

(2015) 06 PAT CK 0055
In the Patna High Court
Case No : C.W.J.C. No. 14531 of 2006

Janardan Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 4 PLJR 474

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Jitendra Nath, for the Appellant; L.P.K. Rajgrihar, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The petitioner, who retired on 31.10.1998 from the Agriculture Department, Government of Bihar, has approached this Court on second occasion with a new claim for grant of 2nd Time Bound Promotion to Senior Selection Grade Scale of Rs. 1,575/- to Rs. 2,300/- revised to Rs. 3,700/- to Rs. 5,000/- that too w.e.f. 1.4.1983 and consequently, has claimed salary and allowances according to the Super Time Grade Scale of Rs. 1,900/- to Rs. 2,500/-, revised to Rs. 4,100/- to Rs. 5,300/- w.e.f. 1.4.1986 after shifting the date of promotion to Junior Selection Grade Scale of Rs. 3,000/- to Rs. 4,500/- w.e.f. 11.3.1992, in view of Annexure-7 to the writ petition. The petitioner has further prayed to quash Annexures-8, 10, 13, 17 and 21 to the writ petition.

2. Before going in detail further, it would be appropriate to indicate that though the petitioner retired w.e.f. 31.10.1998, after two years in the year 2000., the petitioner approached this Court by filing a writ petition, vide C.W.J.C. No. 74 of 2000, mainly on the plea that once the petitioner was promoted to higher post, how he was paid salary of Senior Class-II. Before the writ court, the petitioner was not in a position to show any order by which he was first promoted to the post of B.D.O., then to the post of Project Officer and thereafter, to the post of Sub-Divisional Agriculture Officer and ultimately, to the post of Deputy Director,

Agriculture. However, the writ petition was disposed of by order dated 31.1.2005, vide Annexure-1 to the writ petition. It is appropriate to quote the order dated 31.1.2005 passed in C.W.J.C. No. 74 of 2000, which is as follows:--

"Heard learned counsel for the parties.

It is the case of the petitioner that he retired on 31st October, 1998. It is also the case of the petitioner that on 1st January, 1977 he was promoted to the post of Senior Class-II. It is the case of the petitioner that from 1st January, 1977 till the date of his retirement he was paid salaries in the scale of Senior Class-II. It is also the case of the petitioner that in between 1st January, 1977 and 31st October, 1998 the petitioner was promoted to the post of B.D.O. in 1979, thereafter to the post of Project Officer in 1982. Subsequently to the post of Sub-Divisional Agriculture Officer in 1987 and ultimately to the post of Deputy Director of Agriculture in 1991.

On 18th January, 2005 when surprise was expressed as to how a person could be paid the salaries of the Senior Class-II when he was promoted to higher posts, learned counsel for the State sought time to file supplementary counter affidavit. In the counter affidavit nothing has been stated in relation to the promotions. Today, learned counsel for the State submitted that in little more time should be given to file a supplementary counter affidavit. I refuse to grant any such time.

Learned counsel for the petitioner has not been able to show to me the order by which the petitioner was first promoted to the post of B.D.O. and then to the post of Project Officer and thereafter to the post of Sub-Divisional Agriculture Officer and ultimately to the post of Deputy Director of Agriculture.

In the event such promotion had been accorded to the petitioner, there is no just reason why the petitioner should not be paid salaries earmarked for the said posts unless, of course, he was notionally promoted with a direction that he would be paid salary applicable to the post of Senior Class-II.

Be that as it may, let respondents consider and decide the claim of the petitioner after taking note of the promotions effected to the petitioner and reach to the petitioner his lawful dues on account of such promotions if the petitioner has been paid something less than what he is otherwise entitled to get in accordance with law. Let decision in relation thereto be taken within eight weeks from the date of service of a copy of this order upon the appropriate respondents. Let such decision be communicated to the petitioner in writing within a period of fifteen days from the date of such decision. This disposes of the writ petition. No order as to costs."

3. Subsequently, a contempt petition was also filed, which too was disposed of on 10.3.2006, vide M.J.C. No. 1261 of 2005 (Annexure-2). Though, the contempt petition was disposed of on 10.3.2006, after more than six months, the petitioner again filed the present writ petition with a new plea for grant of 2nd Time Bound Promotion and also for quashing of number of annexures, as

indicated hereinabove. So far as the prayer of the petitioner for quashing of Annexures-10, 13, 17 and 21 are concerned, the Court is of the opinion that such prayer is fit to be outrightly rejected, in view of the fact that he has made such prayer for quashing without impleading the concerned persons, as party respondents, in the present writ petition, who might have been effected, had the Court interfered with said orders. Accordingly, the relief sought for by the petitioner for quashing of Annexures-10, 13, 17 and 21 is, hereby, rejected.

4. So far as Annexure-8 is concerned, which has also been assailed in the present writ petition, the said order has been passed in compliance with the order dated 31.1.2005 passed in C.W.J.C. No. 74 of 2000 by a Bench of this Court.

5. Learned counsel for the petitioner submits that the petitioner was not virtually given promotion to Senior Class, but same relief was granted only by virtue of merger. Learned counsel for the petitioner tried to persuade the Court that one Dr. Chandeshwar Mishra was given 1st Time Bound Promotion w.e.f. 11.5.2001, however; the petitioner was disallowed the same. It has been claimed that both Dr. Chandeshwar Mishra and the petitioner had initially joined in the year 1958 and as such, the case of the petitioner was required to be considered, however; same was not done, which is violative to Articles 14 and 16 of the Constitution of India. In this regard, the petitioner has prayed for quashing of Annexure-10 to the writ petition, whereby, Dr. Chandeshwar Mishra was given 1st Time Bound Promotion. However, it is admitted fact that Dr. Chandeshwar Mishra has not been impleaded, as party respondent, in the present writ petition and as such, in absence of Dr. Chandeshwar Mishra, no order can be passed against him nor it can be examined.

6. In this case, two counter affidavits have been filed. Earlier, a counter affidavit was filed, but since it was sketchy, the respondent/State has filed further counter affidavit on 21.4.2015.

7. Learned A.C. to Addl. Advocate General-6 has referred to number of paragraphs of the counter affidavit. As fact disclosed in the counter affidavit, the petitioner was appointed on the post of Agriculture Inspector on 6.6.1958, which was Non-Gazetted post and it was under the cadre of Bihar Agriculture Subordinate Service. Subsequently, the petitioner was promoted in Junior Class-II, vide Notification No. 6649 dated 22.5.1975 and thereafter, the petitioner entered in Senior Class-II Service through promotion, vide Notification dated 31.3.1978, which was made effective from 1.1.1977 and the petitioner started getting all the benefit. However, the petitioner superannuated on 31.10.1998. After retirement, the petitioner filed a writ petition, vide C.W.J.C. No. 74 of 2000, which was disposed of and in compliance with the order of the writ court, the Agriculture Production Commissioner, Bihar, Patna examined the claim of the petitioner and passed a reasoned order, vide Annexure-8 to the writ petition. It has been indicated that in compliance with the order of the writ court, a meeting of the Departmental Promotion Committee was convened on 2.3.2006, in which

the petitioner was allowed Junior Selection Grade promotion in the scale of Rs. 3,000-4500/-, vide Notification dated 3.3.2006 w.e.f. 11.3.1992. It has further been stated that since the petitioner was getting benefit of promotion from Junior Class-II to the Senior Class-II w.e.f. 1.1.1977, the petitioner was not found entitled to the benefit of 1st Time Bound Promotion. In respect of prayer made by the petitioner for quashing Annexures-10, 13, 17 & 21, it has been indicated that those orders were passed on 11.5.2001, 24.10.1994, 12.5.1992 & 14.1.1997 and as such, it has been prayed that such relief is fit to be rejected, since the same prayer was made at much belated stage. In sum and substance, learned counsel for the State submits that there is no error in the order contained in Annexure-8 to the writ petition.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record: So far as claim of the petitioner that one Dr. Chandeshwar Mishra, who was similarly situated to the petitioner, was given 1st Time Bound Promotion, the stand of the petitioner has been refuted in paragraph-22 of the counter affidavit filed on 21st April, 2015. In reply to the statement made in paragraph-14 to the writ petition, it has been stated in paragraph-22 of the counter affidavit that Dr. Chandeshwar Mishra was given 1st Time Bound Promotion in Junior Selection Grade in the scale of Rs. 3,000-4,500/- and he was not given selection grade promotion, whereas, the petitioner has been given Junior Selection Grade Promotion in the scale of Rs. 3,000-4,500/-, vide Notification No. 620 dated 3.3.2006. It further appears that after Super Time Scale, there was fixed Kalawadhi for five years and before completion of the Kalawadhi by the petitioner, the said selection grade was already withdrawn on 1.1.1996. Accordingly, the petitioner was not entitled to be given Senior Selection Grade. The petitioner would have completed five years of Kalawadhi w.e.f. 11.3.1992 to 11.3.1997, however; before completion of Kalawadhi, the provision for Senior Selection Grade was already withdrawn w.e.f. 1.1.1996 and as such, the respondents have committed no error in not granting 1st Time Bound Promotion to the petitioner. In view of the facts and circumstances and the facts disclosed in the counter affidavit, the Court is satisfied that the writ petition has got no merit and accordingly, the same is dismissed.