

(2011) 07 PAT CK 0282
In the Patna High Court
Case No : CWJC No. 824 of 2007

Kapil Deo Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2011) 3 PLJR 941

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned counsel for the Petitioner and the State, who filed counter affidavit placing on record the order bearing Memo No. 3883 dated 1.9.2005 whereunder request of the father of the Petitioner for grant of senior selection grade in compliance of the orders of the High Court dated 1.9.2004 passed in C.W.J.C. No. 12915 of 2003 has been considered and rejected.

2. It appears father of the Petitioner served the Cooperative Department of the State Government on the post of Cooperative Extension Officer, made accused in a criminal case alleging defalcation and was placed under suspension with effect from 17.8.1973. Initially father of the Petitioner was convicted in the said criminal case but in appeal was acquitted of the charge of defalcation. In the light of the order passed in appeal father of the Petitioner was reinstated on the post of Cooperative Extension Officer with effect from 19.1.1987 and superannuated from the same post with effect from 30.9.1987. Before superannuation father of the Petitioner was allowed senior selection grade under departmental order No. 5684 dated 22.6.1987 with effect from 1.4.1986/1.7.1982. After superannuation a proceeding was initiated against the father of the Petitioner charging him for unauthorized absence for the period between 25.3.1967-31.1.1972 as also for defalcation. Under orders dated 10.8.1988, father of the Petitioner was dismissed from service holding him guilty of both the charges. Against the order dated 10.8.1988 father of the Petitioner

filed appeal, which was considered under orders dated 26.10.1989 and relying on the findings of the criminal court holding the father of the Petitioner not guilty of the charge of defalcation for the failure of the witnesses to establish the said charge the appellate authority held that the charge of defalcation was not proved against the father of the Petitioner. The appellate authority, however found the father of the Petitioner guilty of unauthorized absence but taking into account the long suspension period from 17.8.1973-19.1.1987 directed that the cause of justice shall be subserve If father of Petitioner is paid only subsistence allowance in lieu of salary for the period of suspension. The appellate authority further held that the suspension period of the father of the Petitioner shall, however be taken into account for the purpose of payment of pension and gratuity to him. The appellate order was communicated to the father of the Petitioner under Memo No. 3216 dated 3.11.1989 which has also been produced for my perusal in compliance of the order dated 22.7.2011. In the light of the order dated 26.10.1989/3.11.1989 passed by the appellate authority not to take into account the suspension period for grant of benefit other than pension and gratuity the Registrar, Cooperative Societies passed order bearing Memo No. 9290 dated 3.9.1990 Annexure-1 recalling the earlier order bearing No. 5684 dated 22.6.1987 whereunder father of the Petitioner was allowed senior selection grade with effect from 1.4.1986/ 1.4.1982 and granted him junior selection grade with effect from 19.1.1987. Aforesaid order dated 3.9.1990 was challenged by the father of the Petitioner by filing appeal before the Commissioner-cum-Secretary of the Department under memo of appeal dated 14.7.1999, Annexure-2 and request was made to grant him junior selection grade with effect from 1.7.1979 and senior selection grade with effect from 1.7.1982 the date on which his other juniors have been granted such promotion(s) as father of the Petitioner was acquitted in the criminal case and the dismissal order having already been set aside, there was no occasion for the authorities not to restore the same benefit which has been allowed to his junior colleagues. Aforesaid appeal was considered by the departmental Secretary under orders dated 29.8.2000/22.5.2001 Annexure-3 whereunder the learned Secretary taking into account the entire history of the case of the father of the Petitioner including his acquittal in the criminal case as also the order dated 26.10.1989 passed by the appellate authority setting aside the dismissal of the father of the Petitioner holding that cause of justice shall be subserve if he (father of Petitioner) is punished by imposing punishment of non-payment of full salary beyond the subsistence allowance for the period of suspension. Having taken into account the said punishment the learned Secretary further observed that if the case of the father of the Petitioner is not considered for grant of first time bound promotion/junior selection grade from the date on which his other juniors were granted such promotion then such direction shall tantamount to imposing even punishment more than what has been ordered by the appellate authority. According to the departmental Secretary, the appellate authority ordered for imposing the punishment of non-payment of full salary beyond the subsistence allowance for the period of suspension and in case father of Petitioner is not considered for

grant of first time bound promotion/junior selection grade with effect from the due date then such non-grant shall amount to increasing the punishment imposed under order dated 26.10.1989/3.11.1989. Having made the aforesaid observation the appellate authority under order dated 29.8.2000/22.5.2001, Annexure-3 directed the Registrar, Cooperative Societies to pass fresh order in the matter taking into account the departmental as also the circular of the Finance Department. In compliance of order dated 29.8.2000/22.5.2001, Annexure-3 the Registrar, Cooperative Societies passed order bearing Memo No. 4937 dated 1.10.2003, Annexure-5 holding that father of the Petitioner is entitled for grant of first time bound promotion/junior selection grade with effect from 18.1.1987 the date on which his suspension was vacated and as he superannuated within three years from the date of grant of first time bound promotion without completing the Kalawdhi father of the Petitioner is not entitled for grant of second time bound promotion. Aforesaid order bearing Memo No. 4937 dated 1.10.2003, Annexure-5 was again challenged by the father of the Petitioner before this court by filing C.W.J.C. No. 12915 of 2003 which was disposed of under orders dated 1.9.2004, Annexure-6 directing the authorities to reconsider the matter in the light of the appellate order passed in the case of the father of the Petitioner i.e. 26.10.1989/ 3.11.1989 as also the order dated 29.8.2000/ 22.5.2001, Annexure-3 and to reconsider the request of the father of the Petitioner for grant of first time bound promotion/ junior selection grade with effect from 1.7.1979.

3. In the light of the orders of the High Court dated 1.9.2004, Annexure-6 the authorities reconsidered the matter and passed order bearing Memo No. 3883 dated 1.9.2005 and taking into account the fact that father of the Petitioner was not completely exonerated of the charges leveled against him as also the fact that punishment of non-payment of full salary for the suspension period other than the subsistence allowance was imposed on him did not approve for grant of first time bound promotion/junior selection grade with effect from 1.7.1979 and again held that he has been rightly granted first time bound promotion/junior selection grade with effect from 19.1.1987 the date from which his suspension was vacated.

4. Counsel for the Petitioner challenged the said order before this Court by raising the submissions which were raised before the High Court on the earlier occasion when order dated 1.9.2004 was passed. Learned counsel also submitted that by depriving the father of the Petitioner of the grant of time bound promotion with effect from the due date i.e. 1.7.1979, yet another punishment is being imposed which is contrary to the appellate order dated 26.10.1989/ 3.11.1989 which only impose punishment of non-payment of full salary for the suspension period and thereby father of the Petitioner cannot be deprived of the promotion in the selection grade/time bound promotion with effect from the due date i.e. 1.7.1979.

5. I regret not to accept such submission in view of the clear direction contained

in the appellate order dated 26.10.1989/ 3.11.1989 that period of suspension of the father of the Petitioner between 17.8.1973-18.1.1987 is regularized only for the purposes of payment of pension and gratuity. While passing the said appellate order the appellate authority never directed that the period of suspension shall be taken into account for granting consequential benefit to the Appellant i.e. father of the Petitioner. As the appellate authority has not directed for taking into account the suspension period for granting the consequential benefit, in my opinion said period cannot be taken into account for grant of time bound promotion/junior selection grade. Accordingly, I do not find any merit in the challenge, which has been raised against the order dated 1.9.2005. The writ petition is, accordingly, dismissed.