

(2000) 11 PAT CK 0052
In the Patna High Court
Case No : CWJC No. 9680 of 1999

Dr. Radhey Shyam Sharma	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 10-11-2000

Acts Referred:

Citation : (2005) 2 PLJR 527

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Amit Shrivastava and Abhijit Kr. Lal, for the Appellant; R.P. Bhagat, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioner while challenged the proceeding of Departmental Promotion Committee (D.P.C.) dated 30.6.1998, also prayed for direction on the respondents to consider his case for promotion to the post of Addl. Director w.e.f. 11.1.1988 and to the next higher post of Director w.e.f. 1.8.1989 and to provide the consequential benefit. The fact, as admitted, show that the petitioner having appointed in Bihar Animal Husbandry Service Class-I on 6.7.1966, was placed at serial No. 37 of the final gradation list published on 7.5.1975. He was promoted to senior selection grade scale w.e.f. 1.1.1977 by an order dated 21.11.1985 which was subsequently changed and given effect from 1.2.1983 vide notification dated 3.12.1987. The date of promotion to senior selection grade was again shifted back from 1.2.1983 to 1.4.1981 vide notification dated 8.1.1988, which was the reason for petitioner to move this Court in C.W.J.C. No. 6230/89. The said case was allowed vide judgment dated 17.12.1990 and the notifications dated 3.11.1987 and 8.1.1988 were quashed. One Dr. Ram Raj Ram moved before the Supreme Court against the judgment of this Court in SLP wherein order of status quo was passed on 15.4.1991 and on admission it was numbered as Civil Appeal Nos. 1894 & 1895/ 91. The aforesaid appeals were dismissed by the Supreme Court on 2.5.1996 and judgment was

upheld on 2.5.1996 but petitioner without getting any advantage of such judgment had to superannuate from service of the State on 30.6.1996, having attained the age of retirement.

2. The respondents, after retirement of petitioner, reconsidered the matter of promotion to senior selection grade and super time scale which was allowed vide order dated 30.12.1996. Subsequently, the State requested B.P.S.C. for promotion of petitioner to the post of Addl. Director w.e.f. 11.1.1988 and to the post of Director w.e.f. 1.8.1989 vide letter dated 13.2.1997 but no decision was communicated by B.P.S.C. The petitioner had to move this Court by filing a petition for contempt, whereinafter the D.P.C. held meeting on 7.2.1998 but adjourned the matter for finalisation of the gradation list. The gradation list, thereafter was published vide letter No. 1761 dated 24.4.1998, whereinafter the State requested the B.P.S.C, to hold meeting of D.P.C. The said D.P.C. in its meeting dated 30.6.1998 having rejected the claim of petitioner, the proceeding is under challenge.

3. It will be evident from the proceeding of D.P.C. dated 30.6.1998 that the claim of petitioner has not been rejected on merit. The State of Bihar requested the D.P.C. to consider the case of petitioner for promotion to the post of Addl. Director w.e.f. 11.1.1988 and then to the post of Director w.e.f. 1.8.1989, will be evident from State Government's letter No. 820 dated 13.2.1997. However, the D.P.C. failed to consider the aforesaid aspect that the case of petitioner was to be considered for promotion from retrospective date, which was prior to the date of retirement. Instead of considering the case on merit, rejected the claim of petitioner merely on the ground that the petitioner had retired from service.

A person is entitled for promotion from retrospective date and the order of promotion, in appropriate cases can be issued after retirement will be evident from notification dated 13.12.1996 whereby and whereunder the respondent-State granted promotion to petitioner in the super time scale on the recommendation of D.P.C.

The State of Bihar also took into consideration that delay takes place in the matter of promotion in the State offices. With a view to redress the grievance of its employees and to see that no State employee suffers because of delay on the part of machinery by its letter No. M-2033/ 104 dated 9th January, 1992, decided to allow promotion to a person from retrospective date, including the date from which the post fell vacant.

4. In the aforesaid circumstances, the State of Bihar having requested the B.P.S.C./ D.P.C. to consider the case of petitioner for promotion from retrospective date to the higher post of Addl.: Director and Director respectively, the D.P.C. erred in rejecting the claim on the ground that the petitioner retired from the service of the State.

5. The State of Bihar in their counter-affidavit has not made any specific allegation against the petitioner but merely taken plea that the petitioner having

retired on 30.6.1996 and in absence of recommendation of B.P.S.C./D.P.C., the Government could not promote the petitioner on the said post.

6. In the facts and circumstances, the decision of the D.P.C. dated 30.6.1998 being illegal, is set aside so far it relates to the petitioner.

The case is remitted to the respondents, including B.P.S.C, to reconsider the case of petitioner for promotion to the post of Addl. Director w.e.f. 11.1.1988 and to the post of Director w.e.f. 1.8.1989, in the light of requisition made by the State vide letter dated 13.2.1997 with further direction to pass appropriate order on such decision within a period of four months from the date of receipt/production of a copy of this order.

It is needless to say that if the petitioner is granted promotion from such retrospective date, he will be entitled for consequential revised retiral benefits.

The writ petition is allowed, with the aforesaid observations/directions.