
(2007) 02 PAT CK 0175
In the Patna High Court
Case No : CWJC No. 862 of 2005

Most. Lakshmi Dwivedi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-02-2007

Acts Referred:

Citation : (2007) 2 PLJR 232

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. Shashi Shekhar for the petitioner, Mr. Rajesh Kumar, learned junior counsel to Additional Advocate General No. VI, and Mr. P.K. Rajgrihar for the Accountant General. The petitioner's late husband (Dr. Hari Krishna Dwivedi) was in the services of the Bihar Government. She seeks grant of first time-bound promotion and the second time-bound promotion to the late employee, and the money benefits flowing thereto may be paid to the petitioner in the capacity of his widow and the legal heir. The petitioner also prays for quashing of the order dated 30.3.2000 (Annexure-3), whereby the order dated 12.7.1997 (Annexure-2), granting second time-bound promotion, has been recalled. According to the writ petition, the employee was appointed as a Touring Veterinary Officer in the services of the Bihar Government on 10.10.1960, which was a Class-III post. He was confirmed with effect from 20.2.1962. He was given the selection grade pay scale of Rs. 455-840/-, of the Bihar Animal Husbandry Class-III, with effect from 1.1.1976. He was promoted to the Bihar Animal Husbandry Service Class-II (junior branch) with effect from 24.4.1978. The cadres of Class-II (junior) and Class-II (senior) were merged and the petitioner was granted the benefit of merger, vide letter No. 958, dated 5.2.1983, in the higher pay-scale of Rs. 510-1155/-. In view of the position that he had already been given the Class-II (senior) branch in the pay scale of Rs. 2200-4000/- (unrevised), he was given the revised/replacement pay scale of Rs. 3000-4500/-

with effect from 1.4.1991, vide order bearing Memo No. 3693, dated 26.9.2005 (Annexure-A). The employee died on 30.3.1992 while still in harness. The employee was given the first time-bound promotion with effect from 1.1.1992, vide order dated 15.10.1993 (Annexure-1). He was thereafter given the second time-bound promotion with effect from 10.10.1985, vide order dated 12.7.1997 (Annexure-2). This was followed by the impugned order dated 30.3.2000 (Annexure-3), whereby the aforesaid order dated 12.7.1997 (Annexure-2), granting second time-bound promotion, has been recalled.

2. The respondents have placed on record their counter affidavit and have opposed the writ petition.

3. I have perused the materials on record and considered the submissions of learned counsel for the parties including the scheme for grant of time-bound promotions, as well as the Government Resolution No. 4245, dated 16.7.1985 (Annexure-5), issued by the State Government in the Finance Department modifying the original scheme for grant of time-bound promotion. The employee was granted selection grade in Class-III grade with effect from 1.1.1976. Grant of selection grade in the same post is not a promotion. Reference may be made to the judgments of the Full Bench reported in Maheshwar Prasad Singh and Others Vs. The State of Bihar and Others, , that of a Division Bench of this Court, reported in 1998(2) PLJR 200 (Lal Mani Prasad vs. Chairman, B.P.S.C.), and that of the Supreme Court as reported in Dayaram Asanand Gursahani Vs. State of Maharashtra and Others, . He was promoted from Class-III to Class-II (junior branch) with effect from 24.4.1978. This being a substantive promotion, it will come in the way of grant of first time-bound promotion. In that view of the matter, there is no need to consider the effect of merger of cadres on the question of entitlement to the first time-bound promotion, because the employee already stood deprived of the benefit of first time-bound promotion on account of said promotion to Class-II (junior). In that view of the matter, the petitioner was not entitled to the first time-bound promotion. I accordingly set aside the order dated 15.10.1993 (Annexure-1), whereby the employee was given the first time-bound promotion.

4. This takes me on to the second stage of the employee's career, whether or not he was entitled to the benefit of second time-bound promotion. Before we proceed further, we must examine the Government Resolution No. 4245, dated 16.7.1985 (Annexure-5), which made an amendment in the scheme for grant of first time-bound promotion. The same in its entirety is reproduced hereinbelow:--

4.1 There is no need to examine this resolution in detail for the reason that the same is confined to grant of first time-bound promotion which has been dealt with in the preceding paragraph. There is no material on record to suggest that the employee was given any promotion after he was given the promotion from Class-III to Class-II (junior branch) or merger of cadres. Annexure-5 cannot, therefore, result in deprivation of the second time-bound promotion. I must also notice the money benefit granted to the late employee after his demise, by the

aforesaid order dated 26.9.2005 (Annexure-A), whereby he was granted the replacement pay-scale of Rs. 3000-4500/- in Class-II service. Law is well settled that grant of a replacement pay-scale cannot result in deprivation of a time-bound promotion. In that view of the matter, it appears to me that the order dated 12.7.1997 (Annexure-2), granting the benefit of second time-bound promotion to the employee with effect from 10.10.1985, cannot be faulted, and the late employee was entitled to the same. It follows as a matter of corollary that the impugned order dated 30.3.2000 (Annexure-3) is, therefore, bad in law and is hereby set aside.

5. To summarise the position, the order dated 15.10.1993 (Annexure-1), granting first time-bound promotion to the late employee, is set aside. The aforesaid order bearing Memo No. 3693, dated 26.9.2005 (Annexure-5), granting the replacement pay-scale of Rs. 3000-4500/- in place of the unrevised pay-scale of Rs. 2200-4000/- in Class-II, with effect from 1.4.1991, is hereby upheld. The order dated 12.7.1997 (Annexure-2), granting second time-bound promotion to the late employee with effect from 10.10.1985, is hereby upheld. Consequently, the order dated 30.3.2000 (Annexure-3), recalling Annexure-2, is hereby set aside. In the result, this writ petition is accordingly allowed with costs quantified at Rs. 10,000/- (rupees ten thousand), to be payable to the petitioner along with her remaining claims. Respondent no.1 (The Secretary, Department of Animal Husbandry, Government of Bihar, Patna), as well as respondent no. 5 (The Accountant General, Bihar, Patna), are directed to revise the money benefits admissible to the late employee, as well as the family pension, and now payable to the petitioner in the capacity of his widow along with the costs of this writ petition. This Court will be pleased if the entire process is completed within a period of four months from today, failing which the entire dues shall carry interest @ 11% from the date(s) the amounts became due till the date of payment.