(2005) 05 PAT CK 0032

In the Patna High Court

Case No : CWJC No. 10387 of 2003

Kumar Kant Lal and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 02-05-2005

Acts Referred:

Citation : (2005) 05 PAT CK 0032

Final Decision : Allowed

Judgement

Navin Sinha, J.—The petitioners in the present writ application question the orders of their reversion dated 18.11.2002 with retrospective effect, as contained at Annexure-1. They also challenge the subsequent order dated 2.1.2002, at Annexure-2 after a representation made by the petitioners giving effect to the reversion prospectively.

2. The facts necessary for the disposal of the present application would be that petitioner No. 1 was appointed as a Junior Research Assistant by the Superintending Engineer with the Work-charged Establishment of the Irrigation Department on 23.12.1974. The other petitioners are stated to have been similarly appointed between April 1975 to November, 1977. Pursuant to the constitution of a selection committee and the recommendation of the names of the petitioners, the Superintending Engineer sought approval for promotion of the petitioners in the work-charged. Establishment as Research Assistants. On 30.8.978 the Chief Engineer approved the promotions of the petitioners. The orders of promotion would be available at Annexure-5/1 and Annexure-8. The promotions were substantive in nature and did not contain the nomenclature of being provisional or ad hoc in nature. By an order as contained at Annexure-6 dated 9.9.1978 the post of Research Assistant was upgraded as Assistant Research Officer and made a gazetted post. In this manner all the petitioners got promoted to the upgraded post in the gazetted category with the approval of the Chief Engineer. The petitioners then continued to function on their promoted posts till a show cause notice dated 29.9.2001 came to be issued calling upon

the petitioners to explain why they be not reverted to their original post of Research Assistant for reasons that their promotions were contrary to law. The petitioners having submitted their replies to the same the impugned orders at Annexures 1 and 2 came to be passed.

3. Learned counsel for the petitioners submitted that the impugned orders were bad on each count. Undoubtedly a decision had been taken on 27.7.1974 to prepare a State-wise gradation list of the Research Assistants which was clarified subsequently on 30.10.1975 with directions that no cases for promotion and regularisation etc. be considered in the meantime without Government approval. These orders would be available at Annexure- A and B to the counter affidavit of the respondents. It was submitted on behalf of the petitioners placing reliance upon the Government letter dated 1.8.1975 at Annexure-20 that before issuance of Annexure-B dated 30.10.1975, the petitioners were carved out from the Government instruction dated 27.7.1974 inasmuch as the Research Assistants were to constitute a cadre at muffasil level and not at the State level. The decision dated 1.8.1975 made an exception to the decision dated 27.7.1974. In that view of the matter, the clarification done by the communication dated 30.10.1975 would not be applicable to the petitioners. The impugned order in so far as its setsfoth the said ground is not sustainable. Likewise the second reason assigned in the impugned order that by a government communication dated 22.12.1980 a decision had been taken that only such persons in the work-charged establishment who had completed 5 years of service prior to 1.4.1977 be considered for absorption in regular establishment, is also not applicable to the petitioners of the reason of the Government decision dated 23.10.1987 at Annexure-11 modifying the aforesaid decision dated 22.12.1980 inasmuch as the order dated 1.4.1977 now would be substituted by the cut off date 23.10.1987. The petitioners admittedly fulfilling the said criterion, it cannot be a valid ground for the purposes of reversion. In so far as the third ground with regard to certain orders passed by this Court is concerned, as a justification for reversion of the petitioners, learned counsel for the petitioners submitted that from the orders of this Court at Annexure-D to the counter affidavit it would be apparent that the orders concern such cases of such Research Assistants who had been granted promotion on provisional, officiating or ad hoc basis contrary to the substantive promotions granted to the petitioners. The aforesaid ground also would not sustain the reversion of the petitioners. The last ground urged in the impugned order that the petitioners by a process of regularisation could not be brought into a gazetted case from what were gazetted posts in the work-charged Establishment would also fail scrutiny for the reasons that by virtue of the Government decision at Annexure-6 dated 9.9.1978, the petitioners were not brought into the gazetted cadre but the post on which they were working was upgraded with the same pay scale and promotional avenues. On the basis of the aforesaid, learned counsel summed up the submissions by stating that in any event reversion after nearly 18-24 years of the service on the promoted post is highly unequitable in law. Especially in the background of there being no

allegation of any act on part of the petitioner for having obtained such promotion which according to them fell in normal course of their service and was approved at government level.

4. Learned counsel for the State submitted that the absorption of the petitioners by upgradation of the post to a gazetted cadre was contrary to law. He relied upon the pleadings as contained in Paragraph 3 to the counter affidavit. This court is afraid it is not open to the respondents to challenge their own orders. The law in this regard would be well settled by the judgment of the Supreme Court reported in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, . This Court would appropriately quote paragraph 5 of the judgment which would read as :

"The next submission of learned counsel for the appellants was that the concessions granted by the said order dated June 30, 1969 were of no legal effect as there is no statutory provision under which such concessions could be granted and the order of June 30, 1969 was ultra vires and bad in law." We totally fail to see how an Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the State itself was beyond the powers of the State or how the State can say so either. Moreover, if the said argument of learned counsel is correct, the result would be that even the second order of January 12, 1977 would be equally invalid as it also grants concessions by way of refunds, although in a more limited manner and that is not even the case of the appellants."

The next submission of the State that in view of the instruction at Annexure-A to the counter affidavit dated 27.7.1974 clarified by the instruction dated 30.10.1975, they debar the petitioner from absorption and promotion is also not acceptable in view of the Government communication dated 1.8.1975 at Annexure-20 to the rejoinder of the petitioners to the counter affidavit. This Court also finds that the petitioners are not similarly situated as those writ petitioners whose cases are referred to in the impugned order. The petitioners therein would from a separate category by reason of their promotion being provisional in nature as distinct from the regular promotion granted to the petitioners.

5. In the result this application is allowed. The impugned orders as contained in Annexures-1 and 2 are hereby quashed. The petitioners shall be entitled to all consequential benefits as consequence thereof to be made available to them within a period of two months from the date of receipt/production of a copy of this order.