

(2011) 02 GAU CK 0034
In the Gauhati High Court
Case No : Writ Appeal No. 8 (K) of 2010

Jaswant Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Citation : (2011) 4 GLT 748

Hon'ble Judges : K. Meruno, J;B.K. Sharma, J

Bench : Division Bench

Advocate : Manik Chanda, Mr. C.T. Jamir and Mr. Surajit Dutta, for the Appellant; T.B. Jamir, CGC and Mr. Ashis Das Gupta, for the Respondent

Judgement

B.K. Sharma, J.—This Writ Appeal is directed against the Judgment and Order dated 30.03.2010 passed by the learned Single Judge in W.P.(C) No. 167 (K) of 2009 by which the Writ Petition filed by the present appellant has been dismissed. The appellant filed the Writ Petition praying for a direction to the respondents to consider his case for promotion to the next higher grade of Senior Manager (Civil). While making the said prayer the petitioner also prayed for a direction to the respondents to consider his case as per the standing Office Memorandum. The Office Memorandum is dated 14.09.1992 in terms of which in case of any delay in finalisation of the Departmental/ Criminal Proceedings the incumbent may be considered for ad hoc promotion.

2. In the instant case the appellant was placed under suspension way back in 1999 by order dated 14.10.1999. Such course of action was adopted in view of the appellant alleged involvement in a criminal case launched by the C.B.I. The said order of suspension was put to challenge by the petitioner before the Madras High Court and the learned Single Judge therein having set aside and quashed the order of suspension the respondents had preferred an Appeal being W. A. No. 2411 of 2003. The Appeal was also dismissed by the Division Bench by its order dated 29.08.2008.

3. The Criminal Proceeding was launched against the petitioner/appellant way back in 1999 and has not attained its finality and thus for the last 11 years the said proceeding has become a stumbling block for the petitioner to get his promotion. There is also no indication as to when the proceeding will come to an end.

4. It is in the above background the petitioner has filed the Writ Petition praying for the aforesaid relief. While doing so the petitioner has also placed reliance on the Judgment and Order dated 14.07.2008 passed by this Court in WP (C) No. 6625 of 2004. It is submitted that the petitioner involvement in the said proceeding is also an employee of the respondents Corporation. As in the instant case, in that case also the petitioner was charge sheeted in the year 1999, to be precise on 22.12.1999. Placing reliance on the aforesaid Office memorandum it was argued that in case of any delay in finalisation of the Criminal Proceeding, the case of the petitioner is required to be considered for adhoc promotion if not for regular promotion so that there is no stagnation in the service career. Accepting the said argument the Writ Petition was disposed of inter alia with the following direction:-

(ii) Irrespective of the aforesaid aspect of the matter, if the petitioner has not been promoted due to pendency of the Criminal case, the respondents may also consider the case of the petitioner for promotion on ad hoc basis taking into account the various parameters laid down in the said office memorandum.

(iii) Entire exercise shall be carry out as expeditiously as possible preferably within a period of three months from today.

5. In the instant case as noted above the petitioner while filing the Writ Petition placed reliance on the aforesaid Judgment and Order and a copy of the same was annexed to the Writ Petition as annexure-M. In the counter affidavit filed by the respondents the prayer of the petitioner was resisted. As regards the applicability of the aforesaid Office Memorandum there was no specific and definite denial of the applicability of the same, In paragraph 12 of the affidavit it was stated that the said Office Memorandum does not have any bearing in the instant case in as much as there is a prima facie case of involvement in Criminal Proceeding against the petitioner. In paragraph 8 of the counter affidavit it was stated that the petitioner is not entitled to ad hoc promotion as per the Rules of the respondents Corporation. While there was no specific denial of the applicability of the Office Memorandum, it was stated that the respondents Corporation being an autonomous body (a Government of India Enterprise) the Office Memorandum may not be considered as guidelines.

6. Mr. M. Chanda, learned counsel appearing for the petitioner submits that the same authority which resisted the prayer of the petitioner in the aforesaid manner has implemented the direction contained in the aforesaid Judgment and Order dated 14.07.2008 passed in WP (C) No. 6625 of 2004 by granting ad hoc promotion to the petitioner involved in the said Writ Petition Mr. Ashis Das Gupta,

learned counsel appearing for the respondents Corporation on the other hand submits that the said Judgment and Order has been implemented when a Contempt Proceeding was drawn against the respondents Corporation.

7. Mr. M. Chanda, learned counsel appearing for the petitioner/appellant while placing reliance on the aforesaid Office memorandum and the Judgment and order has also placed reliance on the decision of the Apex Court reported in State of Punjab and Others Vs. Chaman Lal Goyal, in which the Apex Court in the facts and circumstances involved in the said case and having regard to the delay in finalisation of the Criminal Proceeding issued direction for consideration of the case of the respondents irrespective of pendency of the proceeding.

8. Mr. Ashis Das Gupta, learned counsel appearing for the respondents/Corporation has submitted that since a Criminal Proceeding is pending against the petitioner/appellant it will not be conducive in the interest of public service to consider the case of the petitioner/ appellant for promotion.

9. We have given our anxious consideration to the submissions made by the learned counsel appearing for the parties. The learned Single Judge while dismissing the Writ Petition vide impugned order dated 30.03.2010. did not take note of the aforesaid Judgment and Order dated 14.07.2008 passed in WP (C) No. 6625 of 2004. The said Judgment as noted earlier very much formed part of the record, in as much as, the copy of the said Judgment and Order was annexed to the Writ Petition as annexure-M. Thus, it was incumbent to deal with the said Judgment before dismissing the Writ Petition. In case of any disagreement the matter could have been referred to the Division Bench.

10. The impugned Order dated 30.03.2010 also does not indicate the Office Memorandum dated 14.09.1992, which provides for consideration for ad hoc promotion in case of any delay in finalisation of Departmental/Criminal Proceeding. In Dr. Bhupinder Singh v. Union of India and Ors. reported in, (1982) 2 SCC 53 the Apex Court held that keeping disciplinary proceeding pending indefinitely resulting in lose of chances of promotion and supersession by juniors is not justified. In the said Judgment, the Government was directed to dispose of the proceeding within a specific period and to consider the case of the appellant for promotion without taking into account of the said proceeding.

11. In the State of Punjab & Ors. Vs. Chaman Lal Goyal (supra) also as noted above, the Apex Court issued direction for consideration of the case of the respondent in view of the long pendency of the enquiry. In the instant case the proceeding was drawn against the petitioner in the year 1999 and there is no possibility of early finalisation of the same. According to Mr. Ashis Das Gupta, learned counsel appearing for the respondents/Corporation, the said proceeding at the trial stage. However, he submits that he has no instruction as to when the trial will come to an end and the proceeding will attain finality.

12. It is in the above circumstances, the Government of India in its wisdom issued the aforesaid Office Memorandum dated 14.09.1992 providing for ad hoc

promotion in case of any delay in finalisation of the Departmental/Criminal Proceeding. Needles to say that consideration for promotion is a cherished right of an employee. If after a considerable delay Departmental/Criminal Proceedings ends in favour of the incumbent, by the time, when his case is taken up for promotion his service career gets adversely affected.

Mr. Ashis Das Gupta, learned counsel appearing for the respondents/Corporation in support of his submission has placed reliance on a decision of the Apex Court reported in Union of India and Another Vs. R.S. Sharma, In which the Apex Court having regard to the serious offence in which the respondent was involved declined to interfere with the Sealed Cover Procedure adopted by the authority. The said Judgment was passed in the peculiar facts and circumstances of the case and cannot be said to have universal application in all the cases in which the promotion is delayed for indefinite period. Moreover, the respondent Corporation having accepted the aforesaid Judgment of this Court by implementing the same cannot be permitted to maintain a different standard for another employee working under them.

13. For all the aforesaid reasons, we are inclined to accept the appeal by setting aside and quashing the impugned Judgment and Order dated 30.03.2010 passed in WP(C) No. 167 of 2009. The respondents are directed to consider the case of the petitioner/appellant for ad hoc promotion in terms of the aforesaid Office Memorandum as it was done in the earlier case. The entire exercise shall be carried out as expeditiously as possible preferably within a period of 3 (three) months from today.