

(2005) 09 PAT CK 0094
In the Patna High Court
Case No : CWJC No. 3580 of 2002

Krishna Ballava Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Citation : (2006) 3 BLJR 2291 : (2005) 4 PLJR 592

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner is aggrieved by the order contained in Memo No. 200 dated 4.2.2002 (Annexure-18) by which he has been denied of first and second time bound promotion on the plea that he did not exercise option within 90 days as per the Government decision contained in Annexure-10.

2. Petitioner was initially appointed as Lecturer of Civil Engineering in Government Polytechnic, Gaya and joined on 14.8.1965. On 16.7.1969 he was appointed as Assistant Professor of Civil Engineering and was posted at Government Polytechnic, Saharsa vide Annexure-1.

3. It is stated by the learned counsel for the petitioner that when persons junior to the petitioner were granted two time bound promotions and he was denied of the same, he filed several representations for redressal of his said grievance and ultimately he filed writ petition before this Court bearing CWJC No. 16267 of 2001, which was disposed of vide order dated 3.1.2002 (Annexure-16) with an observation that the petitioner, if so advised, may represent his matter before the competent authority for redressal of his grievances and in case it is so done, the same shall be considered and disposed of in accordance with law. Accordingly, the petitioner filed representation on 21.1.2002, which was rejected by the order impugned dated 30.1.2002 (Annexure-18) on the plea that the

petitioner did not exercise his option as per paragraph 6 of the memo dated 16.2.1990 (Annexure-10) within 90 days from the date of issuance of the said memo. Learned counsel for the petitioner submitted that this Court in several cases passed order directing the authorities to grant first and second time bound promotions to similarly situated persons and even junior to the petitioner have been granted such promotion. In support of this, by filing supplementary affidavit, petitioner has annexed an order dated 10.2.2005 passed in CWJC No. 10262 of 1999 Bachcha Jha v. The State of Bihar and Ors., as Annexure-19. Learned counsel for the petitioner has also relied upon the decision of this Court in the case of Prof. Dr. Amarnath Singh and Others Vs. State of Bihar and Others, .

4. A counter and supplementary counter affidavit have been filed on behalf of Respondent Nos. 1 to 5 in which it is stated that the claim of the petitioner was rejected because the petitioner did not exercise his option as per provisions of memo No. 379 dated 16.2.1990 (Annexure-10).

5. Learned State Counsel submitted that as the petitioner did not exercise option, which he admitted before the Secretary, Science and Technology, the memo dated 16.2.1990 (Annexure-10) was applicable in his case and time bound promotion could not be granted to him.

6. I find substance in the submission of learned State Counsel. By Annexure-10 University Grants Commission pay scale were granted to the teachers of Government Polytechnic, who were appointed prior to 5.1.1979. Paragraph 6 of this memo gives an opportunity to the teachers to convey their willingness within 90 days, whether they want to opt the revised pay scale or not. If any teacher fails to comply this order, it will be deemed that they have opted to remain in the revised pay scale and their case of promotion will be decided as per recommendation of All India Council for Technical Education. Since the petitioner did not exercise option, it was presumed that he has opted to remain in the revised pay scale. The ground taken in the order impugned is that there is no provision for time bound promotion and merit promotion under the provisions of AICTE after 1.3.1989 and since the petitioner is getting the revised pay scale, he is not entitled for time bound promotion as claimed by him, which cannot be said to be unjustified.

7. I failed to appreciate as to how the order of this Court in the case of Bachcha Jha v. State of Bihar (Annexure-19) relied upon by the petitioner is of any help to him. It appears from the order passed in the case of Bachcha Jha that he was on deputation in the Department of Industry and his case was recommended and forwarded to the Industries Department for time bound promotion, but, it was somehow missed out though persons similarly situated had been promoted as Associate Professor and Professor and monetary benefit was also given to him. This fact was not denied in the counter affidavit rather the recommendation of Bachcha Jha in 1994 was accepted. Accordingly, the Court held that the same benefit was required to be given to said Bachcha Jha also. The question of non-

exercise of option was neither raised nor considered in the case of Bachcha Jha.

8. The decision relied upon by the learned counsel for the petitioner in the case of Prof. Dr. Amarnath Singh v. State of Bihar (supra) is also of no help to him. In the said case the matter for consideration before the Court was denial of revised UGC Scales of pay to the University and college teachers of the State and the Court held that denial of revised pay scale is arbitrary as no indication whatsoever was ever given to the concerned teachers that their option for promotion under the time bound promotion statutes would make them liable to face some handicap or disability in future. In the said case the petitioner had exercised option, whereas in the present case the petitioner admittedly did not exercise option on account of which pursuant to the Government decision, contained in Annexure-10, he is not entitled to get time bound promotion.

9. Accordingly, I do not find any merit in this writ application. It is, thus, dismissed.