

(2005) 04 PAT CK 0081
In the Patna High Court
Case No : CWJC No. 13288 of 2001

Hashmat Ali

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Citation : (2005) 3 PLJR 164

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : M.P. Jaiswal, for the Appellant; R.P. Bhagat, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioner has sought for issuance of a writ in the nature of mandamus directing the Respondents to promote him from the cadre of Project Managers and equivalent posts in the scale of Rs. 2200-4000/- to the cadre of Functional Managers and equivalent posts in the scale of Rs. 3000-4500/- in Bihar Industries Services cadre with all consequential benefits with effect from 31.10.1997 i.e. the date from which juniors to the petitioner have been so promoted for which a post was reserved for him till the finalisation of representation, which has been decided by the Government. In pursuance of the order dated 27.1.1998 of this Court passed in C.W.J.C. No. 11699 of 1997. It has been claimed that the Government vide order dated 20.3.1998 found adverse remarks false and untrue and withdrew it and no disciplinary action whatsoever was initiated against him and also that he has unblemished career in service. He has also claimed that Lokayukt and Vigilance Department gave clearance in writing which was recorded in the memorandum and post was reserved for his promotion only till the decision on his representation against the adverse remarks, which was decided in his favour.

2. A counter affidavit has been filed on behalf of the State in which aforementioned facts have not been disputed/denied, except it is stated that as

per the Rules laid down by the Finance Department in its circular issued vide memo No. 2074 dated 4.4.1985, the petitioner is not entitled to any monetary benefit for back date promotion.

3. Writ petition was filed on 5.10.2001 and this Court long back on 2.4.2004 after taking note of the stand taken in the counter affidavit that recommendation has already been made and only notification is to be issued about which the counsel for the State was not aware, granted four weeks" time on the request of the learned counsel for the Respondents to seek instruction and file supplementary counter affidavit. Thereafter, again on 2.2.2005 on the request of the learned counsel for the State, the matter was passed over so that the State counsel may bring compliance report on record. Till date no compliance report has been brought on record, which itself shows gross callousness on the part of the State authorities besides adopting delaying tactics. It is really unfortunate that State authorities also have behaved in such manner and this Court strongly deprecates their such inaction especially because they have not even woken up after two indulgences granted by this Court. Further, I failed to appreciate the stand taken in the counter affidavit that as per the Rules laid down by the Finance Department circular referred to above, the petitioner is not entitled to any monetary benefit for back date promotion.

4. In the supplementary counter affidavit filed on behalf of Respondent No. 1, the claim of the petitioner has not been disputed and it is stated that petitioner's claim for promotion to the post of Functional Manager in the pay scale of Rs. 10,000-15000/- has been recommended by the Departmental Promotion Committee alongwith few other similarly situated Officers and sent to Cabinet for approval on 6.12.2004. It is further contended that memorandum has been returned by the Cabinet with some queries and to meet the objection/queries opinion of the Personnel Department has been sought. In Paragraph 4 it is stated that due to Assembly Election Cabinet is not holding its meeting, therefore, the Department sought for two months" time so that the notification may be issued after formation of the new elected Government. Two months" also expired on 7th April, 2005, but, till date the State has not bothered to come out with the notification.

5. Insofar as the stand of the State that the petitioner is not entitled to any monetary benefit for back date promotion in the circumstances aforementioned is fully baseless and the circular of the Finance Department, if there is any such issued, cannot legally deprive a Government servant from getting monetary benefit from the date of promotion when it is not even pleaded that it was for any fault on the part of the petitioner that he was kept denied of such promotion.

6. In the facts and circumstances aforementioned, writ petition is allowed with cost of Rs. 5,000/- (Rupees five thousand) to be paid by the Industrial Development Commissioner from his pocket to the petitioner alongwith notification for promotion and financial benefit which shall be handed over to the learned counsel for the petitioner within two weeks from today, failing which the

petitioner will be at liberty to file two pages affidavit for initiating action against the erring Officer. As prayed by learned Government Pleader No. IV let a copy of this order be supplied to him for its strict compliance.