
(2004) 03 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 9872 of 2003

Chandrika Sao

APPELLANT

Vs

Bihar State Agricultural Marketing Board and Others

RESPONDENT

Date of Decision : 10-03-2004

Acts Referred:

Citation : (2004) 52 BLJR 944 : (2004) 2 PLJR 793

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : B.K. Sinha "Chouhan" and Binod Kumar Singh, for the Appellant; A. Amanullah, for the Marketing Board and Sanjeev Kr. Mishra, for the Intervenor., for the Respondent

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. The petitioner who is working as Senior Selection Grade Assistant has come to this Court seeking promotion to the post of Manager (Sectional Officer). According to the petitioner the Board in its meeting dated 4.12.1999, created certain regulations and in accordance with the same it is obliged to give the promotional benefits to the number of the persons. The petitioner says that his case is not being considered on the ground that the regulations framed by the Marketing Board have yet not been approved by the State Government therefore the petitioner would not be entitled to any promotion while Dilip Kumar and Sandip Ray have been given promotion. The respondents in their counter submitted that unless the regulations are approved by the State Government through the Bureau of Public Enterprises the petitioner cannot be promoted. On 16.12.2003 this Court finding the present to be a case of discrimination required the respondent Managing Director to file his personal affidavit on the following :

(1) In absence of the approved regulations how could promotion be given to some and be denied to others.

(2) If in absence of the regulations or certified regulations the petitioner is not

entitled to the promotion or the revised pay scale then how could such benefits be given to such persons whose instances have been given in the original writ application and in the supplementary affidavit.

(3) If the others could be given the benefits of the revised pay scale or the pay scale of the promotional post without actual promotions then why the said treatment could not be extended in favour of the petitioner.

3. The respondents have along with their supplementary counter affidavit have filed copy of the letter dated 26th June, 2003 issued by the Additional Secretary of the Government to the Managing Director of the Bihar State Agriculture Marketing Board. In the said letter the opinion of the Advocate General has (been referred.

4. The opinion of the Advocate General says that the judgments of this Court appear to be per-incuriam and not binding upon the State Government. Taking a mileage from that opinion the respondents so also the State Government now wish to say that as the judgments are per-incuriam the Act and as proper provisions of law were not brought to the notice of the High Court the judgments are not binding.

5. The petitioner submits that so long as the judgments are not set aside by the higher authorities either in the Division Bench or by the Supreme Court the judgment even if are per-incuriam would be binding upon the respondents. According to them the judgments are not per-incuriam but in fact the same are in accordance with law and the opinion of the Advocate General would not override or overrule the judgments of this Court. Strong reliance has been placed upon the judgment of this Court (Ranch! Bench) in the matter of Sanjiv Kumar Bimal and Ors. v. The Bihar State Agriculture Marketing Board and Ors. C.W.J.C. No. 2035 of 1989 (R), disposed of on 9.3.1990, to contend that a Division Bench of this Court has already observed that the Board is not a public undertaking therefore, is not required to seek approval from the Bureau of Public Enterprises. It is also contended that the said judgment of the Division Bench of this Court was impugned before the Supreme Court in S.L.R (Civil) No. 17165 of 1990 and the leave application was dismissed.

6. At this stage it would be necessary to note that Dilip Kumar Choudhary has filed I.A. No 1410 of 2004 and Sandip Roy has filed I.A. No. 1411 of 2004.

7. According to Dilip Kumar Choudhary's application he had filed C.W.J..C No. 9087 of 2001 and thereafter had filed M.J.C. No. 3798 of 2000. According to him said Dilip Kumar Choudhary was directed to be given the promotional benefits from the date of issuance of the order and in M.J.C. it was an undertaking of the Managing Director that full benefits would be given to said Dilip Kumar Choudhary. According to Sandip Roy he was never promoted. He was appointed as a Programmer and continues to be a programmer.

8. In the matter of Sanjeev Kumar Bimal (C.W.J.C. No. 2075 of 1989) the

petitioners were working as daily rated employees, it was observed that there was no sanctioned post against which the said petitioners could be permanently absorbed. It was submitted before the High Court that a proposal to absorb the petitioner permanently was under consideration. The matter was again taken up before the High Court and it was then submitted on behalf of the Board that the Board had recommended to the State Government the cases of the said petitioner for their absorption in the services of the Board. Some letter of the Chief Secretary was produced in the Court and on strength of the same it was submitted before the High Court that unless the State Government gives permission to the Board to make any appointment the Board cannot appoint the said petitioners. The Division Bench observed that in the Bihar Agriculture Produce Marketing Act there is no provision which empowers the State Government to give any directions to the Board either to appoint or not to appoint the person. This Court in the Division Bench has also observed that the Board is not a public undertaking and therefore Annexure-1 to the said counter affidavit had no application to it. This Court also observed that for purposes of appointing persons by the Board an approval of the State Government was not necessary. This Court disposed of the said writ application with the direction to the said writ application with the direction to the said respondents No. 1 and 2 to take proper steps for filling up the post, which were held by the said petitioners. Undisputedly the matter was taken to the Supreme Court but the leave was refused, if the Division Bench of this Court has already held that the State Government has no say in the matter of appointment etc. Then the State Government would not be entitled to pass any orders in the matter and the Board would also not be justified in seeking approval of its regulations. The Division Bench has already held that the respondent Board is not a public undertaking and therefore, the directions issued by the Government would not apply to it. Taking into consideration the totality of the circumstances and the facts that Dilip Kumar Choudhary was given benefits of the promotion and thereafter the monetary benefits were also given to him under the directions of this Court, I am of the opinion that the petitioner cannot be denied the benefits. The respondents may or may not make an application for approval of their regulations but approval of the regulations by the State Government would not be a condition precedent for considering the case of the petitioner for his promotion. The respondents are hereby directed that within a period of six weeks from today they will consider the case of the petitioner for his promotion and pass speaking order in the matter.