

(2006) 07 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 3315 of 2001

Dr. Sharda Nand Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Citation : (2006) 3 PLJR 438

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties.

2. This matter was heard on 23rd June, 2006 and the state counsel was directed to put in further counter affidavit stating therein as to why the case of the petitioner was not considered for further promotion in accordance with law. No affidavit has been filed pursuant to the said order. This court, therefore, proceeds to dispose of this writ application on the basis of the materials on record.

3. The petitioner is aggrieved by the order as contained in Annexure 1 issued vide memo No. 58(17) dated 31.1.2001 whereby and whereunder the prayer of the petitioner for his promotion to the post of Associate Professor has been rejected. A further prayer has also been made to direct the authorities to promote the petitioner on the post of Associate Professor in Physiology.

4. It appears that the petitioner for the same self grievance had earlier come to this Court in C.W.J.C. No. 2605 of 1998. The writ application aforesaid was dismissed with an observation that this order will not stand in the way of the petitioner for consideration of his case for appointment/promotion to the post of Associate Professor in accordance with law. The petitioner thereafter challenged the order passed in the writ application in L.P.A. No. 1024 of 2000 which was permitted to be withdrawn enabling the petitioner to represent his case before the competent authority. Pursuant to order passed by this Court in L.P.A. No.

1024 of 2000, case of the petitioner was considered and disposed of by the order as contained in Annexure 1 which has been challenged In this writ application.

5. It is contended by counsel for the petitioner that the petitioner since was entitled for promotion to the post of Associate Professor as his juniors were also promoted, he filed his representation before the authorities after disposal of the L.P.A. aforesaid but the authorities rejected his prayer on misinterpretation of facts by saying that since the petitioner was already promoted and posted in R.M.C.H., Ranchi on the post of Associate Professor, there Is no need to again consider his case for promotion and further since the petitioner had not joined the post of Associate Professor in R.M.C.H., Ranchi, he was debarred from consideration for promotion for a period of five years.

6. It is submitted by J.C. to AAG 2 that the petitioner, by virtue of order as contained in Annexure 5, was already promoted to the post of Associate Professor and, therefore, no question arises to re-consider him again and since he had not availed that by not joining the post, he was not entitled for promotion.

7. From Annexure 5, it appears that the petitioner along with others was considered for promotion purely on ad hoc basis and the petitioner was promoted on temporary basis on the post of Associate Professor in his own payscale by way of stop gap arrangement. This appears to be the arrangement of the respondent authorities to man the post of Associate Professor and in no way, it can be said to be a promotion in the eye of law as the petitioner was promoted in his own payscale.

8. The word "Promotion" connote promotion with all consequential benefits. The order passed by the authorities as contained in Annexure 1, therefore, appears to be wholly erroneous and without any basis and pursuant to the direction of this Court as referred to above, the authorities were duty bound to re-consider the case of the petitioner for his promotion. It is another question as to whether the petitioner had joined the post In R.M.C.H., Ranchi and if he had not done so, the authorities were competent enough to proceed in the matter against the petitioner which, admittedly, was not done. At the same time, it appears from Annexure 1 that the petitioner was debarred from promotion for five years. This appears to be by way of punishment and it is held to be wholly without Jurisdiction.

9. In the given facts and circumstances of the case, this application is allowed. Order impugned as contained in Annexure 1 is set aside. Respondent authorities are directed to consider the case of the petitioner for his promotion in accordance with law in case he is found eligible for the poet of Associate Professor within a period of six months from the date of receipt/production of a copy of this order.