
(2006) 04 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 6592 of 2004

Nand Kishore Shukla

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2006

Acts Referred:

Citation : (2006) 2 PLJR 414

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Bindhyachal Singh and Ranjan Kumar, for the Appellant; Shailendra Kr. Singh, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, prayer is to quash the order issued vide memo No. 935 dated 5.6.2004 by the Director, Department of Science and Technology (Annexure-9), whereby and whereunder the promotion granted to the petitioner to the post of Foreman Instructor (Mechanical) in M.I.T., Muzaffarpur vide order No. 982 dated 17.4.1999 has been cancelled. In short, the relevant facts are that petitioner on being appointed as Instructor (Machinist) in M.I.T, Muzaffarpur joined on 2.6.1977. He was granted first time bound promotion vide office order dated 10.1.1988. Thereafter, the petitioner was provisionally promoted to the post of Foreman Instructor (Mechanical) vide letter No. 982 dated 17.4.1999 (Annexure-7) issued by the Director, Department of Science and Technology, Bihar, Patna in the pay scale of Rs. 1500-2750/-. Vide memo No. 2330 dated 29.12.1999 (Annexure-8) issued by the Principal of the College, petitioner was given U.G.C. pay scale of Foreman Instructor of Rs. 2200-4000/- pursuant to the order of this Court passed in C.W.J.C. No. 7160 of 1991 and M.J.C. No. 1348 of 1996. One Mr. Satrugan Chaudhary being aggrieved with the provisional promotion of the petitioner moved this Court vide C.W.J.C. No. 8956 of 2002 in which petitioner was Respondent No. 5. The said writ petition was disposed of vide order dated 14.8.2002 and in compliance of

the direction of this Court the Director, Science and Technology examined the case of the petitioner and found that he was wrongly granted provisional promotion and considering his promotion irregular cancelled the same vide impugned order, contained in Annexure-9.

2. Mr. Singh, learned counsel appearing for the petitioner contended that the impugned order has been passed in complete violation of the principles of natural justice as neither any show cause was issued nor any opportunity was provided to the petitioner before passing the impugned order. Learned counsel submitted that the petitioner has been subjected to major punishment of demotion in disguise of cancellation of promotion without holding any regular departmental proceeding or without conducting any specific enquiry in this regard.

3. Mr. Shailendra Kumar Singh, J.C. to G.P. IX with reference to counter affidavit has submitted that as per provision of All India Council for Technical Education, the post of Foreman was declared equivalent to that of Lecturer with qualification and also entitle for pay scale of Lecturer. Since the petitioner was not having the requisite qualification, he was not granted regular promotion and was given 1st time bound promotion on 10.1.1988 after completion of 10 years of service and after introduction of A.C.P. Scheme the case of the petitioner, if eligible, shall be considered for second A.C.P. Scheme (Promotion) after completion of 24 years of service. He further submitted that petitioner is Industrial Training Institute Certificate holder and cannot be promoted to the post of Foreman as the post is equivalent to the post of Lecturer. Petitioner was provisionally promoted to the post of Foreman (Mechanical) without having the approval of Departmental Promotion Committee as well as from the Bihar Public Service Commission which was essential because the said post was considered to be equivalent to the post of Lecturer. He further submitted that the Director, Science and Technology examined the case of the petitioner in the light of the direction of this Court passed in C.W.J.C. No. 8956 of 2002 and found that the petitioner was wrongly granted provisional promotion and reasoned order was passed on the representation of Satrugan Chaudhary in pursuance of the judgment passed in the aforementioned Writ Petition vide Departmental Memo No. 1713 dated 28.10.2004.

4. I am unable to appreciate the submissions advanced on behalf of the Respondents. It is not in dispute that the post of Foreman Instructor does not come under the purview of norms and standard decided by All India Council for Technical Education rather it is still being guided by the Bihar Service Code and it is non-gazetted post, which is also clear from perusal of the order issued by the Government of Bihar in the Department of Science and Technology vide memo No. 1590 dated 29.9.2004, contained in Annexure-12 to the reply to counter affidavit filed by the petitioner. It appears that the stand taken by the Department in the counter affidavit is contradictory to the order of the Government, contained in Annexure-12. Further, it is clear from clause 10 of the letter dated 3.1.2003 of All India Council for Technical Education under the

caption "Clarification on certain issues pertaining to pay scales and service conditions for teachers of Degree level Technical Institutions", contained in Annexure-15, that the revision of Pay Scales of Workshop Superintendent, Foremen, Instructors, Systems Analysts, Computer Programmers and Training and Placement Officers for Diploma Level Technical Institutes will be decided by State Governments taking local conditions into consideration. AICTE cannot prescribe qualifications and Pay Scales for these posts as there are too many variations among the norms being followed by the States. Thus, the Respondents are not right in saying that they are implementing AICTE norms on the post of Foreman Instructor. Undisputedly, Bihar Public Service Commission's recommendation is not required for confirmation of promotion in a non-gazetted post and the order of promotion of the petitioner to the post of Foreman Instructor (Mechanical), contained in Annexure-7 only talks about roster clearance and clearance from Vigilance Department and Lokayukta. Further, petitioner in his reply to the counter affidavit has specifically stated that he was not given notice in C.W.J.C. No. 8956 of 2002 and M.J.C. No. 1999 of 2003, despite being Respondent No. 5, otherwise he would have clarified all these facts before the Court.

5. Petitioner in paragraph 12 of the reply to the counter affidavit has specifically stated that he was seniormost Instructor in Machinist trade and after consideration of his seniority he was given provisional promotion on the post of Foreman Instructor (Mechanical) vide Annexure-7. Said Shatrughan Chaudhary though senior to him belong to Sheet-metal trade and he cannot be promoted on the post of Foreman Instructor (Mechanical). In paragraph 14, it has been stated that the Department gave the pay scale of Rs. 2200-4000/- to the Foreman cadre in compliance of the order of this Court and even after granting the aforesaid pay scale the post of Foreman Instructor is still a non-gazetted post and is governed by Bihar Service Code and does not come under the purview of AICTE norms and standards.

6. This Court vide order dated 14.2.2006 directed the petitioner to file affidavit as to whether on his promotion he was ever given U.G.C, benefits treating him as teaching staff. In compliance to that supplementary affidavit has been filed on behalf of petitioner in which it is stated that this Court vide order dated 2.11.1995 passed in C.W.J.C. No. 7160 of 1991 (Annexure-16) directed the State authorities to declare the Instructors of the Government Engineering Colleges in the category of teaching staff and extend the benefit of U.G.C. scale to them as has been granted to Laboratory Assistants by order dated 16.10.1987. The said order of this Court has been affirmed up to the Apex Court in Special Leave to Appeal (Civil) No. 6091 of 1998 (Annexure-18). In compliance to the aforesaid order of this Court, the Science and Technology Department granted pay scale equivalent to the U.G.C, scale to the Foreman and Instructors of Engineering Colleges of Bihar and declared them as teaching staff and in turn the petitioner and other similarly situated persons were granted scale equivalent to the U.G.C. scale vide order of the Principal, M.I.T., Muzaffarpur issued vide memo No. 1634

dated 21.8.1999, contained in Annexure-21 to the supplementary affidavit, which cannot be said to be illegal.

7. Under such circumstances, I find no illegality in granting promotion to the petitioner to the post of Foreman Instructor (Mechanical) and the impugned order cancelling the same is fit to be quashed. In the result, writ application is allowed. The impugned order, contained in* Annexure-9 is hereby quashed. Respondents are directed to allow the petitioner to retain the post of Foreman Instructor (Mechanical) in Muzaffarpur Institute of Technology, Muzaffarpur.