
(2006) 01 PAT CK 0054
In the Patna High Court
Case No : C.W.J.C. No. 16383 of 2004

Manik Chandra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Citation : (2006) 01 PAT CK 0054

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner has prayed for quashing of the office order dated 25.3.2003, contained in Annexure 5, whereby and whereunder the date of first time bound promotion granted earlier with effect from 10.10.1983 has been sought to be modified and 11.1.1992 has been fixed as the date of first time bound promotion and, further, as a consequence thereof, the second time bound promotion granted to him with effect from 15.1.1991 has been cancelled and order for recovery has been passed, vide Annexure 6, the validity of which has been challenged in LA. No. 4045 of 2005.

2. The reason for modification of the date of grant of first time bound promotion as mentioned in the impugned order is on account of adjustment of the petitioner on the post of Treasury Guard from the post of Khalasi with effect from 11.9.1982. According to the State, the said adjustment was in the higher pay and as such, the petitioner was entitled for promotion on completion of ten years from the date of his adjustment.

3. As regards second time bound promotion, the impugned order mentions that in view of the modification in the date of first time bound promotion from 10.10.1983 to 11.1.1992, the petitioner, who did not complete "Kalawadhi" by 31.12.1995 whereafter the scheme for grant of time bound promotion itself was abolished with effect from 1.1.1996, is not entitled for the same.

4. In short, the relevant facts are that initially the petitioner was appointed as Khalasi in the Work Charged Establishment on 15.1.1966, Later, he was

regularised in the Work Charged Establishment and made permanent with effect from 1.9.1976. Further, his services were regularised in the regular establishment with effect from 20.6.1981, vide Memo No. 1462 (Annexure K) and vide office order dated 26.12.1981 (Annexure L), he was posted as Treasury Guard" where he joined on 11.1.1982. The petitioner was given first time bound promotion vide office order No. 3401 dated 15.10.1987 with effect from 10.10.1983 pursuant to the scheme for grant of two time bound promotions introduced by the State Government. However, the same has been modified by the impugned order, by treating his posting of Treasury Guard in the higher pay as promotion.

5. Learned counsel for the petitioner has submitted that the petitioner's posting as Treasury Guard was not by way of promotion and, as such, in view of the provisions contained in Finance Department's resolution No. 3/P./R.-7/84/4245 Vi(2)(3) dated 16th July, 1985 and No. 3/P-RC/84/1871 Vi(2) dated 28th March, 1985, on the basis of said posting as Treasury Guard, the petitioner cannot be denied of the benefit of time bound promotion by treating it to be promotion. In support of this, he has placed reliance on a decision of this Court in the case of Ram Swarup Prasad Vs. The State of Bihar and Others, .

6. Learned counsel for the State has submitted that in view of Finance Department's letter No. 3/PAR-04-8-89-920 Vi(2) dated 6.3.1990, the petitioner will be entitled to get the benefit of first time bound promotion only since after his joining on the post of Treasury Guard in the higher pay and, thus, according to him, there is no infirmity in the impugned order.

7. I am unable to appreciate the said submission of the learned counsel for the State. He has not been able to show that there is any provision in the said Finance Department's letter dated 6.3.1990, on the basis of which the petitioner can be denied of the benefit of first time bound promotion on account of his regularisation on the post of Khalasi. The said Finance Department decision also only deals with the cases of promotion and not posting in the higher pay but in the same class of service.

8. It is not the case of the respondents that the post of Treasury Guard is in the higher scale or class of service. The petitioner was appointed as Khalasi in Class IV post. Learned counsel for the State has not been able to show that the post of Treasury Guard is not in Class IV and that it is in Class III. Admittedly, by the order, contained in Annexure L. The petitioner has been posted as Treasury Guard according to the seniority and not promoted as Treasury Guard. Thus, in my opinion, it cannot be held that the petitioner had been promoted as Treasury Guard and thus is entitled for consideration of his case for first time bound promotion from the date he was made Treasury Guard.

9. Learned counsel for the State has placed reliance on the decision of this Court in the case of Sijay Sharma Vs. State of Bihar and Others, . I am unable to appreciate as to how the said decision is of any help to him. In the said case there was a two scale jump on his promotion from Amin as Surveyor as is

evident from paragraph 10 of the order passed in the said case. It was not a case of posting of the petitioner in the same class of service as in the present case.

10. This Court in. the case of Ram Swarup Prasad v. State of Bihar (supra) has considered the scope where an employee who once after joining the Government service has for any reason been elevated to higher pay and held that no employee can be denied the benefit of two time bound promotions, which the scheme provides except for the rider that no employee can get both promotions simultaneously and that there should be difference between two promotions of the period (Kalawadhi) as is provided for regular promotions. Thus, in my opinion, the impugned order is contrary to the principle decided in the case of Ram Swarup Prasad v. State of Bihar (supra).

11. Accordingly, the writ petition is allowed and the impugned orders, contained in Annexures 5 and 6, are quashed. It is made clear that if any recovery has been made, the respondents are directed to pass necessary order for refund of the same forthwith on receipt of a copy of this order and also issue necessary order with respect to revision of pension, gratuity and other benefits accordingly.