity) which was constituted to execute and implement the scheme "Operation Flood-II" and to absorb the services of the officers and Staff of the Corporation in the Federation in accordance with their utility and thereafter the services of the remaining officers and staff of the Corporation shall be absorbed in different Government Departments, including Animal Husbandry and Fisheries Department, Agriculture Department, Public Works Department, Rural Engineering Organization Department, etc. A resolution in that respect was published on 10.2.1984.

3. Learned counsel for the petitioners stated that vide letter dated 7.2.1986 the Special Secretary, Animal Husbandry and Fisheries Department sent the names of Class-III and Class-IV employees of the Corporation, including the petitioners, for absorption in the Federation. However, in the said letter the name of one Sri Awadh Kishore Singh was at serial No. 19 and he was subsequently regularized with effect from 1.4.1974, whereas the petitioners, several of whom, were above serial No. 19 and were senior to him were not regularized, although all the employees whose names were forwarded by the aforesaid letter were absorbed against Class-III posts of Live Stock Assistant in the then pay scale of Rs. 535-765 vide order dated 7.3.1986 and were posted under Intensive Cattle Development Branch (hereinafter referred to as "the ICDB" for the sake of brevity) and even then they were working regularly on that post without any promotion, although they were given pay protection and continuity of service vide letter dated 15.6.1987.

4. Learned counsel for the petitioners submitted that several Live Stock Assistants in the Federation who were junior to the petitioners were given promotion to the post of Live Stock Supervisor in the year 1998 with effect from 1996 and in the year 2001 they were promoted to the post of Live Inspector, whereafter in the year 2003 they were again promoted to still higher posts of Assistant Fodder Development Officers. These facts had been clearly stated in paragraphs 15 to 23 of the writ petition, but have not been categorically denied by the respondents.

5. Learned counsel for the petitioners averred that since several persons who came into the cadre of Live Stock Assistant at a later date than the petitioners, had been given promotions without considering the cases of the petitioners, the petitioners became genuinely aggrieved and filed different representations and reminders to the Director, Animal Husbandry on various dates clearly stating that without considering the cases of the petitioners, their juniors had been given promotion to higher posts. However, those representations and reminders remained unheeded and unreplied.

6. Learned counsel for the petitioners stated that some other persons aggrieved by the said action of the authorities filed CWJC No. 4418 of 2004 for consideration of their cases for promotion and subsequent promotion with effect from the date their juniors were given such promotion with all consequential benefits. In the said writ petition, a counter affidavit was filed on behalf of the Secretary and Director, Animal Husbandry Department specifically stating in paragraph-6 thereof that the authorities were reviewing the cases of promotions granted earlier in the cadre of Live Stock Assistant and if these promotions were not found satisfactory, they would be revised as per Rule and if the petitioners were found entitled for getting promotion from any prior date, they shall be granted the same with retrospective effect.

7. Thereafter in their supplementary counter affidavit, the respondents brought on record final gradation list dated 1.8.2006 of the cadre of Live Stock Assistant. In the said circumstances, a Bench of this court vide order dated 3.8.2006 allowed the said writ petition directing the respondents to grant promotion to those petitioners within a period of one month to the post of Live Inspector with effect from 19.3.1996 with financial benefits and thereafter to grant further promotion to the post of Assistant Fodder Development Officer with effect from 19.3.2001 with financial benefits and in addition thereto the respondents were directed to pay a sum of Rs. 25,000.00 to each of the petitioners by way of compensation by treating them as inferior to persons who were junior to those petitioners.

8. Learned counsel for the petitioners further averred that another set of similarly aggrieved persons filed CWJC No. 12243 of 2004 claiming similar reliefs and the said writ petition was also disposed of by a Bench of this Court vide order dated 7.8.2006 directing the respondents to consider the grievance of those petitioners for promotion to the posts of Live Stock Supervisor/Live Inspector with effect from retrospective date from which other juniors had been granted such promotions alongwith all consequential benefits within a period of three months.

9. Another similarly situated person, namely Md. Khalil also filed CWJC No. 8022 of 2005 for exactly the same relief. In the said writ petition a counter affidavit was filed by the respondents without denying the statements made by the petitioners. Accordingly, a Bench of this Court vide order dated 25.3.2008 disposed of the said writ petition with directions to the respondents to publish

final gradation list of Live Stock Assistant within a maximum period of 12 weeks from the date of receipt and/or production of a copy of that order, if not already finalized. The respondents were further directed thereafter to consider the cases of eligible persons, including the petitioners, in accordance with the such finalized gradation list and grant them promotion from due date. This exercise was directed to be completed within a maximum period of six months from the date of finalization of such gradation list and all consequential monetary benefits and other benefits were directed to be granted to him as per retrospective promotion.

10. Learned counsel for the petitioners asserted that thereafter authorities issued orders dated 26.11.2010, 3.1.2011, 25.5.2012 and 11.7.2012 by which matters of other candidates were considered cursorily and nationally and orders were passed. Those orders were clearly arbitrarily and perverse as the respondents were unable to bring any gradation list from Serial No. 1 and whatever gradation list had been produced by the petitioners, there was nothing else which could be produced by the respondents because each seniority list begins from Serial Nos. 3602 to 4752 and hence only if the respondents brought any final selection list from serial No. 1 onwards in the light of order of this Court dated 25.3.2008 passed in CWJC No. 8022 of 2005 showing promoted persons to be senior to the petitioners, the petitioners would be out of court.

11. Learned counsel for the petitioners argued that in CWJC No. 4418 of 2004, the respondents gave wrong informations and tried to dupe the Court by stating that they were reviewing the cases of promotions granted earlier in the cadre of Live Stock Assistant and only thereafter the promotions can be revised and the aggrieved persons could be granted promotions with retrospective effect. It is apparent from the statement of the respondents themselves and the materials on record that no such promotions were under review as a final gradation list had already been annexed to the counter affidavit filed by the respondents in that case. Even if the subsequent gradation list dated 26.11.2010 issued by the Department is correct, then the seniority position of those petitioners was not altered as they remained at their same respective places and the position of their juniors also did not change. Thus it was also argued that the respondents were unnecessarily trying to delay the matter and in the process they were trying to violate the orders of this Court and harass the petitioners.

12. On the other hand, learned counsel for the respondents-State of Bihar and its authorities vehemently opposed the contentions of learned counsel for the petitioners and stated that no persons junior to the petitioners were promoted. It was further submitted that all the earlier promotions had been cancelled and now promotions are being granted as per the revised gradation list dated 26.11.2010 and 3.1.2011.

13. From the facts and circumstances of this case as well as from the pleadings of the parties and the materials produced by them, it is quite apparent that the stand of the respondents is self-contradictory as at one place they made a bald statement that no persons junior to the petitioners had been promoted and at

the other place they claimed that all the earlier promotions given to such candidates had been cancelled and thereafter promotions were being granted as per the revised gradation list.

14. Now the revised gradation list dated 26.11.2010 issued by the authorities is admitted by both the sides and is already on record as Annexure-20 of I.A. No. 7670 of 2012. This gradation list clearly includes the names of persons who were junior to the petitioners and have been clearly named in paragraph 32 of I.A. No. 7670 of 2012, but they have been granted promotions and they are still working on their promotional posts. According to the said revised gradation list, the position of the petitioners and the persons junior to them is not altered and they remained where they were positioned earlier. Hence, the statements and the claim of the respondents appear to be absolutely frivolous and baseless.

15. Furthermore, letter dated 25.2.2013 issued by the Director, Animal Husbandry Department has also been produced which shows that he had directed the Field officers to inform about persons who were working on the promotional posts. This clearly shows that such persons who were junior to the petitioners and were promoted, were still working. Even the revised gradation list dated 26.11.2010 does not appear to be a final gradation list as by it only the retired persons were shown to have been granted promotions, but the persons still working, including the petitioners, were not at all considered. Thus it is a very sorry state of affairs that in spite of several writ petitions having been filed by the aggrieved persons, the respondents have failed to bring the correct picture on record and they have been throughout trying to divert the attention of the Court to trivial matters merely for the purpose of avoiding clear direction in that regard.

16. By way of I.A. No. 7670 of 2012 the petitioners had clearly prayed for a direction to the respondents to produce the final gradation list of the post of Live Stock Assistant containing the names of persons from Serial No. 1 to 3601 and to produce the orders cancelling the promotion granted to persons junior to the petitioners who were in service or who had already been retired. Although much time have been elapsed since the filing of the said interlocutory application and in the meantime, the respondents have filed a supplementary counter affidavit, but they have miserably failed to produce any such paper which were required by the petitioners and which were necessary for the final disposal of this case.

17. The aforesaid facts clearly show that the petitioners had been clearly discriminated against due to the bias attitude of the respondents as it is well proved that persons much junior to them in the same cadre had been granted promotions and further promotions denying the genuine claim of the petitioners. The situation has become more serious as it has been found that specific directions of this (sic) given in various writ petitions had been completely ignored merely on the basis of lame excuses which showed that neither the respondents have taken any step in that regard in accordance with law nor they are intending to take appropriate steps in the matters as required by them. In the said

circumstances, this writ petition is allowed and the respondents are directed to consider and pass appropriate orders for promotion of the petitioners with all consequential benefits to the post of Live Stock Supervisor with effect from 19.3.1991 and subsequent promotion to the post of Live Inspector with effect from 20.4.2000 and still subsequent promotion to the post of Assistant Fodder Development Officer/Assistant Technical Officer with effect from 19.3.2001 which are dates when juniors to the petitioners had been granted such promotion. The respondents are also directed to pay to the petitioners all the consequential benefits, including difference of arrears of salary on account of the said promotions from due date of payment positively within a period of three months from the date of receipt/production of a copy of this order.