
(1999) 07 PAT CK 0057
In the Patna High Court
Case No : CWJC No. 288/98 (R)

Damodar Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-07-1999

Acts Referred:

Citation : (2000) 1 BLJR 537

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application, the petitioner prays for issuance of an appropriate writ commanding upon the respondents to restore the promotion order and to pay back the difference of amount of enhanced pay due to the promotion for the period with effect from 31-10-1988 to 12-8-1996.

2. The facts of the case lie in a narrow compass: The petitioner was appointed as Lower Division Clerk (shortly LDC) on 1-7-1960 and was working as such in the lower Court, Gumla since then. The petitioner was promoted with effect from 31-10-1988 as Upper Division Clerk (shortly UDC) on completion of 50 years of age as per order dated 8-3-1989 by the District Establishment Deputy Collector, Gumla. When the petitioner was to retire with effect from 31-10-1996, the respondent No. 2, the Deputy Commissioner, Gumla referred the case of the petitioner to the Commissioner, South Chotanagpur Circle, Ranchi vide letter dated 18-10-1996 for exemption from passing first paper as the petitioner could not pass first paper due to remaining busy in official work. It appears that the Commissioner, South Chotanagpur Circle, Ranchi, however, refused exemption to the petitioner on the ground that it is not proper to grant exemption at the end of the service. A copy of the letter dated 30-10-1996 has been filed and marked as Annexure-5. The petitioner retired on completion of 58 years of age on 31-10-1996 and, thereafter, the petitioner was asked to deposit the amount of difference of pay-scale from LDC to UDC paid to the petitioner on promotion as

UDC with effect from 31-10-1988. It is stated by the petitioner that due to threat of stoppage of even provisional pension the petitioner deposited the difference of pay amounting to Rs. 44,072/- on 20-2-1997 out of the retiral dues received by him.

3. Respondents' case in the counter-affidavit is that the case of the petitioner for promotion on completion of the age of 50 years was considered by the District Establishment Committee and, accordingly, promotion order was issued on 8-3-1989. However, the petitioner never tried to file any petition for exemption on attaining the age of 50 years. The Establishment Committee, after giving promotion, sent all the papers including the service book to the Commissioner for confirmation in time-bound promotion. Accordingly the matter was re-considered by the Commissioner who found that since the petitioner had not passed the departmental examination and, therefore, the promotion given to him in the year, 1989 was wrong. Consequently, the promotion order was cancelled with a direction to recover all the difference of pay.

4. I have heard Mr. N. Prasad, learned Counsel for the petitioner and Mr. R.K. Merathia, learned G.P. 2.

5. Learned G.P. 2 has drawn my attention to the Government circular No. 4674 dated 15-5-1992 and circular No. 1161 dated 9-11-1983 (Annexures B and B/1) and submitted that in the matter of time-bound promotion a provision was made for giving exemption to those employees who attained the age of 50 years in the matter of qualifying the departmental examination. Learned G.P. 2 submitted that the power to grant exemption is discretionary and, therefore, since the respondent-authority refused to grant exemption to the petitioner in the matter of promotion without passing the departmental examination, the difference of salary was rightly recovered from the petitioner.

6. Admittedly the petitioner crossed the age of 50 years in 1989 and he was given promotion from LDC to UDC by the District Establishment Committee. The petitioner continued in the promoted post for about 7 years. However, at the verge of his retirement which was due on 31-10-1996, the Deputy Commissioner referred the case of the petitioner to the Commissioner, South Chotanagpur Division vide letter dated 18-10-1996 i.e. 10-12 days before the date of retirement of the petitioner. The prayer of the petitioner for granting exemption was refused by the Commissioner merely on the ground that the application for exemption was not sent in time. Prima facie therefore, it appears that the discretion was not exercised by the Commissioner judicially. When the petitioner was given promotion on attaining the age of 50 years in 1989 and the petitioner worked in the promoted post for 8 years, then the Commissioner ought to have exercised discretion in favour of the petitioner in the matter of granting exemption.

7. It is not a case where the promotion was granted without following the rules so that the period of officiation cannot be counted rather, it is a case where the

promotion was granted to the petitioner as per circular of the Government which provides that the employees who crossed the age of 50 years, shall be granted time-bound promotion without qualifying the departmental examination but the authority concerned shall pass order exempting such employees from passing the departmental examination.

8. As noticed above, in the instant case, as per the Circular the petitioner was granted promotion after crossing the age of 50 years but his case for granting exemption was sent for consideration after eight years and that too 10 days before his superannuation.

9. In that view of the matter I am of the opinion that the petitioner is entitled to get all promotional benefits which is admissible to him under law.

10. This writ application is, therefore, allowed and the respondents are directed to pay back the difference of salary on enhanced pay which was deposited by the petitioner amounting to Rs. 44,072/-. It is further ordered that the petitioner will be entitled to all promotional benefits on his superannuation.