
(2010) 11 PAT CK 0092
In the Patna High Court
Case No : CWJC No. 12687 of 2005

Radha Krishna Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Citation : (2011) 1 PLJR 555

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Petitioner was compelled to approach this Court when many a persons junior to him came to be granted promotion on the post of Joint Secretary or equivalent post by the Respondent State with effect from 8.11.2004. There were some other reliefs as well which were made in the writ application but since they have been allowed, they need not be taken note of. What is left to be decided is the claim of the Petitioner with regard to the monetary benefit occurring based on the subsequent notification by virtue of which Petitioner too was granted promotion from 8.11.2004, the date his juniors were promoted, without monetary benefit.

2. Submission of the learned Counsel is that there was nothing against the Petitioner which prevented the Respondents from considering his case for promotion when cases of other persons were taken up, admittedly juniors to the Petitioner. The whole exercise was done to the detriment of the Petitioner only to cause him prejudice and loss by non-grant of benefit of promotion vis-a-vis his juniors in service. Learned Counsel further submits that since the omission or the fault lay with the Respondent State in non-grant of benefit of promotion to the Petitioner at the relevant time, Petitioner cannot be made to suffer and in this regard he relies on two decisions of this Court rendered in the cases of Md. Izharul Haque Vs. The State of Bihar and Others, and Dr. Paras Nath Prasad Vs. State of Bihar and Others, . Contention of the learned Counsel is that in both the

decisions in similar circumstance, decision to grant notional promotion without monetary benefit was interfered with and direction was given to the Respondents to give benefit to the Petitioners of those cases for the reasons rendered therein.

3. Learned Counsel for the Petitioner further brings a glaring case of one Jai Mangal Paswan who was junior to the Petitioner and was granted promotion subsequently on 22.1.2008 with effect from 8.11.2004. In the case of Jai Mangal Paswan the Respondents gave him said promotion alongwith monetary benefit but the Petitioner has been singled out for the treatment which obviously is discriminatory in the face of the decisions taken by the Respondents.

4. There is no clear cut stand or statement on behalf of the Respondents as to why Petitioner could not be granted promotion alongwith rest of the juniors when the case of promotion was being considered. In fact misleading kind of statements are made and a variable stand is taken to justify the decision which have been taken in favour of the Petitioner.

5. At one point of time it is suggested that the Petitioner had not completed the Kalawadhi based on which he could be given promotion but such a stand on the face of the record seems to be erroneous because Petitioner has been granted benefit of promotion from the date his juniors were granted i.e. 8.11.2004. Obviously, there is pick and choose being practiced by the Respondents in extending benefit of promotion and the benefits flowing there from depending from person to person instead of treating similarly situated employees as a class by themselves. The Court could have accepted the stand of the Respondents provided they had not extended similar benefit to one Jai Mangal Paswan who had been given monetary benefit from 8.11.2004 as would be evident from notification No. 786 dated 22.1.2008 in this regard.

6. Petitioner has not only made out a case of discrimination but also has succeeded in establishing that the benefit which he is claiming is within the parameter of law and supported in this regard by the two decisions which have been relied upon by the Petitioner in the case of Md. Hafiz and Dr. Parasnath (supra) as referred to above.

7. This writ application is allowed with a direction upon Respondent No. 2, the Principal Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna, that the notification granting promotion to the Petitioner from 8.11.2004 would be modified to the extent that the Petitioner would also be entitled to the monetary benefit accruing from such a date his juniors were given benefit. Let necessary order be passed in this regard within a period of three months from the date of communication or production of a copy of this order.