

(2011) 11 PAT CK 0003
In the Patna High Court
Case No : CWJC No. 10643 of 2010

Dr. Shree Narayan Pandit

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Citation : (2013) 1 PLJR 747

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and the State. A counter affidavit is stated to have been filed on 10.5.2011, after serving a copy on the Counsel for the petitioner and which is not on record. The office shall place it on record. The Court requested the counsel for the State to make available his Copy for perusal so as not to hold up the proceedings on that ground.

2. The petitioner has superannuated on 31.10.1991. He was granted first time bound promotion on 30.1.1985 with effect from 1.4.1981. He is now aggrieved by the order dated 20.11.2009 which grants him second time bound promotion with effect from 30.3.1991 subject to the condition that he has passed the departmental examination or granted exemption from doing so till the date of superannuation, failing which the order for grant of promotion shall automatically be deemed to be invalid.

3. Counsel for the petitioner submits that it is not possible for him now to either appear at the examination or to seek exemption as the master servant relationship stood severed after superannuation. The Court is not persuaded by the submission in the supplementary affidavit that he had applied for exemption in 1990. It being a crucial fact ought to have been asserted in the main writ petition itself. It is not possible for the Court to go into a fact finding enquiry

nearly 18 years later.

4. Counsel for the State contended that the order in question was passed with regard to 33 persons in pursuance of certain orders of the Court to consider cases for time bound promotion. The promotion order is conditional in nature and not in a blanket form. The benefit was available only to those who have passed the departmental examination or have been granted exemption before superannuation. The persons mentioned in the order fell in two categories. Those who fulfill the conditions and those who do not. If the order is capable of severance between those who fulfill the conditions making it a valid order with regard to them, those who do not fulfill the conditions making the order inapplicable to them under the recitals, the Court may not interfere.

5. Two conditions were possible for grant of time bound promotion: (a) passing of the departmental examination; or (b) grant of exemption from passing the examination. Both the conditions were possible to be fulfilled by a person in service. The petitioner never staked a claim for time bound promotion much less obtained any orders of a Court for such consideration. If in pursuance of Court orders with regard to others, the respondent's suo motu on 30.3.2006 referred the case of the petitioner also to the Departmental Promotion Committee and which recommended him for such promotion, the respondent's cannot frustrate or render futile the recommendation by imposing conditions impossible of compliance.

6. The Government is not expected to and does not pass futile orders. The Court shall not interpret Government orders in a manner to render them futile, if another reasonable and plausible interpretation be possible enlivening life in the order.

7. The order dated 20.11.2009, without reference to any Court orders refers to consideration on 30.3.2006 by the Departmental Promotion Committee, for promotion of deceased and retired Government employee. It concludes by saying that those who may have passed the examination or granted exemption before death or superannuation were alone entitled to the time bound promotion and the order for promotion deemed, to be automatically cancelled with regard to others.

8. An employee could pass the examination or be told of the deficiency to enable him to remove the same during his service career. If he had not passed the examination in his service tenure he cannot do so after superannuation and the question of conditionally considering his claim on a ground impossible of compliance simply does not arise.

9. Likewise a request for exemption could be made by the petitioner while he was in service. This act on his part is different and distinct from exercise of the power for exemption suo motu by the respondent's. Counsel for the State is right in his submission that exemption cannot be a matter of right. But if the respondent's suo motu exercised the power to grant exemption, and the counter

affidavit does not state that he did not fulfill the conditions for exemption, the Court finds it difficult to interfere with the impugned order.

10. If the power to grant exemption be there, there can be two circumstances for exercise of power. One may be in pursuance of a positive act by the person seeking exemption making an application for the purpose. The other can be a suo motu exercise of the power satisfied that an individual fulfills the condition for exemption.

11. Counsel for the petitioner has relied upon a Bench decision reported in Dinesh Narayan Mishra Vs. The State of Bihar and Others, holding at Paragraph-4 as follows:--

4. Considering all the facts and circumstances, it is found that the petitioner was entitled for consideration for exemption from taking the required examination on account of having crossed 50 years of age and since the concerned authorities granted him time bound promotion without asking him to make specific application for relaxation or condonation, it should be deemed that the concerned authorities granted the required relaxation/exemption from taking the departmental examination. It is further found that petitioner not being guilty of any misrepresentation or fraud cannot be deprived of the benefit of such promotion....

12. The respondent's are held to have suo motu granted exemption to the petitioner from the requirement of passing the departmental examination. Full effect must be given to the same entitling the petitioner to the benefit of the time bound promotion in all its aspects to be complied with expeditiously. The application is allowed.