

(2014) 04 PAT CK 0070
In the Patna High Court
Case No : CWJC No. 3851 of 2014

Lakshman Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-04-2014

Acts Referred:

Citation : (2015) 1 PLJR 719

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Bankey Bihari Singh, Advocates for the Appellant; Satyapal Singh, Advocates for the Respondent

Judgement

Chakradhari Sharan Singh, J.—This is an application seeking following orders from this Court:--

"I. To quash the order of the Com-missioner-cum-Chief Executive Officer, Patna Municipal Corporation, memo No. 77 dated 27.1.2006 and sanction the Time Bound promotion another related benefits.

II. To sanction the new pay scale of Rs. 1,500/- to 2,750/- as per memo No. 781 dated 11.9.2000 issued by Administrator, Patna Municipal Corporation with other consequential benefits.

III. To grant any other reliefs as your Lordship deem fit and proper."

Learned counsel appearing on be half of the Respondents at the very outset has raised a preliminary objection over the maintainability of the writ application on the ground that for similar relief the petitioner had earlier approached this Court by filing C.W.J.C. No. 8477 of 2007 which stood dismissed by an order dated 7.5.2013 with cost. An appeal under Letters Patent of this Court vide L.P.A. No. 710 of 2013 preferred by the petitioner was not pressed on merits of the petitioner's claim and the petitioner had confined his challenge to the order dated 7.5.2013 to the extent it imposed a cost of rupees ten thousand upon the

petitioner.

2. From the order of this Court dated 7.5.2013 passed in C.W.J.C. No. 8477 of 2007, it would appear that the petitioner had sought for the following relief:--

"I. For issuance of writ of Mandamus or any other writ/writs, order/orders, direction/directions to command the respondents to implement the new pay scale of the petitioner, which was sanctioned vide order of the Executive Officer, Patna Corporation, Patna vide memo No. 781 dated 11th Sept. 2000.

II. For issuance of direction to pay the arrears arising out of implementation of new pay scale of Rs. 1500-2750 w.e.f. 1.1.86 till the date of superannuation.

III. For issuance of direction to sanction 1st and 2nd time bound promotion as the petitioner has worked as Assistant Clerk in Patna Municipal Corporation for more than 25 years.

IV. For issuance of direction to pay salary of strike period w.e.f. 21.12.96 to 21.2.97 treating on leave earned by the petitioner.

V. For issuance of direction to pay bonus for year 1997-98 and 1998-99 and other related dues with interest and cost."

3. A portion to the relief sought for by the petitioner in the previous case and in the present one would show that relief in the present case is substantially the same. In the present writ application, the petitioner has challenged the validity of the order dated 27.1.2006 by which the competent authority under the Corporation had rejected petitioner's claim for grant of benefits of time bound promotion. This Court while passing the order dated 7.5.2013 took note of the fact that the petitioner in the said writ application did not choose to challenge the legality of the said order dated 27.1.2006.

4. From the said order dated 7.5.2013 of this Court, it will also appear that the petitioner's writ application was dismissed being barred by the principle of res judicata. While dismissing the writ application, this Court also observed that the petitioner made an attempt to mislead the Court by not placing the facts in its proper perspective.

5. Learned counsel for the petitioner, resisting the objection as regard maintainability of the writ application has submitted that earlier the petitioner had not challenged the legality of the order dated 27.1.2006 passed by Respondents rejecting the petitioner's claim for time bound promotion. However, it appears that the petitioner's claim for time bound promotion was rejected on the ground that there is no such scheme in Patna Municipal Corporation. Similar relief was sought for in the earlier writ application seeking a direction to the Respondents to sanction 1st and 2nd time bound promotion which relief was declined by this Court and same relief is being sought in the present writ petition.

6. In any view of the matter, this Court while dismissing the writ application vide order dated 7.5.2013 did not grant the petitioner any liberty to challenge the

order dated 27.1.2006 in a separate proceeding. Further, in my opinion, that correctness of the order impugned dated 27.1.2006 is dependent upon the petitioner's claim for time bound promotion which relief was sought specifically by him in the earlier writ application which was not granted.

7. Learned counsel appearing on behalf of the petitioner has submitted that similarly situated persons have been granted such relief but it has been denied to this petitioner. Be that as it may, in view of the fact that the petitioner had earlier approached this Court seeking similar relief, this application cannot be maintained. This application is accordingly rejected.