

(2000) 04 PAT CK 0108
In the Patna High Court
Case No : C.W.J.C. No. 5130 of 1991

Paras Nath Mishra and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Miscellaneous Rules of the Board of Revenue, Bihar, 1958 — Rule 157(3)(J), 309

Citation : (2000) 3 PLJR 690

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Dhruba Mukherjee, for the Appellant; R.P. Bhagat and S.C. Ranjan, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—There are 12 Petitioners in this writ application who were all clerks in the Commercial Taxes Department, Govt. of Bihar. Petitioners 1 to 5 are said to have retired from service during the pendency of the writ application. The claim of all the Petitioners is for direction to the Respondents to consider their cases and grant them junior selection grade by way of first time bound promotion with effect from due dates and also to consider their cases and grant them senior selection grade by way of second time bound promotion in terms of recommendation of the 4th pay revision committee accepted by the Govt. of Bihar vide resolution dated 30th December, 1981 (Annexure-2).

2. Had this case not been admitted and pending for such a long time I would have directed the Petitioners to file separate writ application because of their different date of appointment and different dates from which they claim promotion. At times because of large number of Petitioners it become very difficult to examine the individual cases of Petitioners although they may be raising same or similar questions of law. In service matters generally law has to be applied with due regard to particular and individual facts of the Petitioners. However, since the matter was admitted long time back hence, I do not consider

it just and proper to non suit the Petitioners for misjoinder of causes of action.

3. Petitioners have given in paragraph 8 of the writ petition the various dates on which Petitioner Nos. 1 to 5 and 7 to 11 were initially appointed as Lower Division Clerks. About Petitioner Nos. 6 and 12 it has been stated that they were initially appointed to class-IV posts and thereafter by way of promotion they were appointed to class-III posts on the dates given in paragraph-8 of the writ application. As per policy decision and resolution of the Government contained in Annexure-2 ordinarily first time bound promotion and 2nd time bound promotion are to be given to such Government employees who could not get regular promotion in their service career on completion of 10 years and 25 years of service respectively. Petitioner's case is that they are covered by said policy decision and resolution and all of them become eligible for grant of junior selection grade by way of first time bound promotion between 1.4.1981 to 1.2.1985. About the Petitioner No. 5 it has been submitted that he completed 25 years of service on 23rd December, 1984 and was eligible for 2nd time bound promotion also from that date.

4. The Petitioners realise that the main hurdle in grant of selection grade to them lies in the fact that although they attempted but could not successfully clear all the papers for the accounts examination. Non passing of such departmental examination in accounts had an adverse effect as provided in Rule 157(3)(J) of the Bihar Boards Miscellaneous Rules which debar the Lower Division Clerks from being promoted to the post of Upper Division Clerks. It is admitted that in the year 1980 there was a merger of LD and UD clerks and both were placed in a combined cadre under the nomenclature of Assistants. In such a situation, it was submitted that Rule 157(3)(J) as it stood then became redundant.

5. Petitioners have annexed a notification dated 29.4.1985 as Annexure-3 which shows that in exercise of power under proviso to Rule 309 of the Constitution of India the relevant part of Rule 157(3)(J) was amended and as a result of such amendment a clerk who had not passed the final examination in accounts was debarred from promotion to the selection grade.

6. According to the Petitioners the amendment in the rules vide notification dated 29.4.1985 can apply only prospectively and therefore, the Petitioner cannot be denied promotion to junior selection grade by way of first time bound promotion since all of them had become eligible for such promotion prior to 29.4.1985.

7. It has further been submitted with regard to Petitioners' claim for 2nd time bound promotion that Govt. of Bihar vide a notification dated 9.11.1983 as contained in Annexure-4 to the writ application has laid down conditions for relaxation of Rules requiring in passing of departmental examination and on the basis of said notification dated 9.11.83 it has been claimed that the Petitioners were/are entitled for relaxation and exemption. In support of their claim the Petitioners have placed reliance upon a judgment of this Court in the case of Lala Devendra Prasad v. The State of Bihar reported in 2000 (1) PLJR 228.

8. On behalf of the State the prayer of the Petitioner was contested on the basis of Rule 157(3)(J) of the Bihar Boards Miscellaneous Rules for the reason that admittedly the Petitioners inspite of making attempts here not passed the final examination in accounts. However, learned Counsel for the State could not distinguish the aforesaid judgment of this Court in the case of Lala Devendra Prasad (supra) wherein it has been held that in the policy of the Government governing grant of time bound promotions there is no requirement of passing any departmental examination and the notification containing such requirement has been issued only on 29th April, 1985 and hence, prior to 29th April, 1985 there was no requirement in law of passing the departmental examination in accounts for grant of time bound promotion. In view of settled proposition of law there is no difficulty in this case in directing the Respondents to consider the case of Petitioners for grant of junior selection grade by way of first time bound promotion for which they appeared to have become eligible prior to 29th April, 1985. However, for this relief the cases of Petitioners 6 and 12 may require a separate consideration to find out whether they are still entitled for grant of such time bound promotion after their appointment to class-III posts by way of promotion from class-IV posts.

9. So far as Petitioners prayer for promotion to senior selection grade by way of 2nd time bound promotion is concerned, on facts it appears that except Petitioner No. 5 all other Petitioners clearly become eligible for such promotion after 29.4.1985 and therefore, their cases for grant of promotion to senior selection grade post cannot be considered ignoring the notification dated 29.4.1985. About Petitioner No. 5 it has been pointed out that he completed 25 years of service on 23.12.84 and therefore, he became entitled for 2nd time bound promotion without being affected by the requirement of passing the departmental examination introduced on 29.4.1985. This submission appears to be acceptable but it is not clear as to what was the minimum period prescribed in law for promotion from junior selection grade to senior selection grade. If such period was three years then case of Petitioner No. 5 as per aforesaid submission has to be accepted but if the minimum period was of five years then his case will also have to be treated like the cases of other Petitioners with regard to claim for 2nd time bound promotion to senior selection grade posts.

10. In order to get over the hurdle created by notification dated 29.4.85, on behalf of the Petitioner reliance has been placed upon notification dated 9.11.1983 (Annexure-4) to submit that upon attaining the age of 50 years the Petitioner became entitled for relaxation/exemption from taking the departmental examination because, according to the Petitioners they fulfill the main eligibility criteria laid down in Annexure-4.

11. The aforesaid submission of Petitioners on the basis of notification dated 9.11.83 (annexure-4) is to be first considered by the departmental authorities themselves and it will not be proper for this Court in exercise of writ jurisdiction to consider whether they are fit to be granted relaxation from appearing in the

examination or not.

12. For the purpose of seeking aforesaid relaxation it will be open for the Petitioners to file a proper representation before Respondent No. 2, Commissioner-cum-Secretary, Commercial Taxes Department, Govt. of Bihar, Patna.

13. It goes without saying that if relaxation sought for by the Petitioners is refused for no good reasons it will always be open for them to seek their remedy against such rejection in accordance with law.

14. In view of aforesaid discussions this writ application is disposed of with direction to the concerned Respondents to consider the cases of the Petitioners for grant of junior selection grade by way of first time bound promotion from the dates they become eligible for such promotion. The Respondents are further directed to consider the cases of Petitioners for the purpose of necessary relaxation in terms of notification dated 9.11.1983 (Annexure-4) and thereafter consider their claim for grant of senior selection grade by way of 2nd time bound promotion from due dates in accordance with law. It is made clear that although Petitioner Nos. 1 to 5 have retired from service but their cases also have to be considered for grant of notional promotion and for all consequential monetary benefits to which they may become entitled on account of promotions. Such benefits will extend to their retiral benefits also. The necessary consideration as directed above should be made by the concerned Respondents within a period of four months from the date of filing of representation by the Petitioners for the purpose of relaxation from requirement of taking examination or from the date of production communication of a copy of this order before the Respondent No. 2 Commissioner-cum-Secretary, Commercial Taxes Department, Govt. of Bihar, Patna.

15. The consequential monetary benefits to which the Petitioners may be found entitled should also be made available to them within a further period of two months from the date of aforesaid consideration and decision.

16. With the aforesaid observation and direction this writ application is allowed to the extent indicated above.

17. However, in the facts and circumstances of the case there shall be no order as to costs.