
(2005) 09 PAT CK 0044
In the Patna High Court
Case No : CWJC No. 10196 of 1993

Manohar Lal Barnwal and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Citation : (2006) 1 PLJR 24

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : S.N. Jha and Harish Kumar, for the Appellant; S.N. Pathak, Shri Ganesh and Meena Singh and M/s Tara Nath Jha and Kamteshwar Prasad for the Private Respondents, for the Respondent

Judgement

Narayan Roy, J.—Heard counsel for the parties. Initially, this writ application was filed by the petitioners for bundle of reliefs. However, now it is submitted by Dr. S.N. Jha, learned counsel for the petitioners that petitioners have got promotion and their seniority has been restored and, therefore, their grievances are confined to nonpayment of consequential monetary benefits on account of promotion and also for the period they waited for posting in between 1979 to 1983.

2. It is submitted by Dr. S.N. Jha, learned counsel for the petitioners that petitioners along with other persons, who were Graduates in Mechanical Engineering, were appointed on the posts of Assistant Engineer (Mechanical) vide letter No. 489 dated 3.2.1979 and they were sent for their posting in the Public Health Engineering Department. The Department of Public Health & Engineering, however, refused to accept the joining of all such persons covered under annexure-2. Some of them, however, were retained and the list was returned to the Irrigation Department. Learned counsel further submitted that petitioners reported for their appointment, but somehow or the other they were not given appointment. They, thereafter came to this Court in C.W.J.C. No. 3264 of 1979. The writ application aforesaid was disposed of on 29.6.1981 directing the

Government to consider their cases preferably within a period of three months. The matter thereafter was again raised in Bihar Legislative Assembly where assurances were given for proper appointment of the petitioners and others and, accordingly petitioners were given appointment on ad hoc basis, vide order dated 15.6.1983 and they joined on the post with effect from 16.9.1983. The petitioners thereafter were regularized with effect from 15.9.1983, but their seniority was not fixed according to the date of their entry in services. The matter was agitated by the petitioners departmentally and ultimately the Department granted reliefs to the petitioners and their seniority was restored but the consequential monetary benefits were not given to them for the reasons best known to the Government. At the same time, learned counsel submitted that since the petitioners had waited for posting since 1979 and ultimately they got their appointment on 16.9.1983, they are entitled for salary for the period they waited for posting. A further grievance has also been made by the petitioners for grant of time bound promotion to the petitioners which have already been given to the persons who are juniors to them in the gradation list of the year 2003. In support of the contention, learned counsel referred the gradation list of the Assistant Engineers (Mechanical) prepared in the year 2003 to show that seniority of the petitioners has been reckoned with effect from 1979 itself as the persons who were appointed in 1979 have been shown below them in that gradation list.

3. Learned counsel appearing on behalf of the State, however, submitted that pure questions of facts are involved in this writ application and, therefore, the matter can be examined by the Department on the basis of the materials on record.

4. From the tenor of the arguments of the learned counsel for the petitioner, it appears that basically their grievances have already been redressed, save and except for payment of the monetary benefits and the grant of time bound promotion.

5. Prima facie, it appears from the gradation list of 2003 which has been brought on record that petitioners have been shown senior to other persons who are said to have been appointed in the year 1979 itself. This, therefore, demonstrates that petitioners were appointed initially in the year 1979 and they waited for posting and ultimately proper posting was given to them in the year 1983. Had it been a case that petitioners were appointed for the first time in 1983, they could not have got preference in the seniority list over other Assistant Engineers who were initially appointed in the year 1979.

6. In the given facts and circumstances of the case, however, it would not be appropriate for this Court to issue any positive direction as the matter requires detailed scrutiny of facts.

7. In this view of the matter, respondent No. 2, Commissioner-cum-Secretary, Department of Water Resources, Govt. of Bihar, Patna, is directed to examine the

claims of the petitioners for grant of consequential monetary benefits on account of promotion and restoration of their seniority and also to consider for payment of salary to the petitioners for the period they had waited for posting from 1979 to 1983. At the same time, the Secretary-cum-Commissioner will also consider the case of the petitioners for grant of time bound promotion which has been given to their juniors. The Secretary-cum-Commissioner having examined the claims of the petitioner shall pass necessary reasoned orders in accordance with law within a period of three months from the date of receipt/production of a copy of this order. With this direction/observation, this writ application is disposed of.