
(2011) 10 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 5975 of 2010

Murali Manohar Lall

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Citation : (2013) 1 PLJR 68

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Sanjay Kumar, Dewakar Prasad Sinha, for the Appellant; Ajay, for the Respondent

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and the State. The petitioner has superannuated on 30.4.2004 from the post of Assistant. He has been granted first time bound pro motion from 1.4.1981. The relief sought is to be considered for second time bound promotion from 1.4.1991 and for grant of first ACP with effect from 9.8.1999 as also second ACP. It has been rejected by the respondents on 4.6.2010 on the ground that he had not passed the departmental examination. The first time bound promotion was granted to him considering that his claim fell within the period of exemption from 1.5.1980 to 29.3.1982.

2. Learned Counsel for the petitioner submitted that if the petitioner fell within the exempted period for first time bound promotion, the benefit of the second time bound promotion is automatically available to him without the requirement of passing the departmental accounts examination. Strong reliance has been placed on two Bench decisions of this Court reported in Kalanand Singh Vs. State of Bihar and Others, and Ram Yash Rai Vs. State of Bihar and Others, . It was likewise submitted that for similar reasons ACP also cannot be denied. It was lastly submitted that the respondents as recently as 2.12.2006 have granted time bound promotion to certain others with effect from 1989-90 and 1993-94.

3. Counsel for the State foremost raised objection of delay. It was contended that if the eligibility for second time bound promotion accrued on 1.4.1991 it was for the petitioner to pursue his remedies while in service. Even after his superannuation the writ petition has been filed nearly six years later. The claim is stale and may not be entertained by the Court. Strong reliance was placed on a judgment of the Supreme Court reported in Bhakra Beas Management Board Vs. Krishan Kumar Vij and Another, . It was next submitted that ACP scheme introduced in 2003 in no uncertain terms provides in Clause 5 that it was necessary to pass the departmental examination as may have been necessary for a regular promotion. There is no challenge to the scheme for grant of ACP subject to the aforesaid condition. Learned Counsel for the State sought to persuade the Court to reconsider the very same circular as discussed in the case of Kala Nand Singh (supra) and Ram Yash Rai (supra) submitting that perhaps proper assistance was not rendered to the Court when distinction between Works and Non-Works Departments have not been noticed.

4. The Court upon consideration of the submission on behalf of the parties is satisfied that the petitioner has made out a claim to be considered for grant of second time bound promotion in pursuance of the exemption from the departmental examination granted to him for first time bound promotion. To that extent his case is fully covered by the decisions of this Court in Kala Nand Singh (supra) and Ram Yash Rai (supra). The Court is not persuaded to re-examine the circulars on any precocious plea that proper assistance was not rendered to the Court. If the judgments in question have held the field for long years and has been understood both by the litigant and the State in a particular perspective, the Court is not persuaded to reopen settled matters and thereby create further turmoil in service jurisprudence.

5. But the finding of the Court on the eligibility for grant of second time bound promotion has been hindered by the judgment of the Supreme Court in Bhakra Beas Management Board (supra) observing at paragraph 37 as follows:--

37. Yet, another question that draws our attention is with regard to delay and laches. In fact, Respondent 1's petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the matter and dealt with it in a rather casual and cursory manner. The appellant had categorically raised the ground of delay of over eight years in approaching the High Court for grant of the said relief. But the High Court has simply brushed it aside and condoned such an inordinate, long and unexplained delay in a casual manner. Since, we have decided the matter on merits, thus it is not proper to make avoidable observations, except to say that the approach of the High Court was neither proper nor legal.

6. All materials on which a litigant proposes to rely has to be brought on record in an appropriate manner. The purpose is salutary so that the adversary may have the opportunity to understand and appreciate the case that he has to meet. It is therefore not possible for the Court to consider the order dated 2.12.2006

relied upon by the petitioner as it is not part of the record and the respondents have had no opportunity to rebut the same. Similarly an oral submission has been made on the same that the persons mentioned therein have been granted benefit of second time bound promotion without requirement for passing a departmental examination. It is again not possible for the Court to examine those matters in absence of the respondents having had any opportunity to rebut and statement in support thereof having been made on oath. If the ACP Scheme provides that it can be granted only subject to clearing such departmental examination as may also be required for regular promotion, in absence of any challenge to the scheme itself it is not possible for this Court to deviate from the instructions contained in the scheme and to hold otherwise. But if the respondents have granted any benefit of ACP to persons similar situated without requiring them to pass the departmental accounts examination the petitioner certainly has a claim to be considered. Since the pleadings in this regard are wanting, the only direction that can be issued is that if the petitioner files a representation with specific details making disclosure with regard to persons who may have been granted the benefit without passing departmental examination as an interpretation of the ACP Rules by respondents, themselves quite naturally issues of discrimination shall arise when the respondents are required to consider his claim for ACP appropriately. The writ application stands disposed.