

(2011) 01 PAT CK 0154
In the Patna High Court
Case No : CWJC No. 10493 of 2006

Lakshmi Prasad Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : (2011) 59 BLJR 2629 : (2011) 2 PLJR 934

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—This case is illustrating as now for some "unknown" consideration, due promotion and monetary benefits are withheld for employees in this State.

2. The Petitioner was appointed in 1965 as an Overseas, which post is now known as Junior Engineer. He retired on 28.2.2001 fighting repeatedly for his promotion, which was due as Assistant Engineer with effect from 1.4.1995. The shameful conduct of the Respondents would be apparent that though the department decided on 3.12.1999 (Annexure-1) that the Petitioner was entitled for promotion to the post of Assistant Engineer with effect from 1.4.1995, still the promotion was denied to him for no reason disclosed. When nothing was done to give promotion, Petitioner alongwith others filed CWJC No. 9267 of 1999, which was ultimately disposed of on 25.2.2005 directing the department to take a decision and give effect to it with regard to the promotion of the Petitioner to the post of Assistant Engineer from the date it was due, as is usual. Petitioner had to do something much "more", his case was not considered. He then filed a contempt application being MJC No. 1621 of 2005. Once notice of contempt was issued, department realized its predicament but only to teach a lesson granted promotion to the post of Assistant Engineer with effect from 29.9.2000 (Annexure-4). Thereafter, again for some undisclosed reason, in relation to some similarly situated persons, by order dated 23.1.2001 (Annexure-6), their date of

promotion was shifted back to the due date of 1.4.1995. Again the Petitioner was left out for some undisclosed reason. This is what brought the Petitioner to this Court.

3. A counter affidavit after much persuasion and fine has been filed. In the counter affidavit it was stated that earlier the Petitioner was granted promotion after he filed MJC application from the date when his juniors, were given promotion, meaning thereby, that the juniors were given promotion from 29.9.2000 and as such the Petitioner was granted promotion from that date. Now, in the counter affidavit it is stated that delay in granting promotion was that when first time the Departmental Promotion Committee met, the Petitioner was posted in a division of which Auditor Controller General of India was enquired into the affair. It is not clear to this Court as to how this come in way of granting promotion where it is due, for if the Petitioner was found guilty of misconduct, disciplinary proceeding could have been started but without any disciplinary proceeding or any proceeding against the Petitioner how he could have been deprived of his promotion. It is then stated that the Departmental Promotion Committee met and denied him promotion on the ground that the Petitioner was to retire soon. Again a significant ground was given by the Departmental Promotion Committee. Apparently the Petitioner was not making sufficient efforts in the right direction, now, after considering the whole thing in para 14 of the counter affidavit it is admitted that, in fact, juniors to the Petitioner were given promotion to the post of Assistant Engineer in Class-II Engineering Services with effect from 1.4.1995 for which the Petitioner has been denying (sic--denied ?) for over a decade. State thus concedes that the Petitioner was liable (sic-- to be?) given promotion with effect from 1.4.1995 but again a strange pleading is taken that the matter would now be referred to Departmental Promotion Committee for fresh consideration. In my view, the entire action taken, as a whole, would show that right from the date all efforts were made to deny promotion to the Petitioner. In 1999 itself it has been conceded that promotion was due to the Petitioner with effect from 1.4.1995, still for non est reason it was being denied. He has never been found unfit for promotion. It is now again conceded that the promotion was due to the Petitioner with effect from 1.4.1995. If that be so, then it would be travesty if this Court does not hold so and issue mandamus in that regard. Accordingly, let a mandamus be issued granting promotion to the Petitioner with effect from 1.4.1995 as per his entitlement and as per admission of the State itself in the counter affidavit with all consequential benefits, which must be worked out and paid to the Petitioner within three months from today. If that is not paid within the stipulated period then the Petitioner would be entitled to compensation at the rate of 6% per year on the amount dues and payable from the date it was due. The responsibility whereof would be on the Secretary, Road Construction Department, Government of Bihar (Respondent No. 2).

4. The writ petition stands allowed in terms as indicated above.