

(2019) 05 PAT CK 0084

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12699 Of 2017

Krishnadeo Das

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 17-05-2019

Acts Referred:

Citation : (2019) 3 PLJR 631

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Madan Prasad Singh, Manish Kumar

Final Decision : Allowed

Judgement

1. The petitioner by way of the present writ petition has prayed for quashing the order dated 24.11.2016 whereby his claim for promotion along with monetary benefit with effect from 20.07.2005 has been denied. It has further been prayed to grant monetary benefit from the date of his notional promotion with effect from 20.07.2005.

2. The brief facts of the case are that the petitioner was appointed as Assistant Public Prosecutor (now known as A.P.O.) in the year 1984. It has further been stated that while the petitioner was posted at Daltenganj in the State of Jharkhand, the retirement age of the A.P.Os was raised from 58 to 60 years with effect from 24.10.2004, as such, the petitioner was to retire on 31.01.2007 upon completion of 60 years of service. The State of Jharkhand issued an order dated 23.03.2005 whereby and whereunder 96 A.P.Os including the petitioner were relieved for joining the State of Bihar, pursuant to the reorganization of the State of Bihar and its division into the State of Bihar and the State of Jharkhand. The petitioner and three others

were then relieved vide Memo No. 193 dated 28.03.2005 for joining at the Patna Secretariat, Home (Police) Department where the petitioner joined on 30.03.2005.

3. Shorn of the details, it may be stated that pursuant to the order of Honâ??ble Supreme Court dated 01.10.2013, passed in Civil Appeal No. 9018 of 2013 & other analogous cases, the petitioner herein and others were directed to be granted continuity of service till attaining the age of 60 years as well as their pension and salary were directed to be fixed accordingly. However, the State of Bihar vide Memo dated 24.03.2005 enhanced the retirement age of the working Government servants from 58 to 60 years, but after the petitioner had submitted his joining in the State of Bihar on 30.03.2005, he was made to retire with effect from 31.01.2005 upon completion of 58 years of service by an order dated 22.11.2005. However, the Government of Bihar by notification dated 16.12.2013 directed for payment of pension to the petitioner on the basis of treating the petitioner to have retired upon completion of 60 years of service in terms of the aforesaid order of the Honâ??ble Supreme Court dated 01.10.2013. Thereafter, the petitioner was granted notional promotion by an order dated 13.08.2015 with effect from 20.07.2005 as District Prosecution Officer, without any monetary benefit.

4. Further case of the petitioner is that he had moved this Court by filing a writ petition bearing C.W.J.C. No. 4611 of 2011 for grant of promotion with effect from 07.04.2004 from the post of S.D.P.O. to the post of D.P.O. and the said writ petition was disposed of by an order dated 18.02.2016 with a direction to the petitioner to approach the concerned authority whereafter the petitioner had made a representation to the Principal Secretary, Home (Police) Department stating that the juniors to the petitioner have been granted promotion with effect from 07.04.2004 vide notification dated 21.04.2010 along with the monetary benefit, however, the petitioner has been given notional promotion with effect from 20.07.2005 without any monetary benefit. The said representation of the petitioner was rejected by Memo dated 24.11.2016 stating that since the petitioner was forcibly retired, he was not given monetary benefit and instead, he was given notional promotion.

5. The learned counsel for the petitioner has submitted that since the juniors to

the petitioner have been granted promotion with monetary benefits with effect from 07.04.2004, the petitioner is also entitled to grant of at least monetary benefit with effect from 20.07.2005.

6. Per contra, the learned counsel for the Respondents has submitted that in view of the order of the Honâ??ble Supreme Court dated 01.10.2013

and in view of the fact that the petitioner had stood superannuated from his services on 31.01.2005 upon attaining the age of 58 years, which was the

age of retirement at the relevant time in the State of Bihar, the petitioner has been granted notional promotion.

7. I have heard the learned counsel for the parties and gone through the materials on record.

8. At the outset, it would be relevant to reproduce hereinbelow Paragraph No. 9 of the judgment passed by the Honâ??ble Supreme Court dated

01.10.2013, in the case of the petitioner and others:-

â??9. Having heard learned counsel for the parties we think that the cause of justice would be best subserved by issuing following directions:-

(i) The respondents shall get continuity of service till they attained the age of 60 years and their pension shall be accordingly fixed.

(ii) As far as arrears are concerned, the amount they have received while continuing in service after the age of 58 years in the State of Jharkhand

should be deducted.

(iii) After deduction of the said sum, the arrears shall be computed for the rest of the period and 20% of that sum shall be paid to the respondent-

employees within three months. The respondents shall not be entitled to any interest thereonâ??.

9. From the aforesaid judgment passed by the Honâ??ble Supreme Court, it is clear that the petitioner has to be granted continuity of service till he

attains the age of 60 years and he will be entitled to pension, which has been directed to be fixed accordingly. It has further been directed that after

deducting the amount received by the petitioner while continuing in service after the age of 58 years in the State of Jharkhand, the arrears should be

computed for the rest of the period and 20 per cent of that sum should be paid to the petitioner within three months.

10. In view of the aforesaid directions, this Court is of the view that since the Honâ??ble Apex Court has not barred grant of actual benefits of the

promotion, but on the contrary has directed for payment of 20 per cent of the sum payable for the rest of the period and in fact, the Respondents, vide notification No. 1128 dated 16.12.2013, have cancelled the earlier notification dated 22.11.2005 whereby the petitioner was made to retire with effect from 31.01.2005 and it has now been directed to superannuate the petitioner with effect from 31.01.2007 as well as it has been directed that the salary etc. should be computed treating the age of superannuation of the petitioner to be 60 years and after deducting the amount paid to the petitioner upon completing the age of 58 years, the balance amount be computed and 20 per cent of the sum be paid to the petitioner without interest, hence, there is no impediment in calculating the arrears of salary to be paid to the petitioner for the remaining balance period at the rate of 20 per cent after considering the financial effect of the promotion granted to the petitioner vide notification dated 13.08.2015 with effect from 20.07.2005 and paying the differential amount to the petitioner herein.

11. It is a well settled law that when a Government servant has failed to get a due promotion for no fault of his and consequently, it is held that he is entitled to such promotion, the arrears of salary cannot be denied to him on the ground that the promotion due to him will only be notional without any monetary benefit. In the present case also, the petitioner is entitled to all the monetary benefits upon being granted promotion to the post of D.P.O. with effect from 20.07.2005, on the same analogy i.e. it was not the fault of the petitioner that he was retired earlier. I also find that the impugned order dated 24.11.2016 is totally a non-speaking and unreasoned order, which suffers from the vice of irrationality.

12. In such view of the matter, the said order dated 24.11.2016 contained in Memo No. 1230 issued by the Principal Secretary, Home Department, Bihar is set aside.

13. For the reasons mentioned hereinabove, the present writ petition stands allowed to the extent that the monetary benefits, arising out of promotion granted to the petitioner with effect from 20.07.2005 on the post of D.P.O., be paid to the petitioner in terms of the aforesaid judgment of the Honâ??ble Apex Court dated 01.10.2013, as also in terms of what has already been explained hereinabove in the preceding paragraphs.