

(2012) 03 PAT CK 0114
In the Patna High Court
Case No : CWJC No. 1623 of 2012

Madhu Sudan Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Citation : (2012) 3 PLJR 55

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and the State. The petitioner superannuated on 31.12.2001. The respondents have granted him promotion as Assistant Engineer by an order dated 19.11.2009 with effect from 1.4.1995, the date when his junior was promoted. The petitioner is aggrieved by grant of notional promotion denying him the monetary benefits of the same in service and post retirement.

2. Learned counsel for the State submits that the petitioner never worked on the promoted post. He is not entitled to the monetary benefits under Rule 58 of the Bihar Service Code (hereinafter referred to as the "Code") read with circular No. 7020 dated 24.12.2005 issued by the Finance Department. A Division Bench in C.W.J.C. No. 10200 of 1992 (Umesh Prasad Singh vs. State of Bihar) declined to grant retrospective monetary benefits.

3. The counter affidavit discloses that the petitioner was considered for promotion by the Departmental Promotion Committee on 10.3.1999 under sealed cover. It makes no disclosure thereafter. Obviously nothing came out of the allegations. His junior was promoted by notification dated 2.8.1999 with effect from 1.4.1995 along with monetary benefits and interest. The Departmental Promotion Committee did not consider his name on 10.6.2002 because of his

superannuation in the meantime. The petitioner instituted C.W.J.C. 11223 of 2003. The Court on 5.11.2003 directed consideration. The petitioner was required to file contempt M.J.C. No. 3318 of 2008 after which the respondents passed the order for promotion.

4. Rule 58 provides that a Government servant shall begin to draw pay and allowances with effect from the date he assumes duties of that post. The Rule fell for consideration by a Division Bench of this Court in Dr. Paras Nath Prasad Vs. State of Bihar and Others, . The contention raised presently was expressly rejected at Paragraph-19 holding as follows:-

19. The other contentions of the learned counsel for the respondents that Rule 58 of the Bihar Service Code prohibits any grant of pay and allowances to the petitioner on fictional and notional promotion granted to him, is in my view, misconceived. A notional promotion has to be as if, for service benefits, he had being given due promotion. A person, who is entitled to promotion and is not promoted can always invoke the jurisdiction of this Court under Article 226 of the Constitution for a mandamus to the employer State to consider his case for such promotion. Such due promotion is not a claim of anything notional but it is something that is really attached to the status and service contract of the employee concerned.....

5. The question again fell for consideration in 1996(1) All PLR 154 : [1996 (2) PLJR 231] (Brajnandan Kumar Sinha & Ors. vs. The State of Bihar & Ors.) it was held at Paragraph-9 as follows:-

9. In the cases of Smt. P. Grover Vs. State of Haryana and Another, , and Dr. Paras Nath Prasad Vs. State of Bihar and Others, , the Supreme Court and this Court consistently held that if a person is granted promotion from a retrospective date, in that case, he is also entitled for arrears of salary on such promotion.....

6. In Ranjit Sahay Jamuar and Another Vs. State of Bihar and Others, Rule 58 of the Bihar Service Code and Rule 74 of the Bihar Financial Rule again fell for consideration in context of retrospective promotion and the grant of monetary benefits. It was held at Paragraph-7 as follows:-

7. The stand taken by the respondent authority and the reliance place on the aforesaid Rules is not acceptable to me. In my view the provisions of Rule 58 of the Service Code and Rule 74 of the Bihar Financial Rules have no application to the case of the petitioners for the simple reason that those Rules envisage promotions given in the normal course of administration and at due time when the right of promotion accrued to the concerned employee. The two Rules do not by any stretch of imagination, deal with cases where promotions were given not at the due time but; with retrospective effect not for any fault on part of the concerned employee but due to the laches and mistakes committed by the Department.

7. In 2005 (1) PLJR 297 (Awadhesh Singh vs. State of Bihar) Rule 58 of the

Bihar Service Code and Rule 74 of the Bihar Financial Rules in context of Government letter dated 4.4.1985 fell for consideration. The Finance Department circular dated 28.12.2005 relied upon by the respondents is but a replication of the same. After considering the Division Bench judgment in Dr. Paras Nath Prasad and a plethora of case law including judgments of the Supreme Court it was held at Paragraphs-13 and 22 as follows:-

13. It is unfortunate that the State Government still persist with its archaic theory of not giving benefits to an employee given promotion with retrospective date for no fault on his part, in spite of a large number of authorities on the question saying to the contrary.

22. It is unfortunate that the principle laid down by this Court long ago is not being adhered to by the State Government and public servants are denied their legitimate right flooding this Court with uncalled for litigations. The State Government shall be well advised to modify his circular in the light of the decision of the Court aforesaid, so as to avoid future litigation.

8. In Food Corporation of India Vs. S.N. Nagarkar, it was held at Paragraphs-19 and 20 as follows:-

19. Having regard to the facts and circumstances of the case, the Court was satisfied that the respondent was not only to be considered for promotion to the promotional posts, but was also entitled to arrears of pay and allowances since he had been deprived of those benefits not on account of any fault of his but on account of the fault of the authorities concerned. It is well settled that in exercise of writ jurisdiction, the Court may mould the relief having regard to the facts of the case and interest of justice.

20. In this appeal, we are not called upon to pass a judgment on the correctness of the order passed by the learned Judge in Civil Writ Petition No. 4983 of 1993 dated 6th May, 1994. The only question that arises for consideration is whether under the said judgment and order, the respondent is entitled to the arrears of pay and allowances from the dates of promotion. In our view the learned Single Judge as well as the Division Bench in Letters Patent Appeal have correctly held that the respondent (petitioner in the writ petition) is entitled, in terms of the order dated 6th May, 1994, to arrears of pay and allowances with effect from the dates he was granted the two promotions, and not from the date he joined the promotional posts. No interference by this Court in exercise of jurisdiction under Article 136 of the Constitution of India is called for. This appeal is, therefore, dismissed with costs which is quantified at Rs. 2,500/-.

9. The manner in which the respondents have obstinately sought to oppose the writ application on an aspect where the law stands well settled wasting the time of the Court is an indefensible conduct. When the Court pronounces on issue of law it applies to all who are similarly situated as held in State of Karnataka and Others Vs. C. Lalitha, as follows:-

29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently....

10. The State Litigation Policy provides that litigation shall not be resorted too for the sake of litigation. The Government is required to behave as a responsible litigant and reduce the pressure on the overloaded judiciary. False pleas and hyper-technical points are not to be taken. Clause 4C(1) read as follows:-

4C(1) A good number of cases are from the category of similar cases. Each Government department will aim to consider and settle the claim of the representationist/applicant-employee/citizen, if the claim is found covered by any decision of the Court. Many service matter of this nature, can be disposed off at the level of the department itself without compelling the litigant to come to the Court. In this manner, the Government departments would be acting as efficient litigants.

11. In Union of India (UOI) and Another Vs. Rahul Rasgotra and Others, noticing the manner in which cases are conducted on behalf of the Government by those given powers in trust, it was observed as follows:-

14.....We are not sure whether such lapses of the persons responsible for conduct of the case on behalf of the Government are deliberate or inadvertent but they are certainly culpable which need to be investigated by the concerned authorities to identify the delinquents and punish them in public interest. It is time that the derelicts are also held accountable and liable for the loss of public money due to their lapses....

12. Even recently in Urban Improvement Trust, Bikaner Vs. Mohan Lal, it has been held as follows:-

5. It is a matter of concern that such frivolous and unjust litigations by Governments and statutory authorities are on the increase. Statutory authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and high-handed manner. They cannot behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers are brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

6. This Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not. put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of

justice. We may refer to some of the decisions in this behalf.

10. Unwarranted litigation by Governments and statutory authorities basically stems from the two general baseless assumptions by their officers. They are:-

(i) All claims against the Government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.

(ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the court and secure a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of Governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in-charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision-making, or worse, of improper motives for any decision-making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision-making to courts and tribunals.

13. The respondents essentially seek to take advantage of their own lapses and deficiency in granting delayed promotion but wish to visit the petitioner with the consequences. The policy dated 28.12.2005 sought to be relied upon by the respondents is quite to the contrary. Clause 3 provides that Rule 58 can be implemented only if promotions are given in time. Clause 4(a) provides that if retrospective promotion is given, the monetary benefits shall be paid. Clause 4(d) provides that Clause 4(a) shall apply both to serving and retired officers. The reliance on Umesh Prasad Singh (supra) is misconceived. No claim for retrospective monetary benefits was made and therefore the Court had no occasion to consider the law while granting notional benefits.

14. The respondents are held liable to pay all arrears of enhanced salary from 1.4.1995, all arrears of pension and issue revised pension payment order all to be done within a maximum period of four months from the date of receipt/presentation of this order.

15. A copy of the order be sent to the Chief Secretary of the State for needful and communication to all departmental heads so that covered matters are not unnecessarily persevered with. The writ application is allowed.

*Ed.-Published in 2011(2)

PLJR Pg. 14 (statute).