

(2013) 04 PAT CK 0041

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2682 of 2001

Mahendra Rai and Surendra Jha

APPELLANT

Vs

Rajendra Agricultural University and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 04 PAT CK 0041

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Satya Narayan Mishra, for the Appellant; Anil Kumar Upadhyaya, Advocate for the University, Mr. Anand K. Ojha and Mr. Amar Nath Deo, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—The two petitioners have been fighting for justice and are looking for equality in matter of grant of promotion viz-a-viz other similarly situated employees, if not juniors to the petitioners. These petitioners as well as the private-respondents were all appointed on a Class-IV post over varied period of time relating to the decade of mid 70s. They have been performing the responsibility conferred upon them without their being anything adverse against them. Like all other employees they also had hopes and expectation from their employer, i.e., the university to treat them fairly, including grant of promotion, which has not been done, as is the averment in the Writ Application. Writ was filed in the years 2001, but was admitted for final hearing and is being taken up now for final disposal. The Court cannot ignore some significant observation, which had been recorded on 17.04.2008 by one of the Learned Single Judge, while adjourning the case for further consideration. The Court would like to reproduce some of this observation as it crystallizes the issue rather clearly:

Having heard counsel for the parties at some length this Court feels that everything is not fair in the promotion of Class-IV employee in Rajendra

Agricultural University and its Sugar Cane Research Institute. Though in the impugned order passed by the Director Administration, it has been claimed that the post of Peon does not have a cadre leading to the promotion to the post of Laboratory Assistant the earlier decision of the University giving such promotion to respondent nos. 6, 7 and 8 as well as to Jivanath Jha and Kewal Mahto would go to show that such stand taken in the present counter affidavit is not correct. The specific assertion of the petitioner is that the aforementioned five persons were given promotion without holding any limited departmental merit test has not been controverted in the counter affidavit, but in the impugned order it has been mentioned that none of senior of the petitioner have been promoted without appearing in the limited departmental merit test and getting selected therein. Thus a total inconsistent stand on behalf of the University in its counter affidavit with the earlier order of promotion to at least the aforementioned five persons cannot be reconciled by this Court.

2. In addition to that counsel for the petitioners has clearly established from official records of the university that the private-respondents had been given the benefit of promotion, even though they have been shown to be junior to the two petitioners, which is evident from Annexure-20 to the Writ Application.

3. Private-respondent No. 6 has been promoted on 01.07.1991. The order of promotion is Annexure-8. Private-respondent No. 7's promotion order is contained in Annexure-9, is dated 22.08.1996 and private-respondent nos. 8 was promoted on 07.08.1999, his order is Annexure-15.

4. A reading of these annexures would show that the promotion orders have not been passed limited to these respondents but contains whole lot of other names, who have been extended the benefit. They have all been promoted from Class-IV posts.

5. Variable stand has however been taken on every occasion, which is writ large from the records of this case. Every time the respondent-university has been asked to take a stand or file their response either in the present Writ Application or in the earlier writ, when the petitioners had approached the High Court and the Court relegated them to the university authorities for consideration of their claim.

6. A statutory authority like the university, I suppose, is governed by some set of rules. Their cannot be variable rules for different people on different occasions. For after all consistency is the hallmark or an integral part of rule of law. If it is not, then it is per-se arbitrary and violative of Article 14 of the Constitution of India, if not Article 16, in the present case. Court has reasons to observe this, because despite observation of the Learned Single Judge in His Order, dated 17.04.2008, in a supplementary affidavit filed on behalf of the Vice-Chancellor, he takes a peculiar stand, showing that the promotion order granted to other persons including the private-respondents was an illegal decision. Promotional avenues are available to Class-IV employees only through limited competitive

examination.

7. Counsel for the petitioners is correct in pointing out that the concept of limited competitive examination has come only in the year 1999. The decision to grant promotion in terms of Annexure-8, 9 and 15 has been in play much prior to the so called policy of limited examination. The violation or breach of equality has been there right from 01.06.1999 when respondent no. 6 was granted promotion along with many other similarly situated persons and it continues to violate their right of equality even now.

8. The bona-fide of the stand of the Vice-Chancellor in the supplementary affidavit could have been accepted provided they would have gone ahead and undone the illegality, which they are talking about now which are more than two or two and half decades. But the reluctance on their part to do so again does not enthruse this Court to accept their stand. In fact the Court feels that it is yet another effort on the part of the university to divert or deviate from the main issue whether they have been violating Article 14 and 16 in matters of grant of promotion to its employees. In fact the Court gets an impression that it is pick and choose all the way and there is no objectivity in matters of grant of promotion, being practiced in the university.

9. The university cannot hide behind a stand that they have illegally granted promotion to some and they are not willing to repeat that illegality. The thrust of their stand emerges from the so called limited competitive examination policy, which is supposed to be in place since 1999. This Court, however, is constrained to record that the claim of the petitioners has been in place, from the time the private-respondents had been given promotion on higher post and higher pay-scale by various notifications, which have been talked about earlier. Such a position was also noticed in Annexure-12, which was the order of the Learned Single Judge passed in previous Writ Application of the petitioners and decided on 19.08.1998. Unfortunately, instead of correcting the illegality even then, the respondents insisted on adopting a different yardstick for these two petitioners, which still remains a mystery as to the reason because petitioner has also annexed an order contained in Annexure-11 in yet another Writ Application, where the university had readily accepted the claim of those petitioners and again the plea of mistake was taken in not granting benefit of promotion. But since that mistake was loaded in favour of those employees and the present mistake is loaded against present petitioners, this Court fails to understand as to which mistake this Court should accept; the previous one or the current one.

10. The stand of the counsel for the university based on the decision of the Hon"ble Apex Court in the case of State of U.P. and Others Vs. Rajkumar Sharma and Others, , especially paragraph 15, will have no applicability to the present case, because if there was an illegality, that illegality ought to have been undone by the university, which they are not willing to undo even now and they only want to resist granting benefit to similarly situated persons like the two petitioners. The ratio of the Hon"ble Apex Court, therefore, does not apply to the

present bundle of facts, which have been noted in detail in the earlier part of the order.

11. The stand taken by the respondent-authority in refusing to grant benefit of promotion to these two petitioners, is obviously a mala-fide decision if not in fact surely in law, which is available from varying positions taken from time to time either before this Court or in every affidavit which have been filed in varied proceedings.

12. The impugned order contained in Annexure-16, dated 23.03.2000, which is the order of rejection of the claim of these petitioners, based on the earlier direction of the Court is hereby quashed. The Writ Application is allowed. A direction is issued upon the Vice-Chancellor that he shall consider the claim of these petitioners for grant of promotion from the date their juniors were granted promotion. If for arguments sake, it is treated as a case of mistake, if at all, then may be the grant of promotion to these petitioners cannot be treated as a precedent, but these two petitioners cannot suffer at the hands of the respondents in the manner in which decision has been taken against their interest viz-a-viz similarly placed employees. Writ Application is allowed. However, no order as to costs.