
(2009) 03 PAT CK 0037
In the Patna High Court
Case No : CWJC No. 12070 of 2002

Laboratory Asstt. Association and Another APPELLANT
Vs
The State of Bihar and Another RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Bihar Finance Rules, 1981 — Rule 74
Bihar Service Code, 1952 — Rule 58

Citation : (2009) 3 PLJR 818

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Yogesh Chandra Verma and Abhay Kr. Kashyap, for the Appellant;
Amarendra Kumar, for the Respondent

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioners and the State. The relief claimed in this writ application is for grant of promotion to the post of Research Assistant in the Road Construction Department from the date that the vacancy occurred alongwith monetary benefits and not from 15.12.1999, when, as per the petitioners, the Respondents at their leisure decided to issue the order of promotion effective from that date.

2. The controversy relates to the avenue for promotion from the post of Laboratory Assistant to Research Assistant in the Road Construction Department.

3. Learned counsel for the petitioners submits that there is no justification for the Respondents to grant such promotion from the date of notification and not from the vacancy in the promotional post. In essence, the challenge is that the Respondents seek to take advantage of their own lapses and visit the petitioners with the consequences of their lapses.

4. Counter affidavit has been filed on behalf of the Respondents affirmed by one Salman Ahmad son of Md. Yusuf, Deputy Director in the Department of Road Construction. It states that the Finance Department declined to consider the case

of the petitioners for promotion from the date that the vacancy arose in light of the Government Circular as appended to Annexure-A to the counter affidavit, which refers to Rule 74 of the Bihar Finance Rules and Rule 58 of the Bihar Service Code that retrospective promotion and monetary benefit of the same cannot be given for a period that the incumbent did not hold the promotional post.

5. The writ petition encloses as Annexures-6 & 6/1, orders of this Court in CWJC No. 11691 of 1993 and CWJC No. 1631 of 1996 and analogous cases on the issue. In the former case, the objection of the Respondents with reference to Rule 74 of the Bihar Finance Rules and Rule 58 of the Bihar Service Code was also noticed. This Court considers it proper to quote the relevant extract of the order hereinafter:--

"The respondents have filed counter affidavit stating, inter alia, that as order of promotion was issued in 1988 he is not entitled to the consequential benefits from 1975/1981. Reference has been made to the circular of the Finance Department dated 4.4.85 in this regard. We have considered the submissions of the counsel for the parties. The plea of the respondents as also reliance on the circular dated 4.4.85 is wholly misconceived both in law as well as on facts. The plea rests on the provisions as contained in Rule 58 of the Bihar Service Code and Rule 74 of the Bihar Financial Rules. The circular also, in fact, stems from the said two provisions. The aforementioned rules have fallen for consideration by this Court times without number. This Court following authoritative pronouncements of the Apex Court as well as precedents of this Court has consistently taken the view that any promotion which the person concerned is entitled to as of right cannot be said to be notional and if the person concerned is prevented from discharging the duty of the superior post it is only on account of mistake or laches on the part of the State. The State having issued necessary notification in 1988 cannot turn round and take this stand that as the petitioner did not discharge the duty of the posts of Assistant Engineer he is not entitled to pay of the post."

6. The right to be considered for promotion is a fundamental right. This necessarily entails a timely consideration of such promotion from the due date. The Respondents cannot be permitted to defer the due date and then take advantage of the same to deny benefits to those aggrieved by such delayed consideration. This Court having authoritatively pronounced on the issue as noticed above, the deponent in the counter affidavit, in his wisdom, has chosen to file a cryptic reply ignoring that the issue is in the teeth of the judgments of this court appended to the writ application. Presumably, this was so, as he considered the present litigation as a luxury at tax payers' expense without taking responsibility for what he states in the counter affidavit. This Court is disturbed with the manner the deponent has conducted himself in swearing the counter affidavit choosing to ignore and refuse to deal with and answer the earlier orders of this Court on the issue appended as Annexures to the writ

application burdening this Court with unnecessary litigation.

7. The writ application is, therefore, disposed off in terms of the earlier orders of this court referred to above, with directions to the Respondents to consider the due date for promotion of the petitioners to the post of Research Assistant and give them promotion as also of monetary benefits from that date, and not from the date of notification of such promotion, within a maximum period of four months from the date of receipt and/or production of a copy of this order.

8. This Court further considers it proper to direct that a copy of this order be placed before the Chief Secretary of the State so that the nature of the counter affidavit filed, ignoring the earlier orders of this Court appended to the writ application, be left to his final decision on the administrative side.

9. The Chief Secretary shall then file an affidavit of the corrective action taken, both with regard to the present deponent as also in the larger perspective, since counter affidavits of the present nature are a recurring issue and the present is not an isolated case. List under appropriate heading after one month for filing of affidavit of compliance.