
(2005) 07 PAT CK 0081
In the Patna High Court
Case No : CWJC No. 16454 of 2004

Maheshwar Prasad Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Citation : (2005) 4 PLJR 17

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Binod Kumar, L.P.K. Rajgrihar, for the Appellant; Archana Shahi, for the Respondent

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner, and for the State as well as the Accountant General. Petitioner has filed this application for quashing the order contained in Memo No. 862 dated 2.4.2004 whereby the increments allowed to the petitioner on the basis of his promotion with effect from 1.1.1979 has been withdrawn as his salary has been fixed at Rs. 5500/- instead of Rs. 6725/- with effect from 1.1.1996. This order has been passed on the ground that the petitioner has not passed the Hindi Noting and Drafting Examination. The petitioner has also prayed for quashing the subsequent order contained in Memo No. 81 dated 31.7.2004 whereby Rs. 3,45,854/- has been directed to be recovered from the gratuity, leave encashment, L.I.C., Provident fund of the petitioner.

2. Petitioner's case is that he was appointed on the post of constable in the year, 1964, and, thereafter, time-to-time, he was given promotion. Finally he was promoted on the post of Sub-Inspector of Police. He appeared in the examination of Hindi Noting and Drafting Examination three occasions but could not succeed. Considering the fact that he had crossed 50 years of age, the department considered his case for exemption for appearing in the Hindi Noting and Drafting Examination and by order contained in Memo No. 2862 dated 21.12.2001, the Superintendent of Police, Sitamarhi passed the order whereby the petitioner was

exempted from appearing in the Hindi Noting and Drafting Examination. He was allowed the promotional scale of Rs. 7775/-. Thereafter, the petitioner started receiving this salary and at the time of his superannuation on 31.1.2004, he was receiving Rs. 8125/- as his salary. After petitioner's retirement, when he submitted his papers for fixation of pension, and for payment of his retiral dues, the impugned order has been passed whereby the promotional scale given to the petitioner has been withdrawn and an order has been passed for recovery of the amount which the petitioner had received as salary promotional scale.

3. A counter-affidavit has been filed by the State wherein it has been stated that the order passed in case of the petitioner, giving him exemption from appearing in the Hindi Noting and Drafting Examination was an order without jurisdiction as the Superintendent of Police, Sitamarhi was not the competent authority to grant exemption from appearing and passing departmental Hindi Noting and Drafting Examination. As per Hindi Examination Rules 1968 (Notification No. 361 IR dated 15.6.1968), it is clear that every government servants whose nature of work demanded Noting and Drafting had to pass Hindi Noting and Drafting Examination and unless he passed the said examination, he could not have the benefit of increment/ confirmation and he will not cross the efficiency bar. As per letter No. 12/5040-78 per/1925, dated 21.6.1978, the Government decided a principle that those personnel who crossed 50 years of age but had not passed departmental examination if applied for exemption from the examination, his case may be considered. This circular was not clear about the competent authority. Subsequently, in letter vide memo No. 11691/per dated 9.11.83 was issued in continuation of the circular 11925 dated 21.6.1978 issued by the Personnel and Administrative Reforms Department. From this circular, it is clear that exemption could have been granted by the departmental Secretary. In this view, it has been submitted by the counsel for the State that the exemption order which has been issued in favour of the petitioner by the Superintendent of Police, Sitamarhi is not sufficient for giving him. exemption from passing the examination as the Superintendent of Police was not competent authority to grant exemption.

4. Considering the fact that there is such provision for exemption in respect of such employees who have appeared in the examination but could not succeed and have crossed the age of 50 years, the petitioner should be given benefit of that provision. This provision is essentially applicable in the case of petitioner as the Superintendent of Police, Sitamarhi under the misconception that he is the competent authority had allowed exemption to the petitioner. On the basis of this exemption, petitioner started getting salary and increment on promotional scale. If it was not done by the on the lawful authority, that was laches on the part of the respondent. For the laches done by the respondent, the petitioner should not suffer.

5. In the facts and circumstances stated above, the order dated 2.4.2004 contained in Memo No. 862 as well as the order dated 31.7.2004 contained in

Memo No. 81 are quashed. The pension of the petitioner may be fixed on the basis of the last pay drawn and all other retiral benefits also be paid to the petitioner, accordingly. If the sanction order has already been issued, on the basis of impugned order, that may be withdrawn and a fresh sanction order may be issued on the basis of the last pay drawn by the petitioner. If any recovery made from the pensionary benefit of the petitioner that may also be paid to the petitioner. The respondents are directed to take all necessary steps towards the fixation of pension and payment of the same to the petitioner within six weeks from the date of communication/production of this order. With this observation/direction, this application is disposed of.