
(2015) 04 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1879 of 1998

Pawan Kr. Sinha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 04 PAT CK 0017

Hon'ble Judges : Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Rajendra Narain, Senior Advocate, Surya Deo Narain Verma and Dharmendra Kumar Sinha, for the Appellant; Mithilesh Prasad Singh, A.C. to S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—The petitioner retired while holding the post of Head Reader from Bihar Secretariat Press, Gulzarbagh, Patna. The said post belonged to the cadre of Reader. This writ application was filed on 27.02.1998, seeking a direction to the respondents to grant promotion to him in Supertime Selection Grade in the scale of Rs. 1640-60-2600-75-2900/- from 01.03.1989 to 30.06.1989, by conversion of post, in accordance with the instructions as contained in State Government resolution No. 6021 (F2) dated 18.12.1989 with consequential benefits, including payment of difference of salary, calculation and re-fixation of pension, gratuity and other post retiral benefits payable to the petitioner accordingly. During the pendency of the writ application, the petitioner Kishori Nandan Prasad Sinha died and, accordingly, by an order of this court dated 26.09.2012 his heirs and legal representatives, being wife and children, were substituted in his place. Tara Devi, wife of original petitioner, also died whereafter an application for expunging her name was filed vide I.A. No. 4644 of 2014 and, accordingly, her name has been directed to be expunged by an order of this court dated 09.02.2015.

2. The original petitioner was appointed on the post of Junior Reader, Govt. Printing Press, Gulzarbagh under the department of Finance, Government of Bihar on 22.11.1951 whereafter he had submitted his joining on 27.11.1951. He was promoted to the post of Senior Reader and was confirmed as such with effect from 19.08.1963. It was his claim that in the gradation list of Senior Readers circulated on 16.03.1972 and he was placed at serial No. 6, which is just below one Yogeshwar Mishra. He was granted status of Selection Grade Reader with effect from 31.12.1980 and Senior Selection Grade Reader with effect from 01.04.1981. The said Yogeshwar Mishra, holding substantive post of Head Reader, was going to superannuate on 31.01.1986 and, accordingly, the original petitioner was asked to perform the duties of Head Reader in addition to his duties as Senior Selection Grade Reader till alternative arrangement was made vide memo dated 30.01.1986. The original petitioner, accordingly, assumed the charge of Head Reader with effect from 01.02.1986. His pay was fixed on the post of Head Reader vide memo dated 22.04.1987 with effect from 01.03.1986. As has been noted above, the original petitioner retired while working as Head Reader with effect from 30.06.1989, after attaining the age of superannuation.

3. On 18.12.1989 the Finance Department, Government of Bihar came out with a resolution revising pay scale of the employees of the State Government including those holding the post of Head Readers and Senior Selection Grade Readers. It was the case of the original petitioner that prior to the decision of the State Government, as contained in resolution dated 18.12.1989, and total cadre posts, 20% were fixed for Selection Grade (Junior Selection Grade) and 10% for Senior Selection Grade. However, by the resolution dated 18.12.1989 the Government decided to make available 35% Selection Grade in all cadres in the ratio of 20% (Junior Selection Grade), 12.5% (Senior Selection Grade) and 2.5% (new Supertime Selection Grade). It was further decided that administrative department concerned would take steps to lay down minimum qualifying time (Kalawadhi) for promotion to new Supertime Selection Grade for cadre/group of posts in consultation with the department of Personnel and Administrative Reforms. It further provided that actual number of posts in these Selection Grades shall be determined for particular cadres/groups of posts taking into account the normal promotion prospect already existing for them so that first and second level of promotions inclusive of Selection Grade remain at least 20% and 12.5% for Junior Selection Grade and Senior Selection Grade respectively of total strength of cadre/group of posts available and for third further promotion it shall remain at least 2.5% of the total strength. The Government resolution made it clear that these Selection Grade posts to the extent of additional 2.5% in Senior Selection Grade and 2.5% in Supertime Selection Grade shall not be in addition to the existing sanctioned strength in the cadre but will be created by conversion of existing sanctioned posts in the cadre. The decision in this regard, as contained in resolution dated 18.12.1989, was to be effective from 01.03.1989.

4. It is on the basis of this decision of the State Government, the original

petitioner claimed that 2.5% of the posts in the cadre of Reader in Bihar Secretariat Press, Gulzarbagh, Patna were required to be converted into Supertime Selection Grade and he being senior most in the cadre on the date of his retirement, be given pay scale of Rs. 1640-2900/- with effect from 01.03.1989, which is the scale admissible for an employee in the cadre of Reader holding Supertime Selection Grade.

5. It has been stated in the writ application that the original petitioner had submitted his representation raising his grievance on 02.04.1990 itself. A letter dated 08.08.1994 has been brought on record by way of Annexure-6 to the writ application to demonstrate that the Superintendent, Bihar Secretariat Press, Gulzarbagh, Patna had written to the Finance Department, Government of Bihar for fixing Kalawadhi for grant of promotion to various posts in the cadre of Reader in the Press. The original petitioner is said to have submitted a representation in the year 1994 itself also claiming the said scale of Rs. 1640-2900/- which, according to him, was the scale admissible for Supertime Selection Grade in the cadre of Reader. It was also his claim that in the year 1997, some persons in the cadre of Reader were granted promotion to Senior Selection Grade in the scale of Rs. 1500-2750/- with retrospective dates but the original petitioner's claim for promotion to higher scale with effect from 01.03.1989 was not considered.

6. Counter affidavit as well as supplementary counter affidavit have been filed on behalf of the respondents- the State of Bihar. Along with supplementary counter affidavit, the respondents have brought on record a letter dated 09.09.1999 issued by the Department of Finance addressed to the Accountant General, Bihar to the effect that out of total 97 posts in the cadre of Reader, 20% of posts, i.e., 19 in number are admissible for Junior Selection Grade. It has been stated in the said communication that the post of Reviser has been treated to be of Junior Selection Grade and post of Junior Reader has been treated to be Senior Selection Grade posts. It has, accordingly, been mentioned that 11 posts of Revisers were already existing and, therefore, scale admissible to Junior Selection Grade can be available for eight posts of Revisers. It has further been mentioned that in the scale of Rs. 1400-2600/- already 18 and 19 posts (total 37) were created and, therefore, there was no scope of conversion of any further posts in the scale of Senior Selection Grade. It has been further stated in the counter affidavit that on the date when the petitioner retired, i.e., 30.06.1989 he was holding the post of Head Reader in the scale of Rs. 1500-2750/- which scale is admissible to the holder of Supertime Selection Grade posts in the cadre of Readers in Bihar Secretariat Press, Gulzarbagh, Patna.

7. Mr. Rajendra Narain, learned Senior Counsel and Mr. Suryadev Narain Verma, learned counsel, representing the petitioners have strenuously submitted that on the date of original petitioner's retirement, he was in the scale of Senior Selection Grade and as per resolution dated 18.12.1989, the petitioner, being senior most in the Readers, was entitled for higher scale of Rs. 1640-2900/-,

which is admissible to Senior Selection Grade posts in the cadre of Reader.

8. I am not convinced with the submission made on behalf of the petitioners for two reasons. Firstly there is inordinate delay in institution of the writ application of at least 7 years inasmuch as the original petitioner retired in the year 1989. The Government resolution also came in the year 1989. The original petitioner submitted his first representation claiming scale of Supertime Selection Grade in the year 1990 and he filed the present writ application in the year 1998.

9. It has been submitted on behalf of the petitioners that the original petitioner had been representing the departments regularly and when he failed to get any relief he filed the writ application in the year 1998.

10. The submission is not acceptable to me. The Supreme Court has repeatedly held that belated claim cannot be entertained by the High Court under Article 226 of the Constitution of India unless tangible explanation is tendered. Reference may be made in this regard to paragraphs 10, 11 and 14 of the judgment in the case of Delhi Administration and Others Vs. Kaushilya Thakur and Another, . Reference may also be made in this regard to the Apex Court judgments reported in the case of C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, ; Naresh Kumar Vs. Department of Atomic Energy and Others, ; S.S. Balu and Another Vs. State of Kerala and Others, ;. and Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, .

11. Secondly, I am of the view that original petitioner cannot claim a higher scale on the ground of resolution of the State Government dated 18.12.1989. The said resolution provides, for the purpose of fixation of pay scale in a particular cadre in basic grade, Junior Selection Grade, Senior Selection Grade, Supertime Selection Grade. According to the resolution, out of total cadre strength minimum 20% should be of Junior Selection Grade, 12.5% of Senior Selection Grade and 2.5% for Supertime Selection Grade. In the present case, it is specific case of the State, with reference to various posts in the cadre, that there are more than number of posts already existing of Senior Selection Grade than the minimum prescribed under the said resolution dated 18.12.1989 in the scale of Rs. 1400-2600/-. It is also their stand that the scale of pay which the original petitioner was getting of Rs. 1500-2750/- was in fact admissible to Supertime Selection Grade posts in the cadre of Reader in Bihar Secretariat Printing Press, Gulzarbagh.

12. In any view of the matter, there being inordinate delay of more than seven years in approaching this court for the relief sought for in the present writ application, I am not inclined to entertain this writ application which is, accordingly, dismissed.

13. There shall be no order as to costs.