

(2004) 01 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 1193 of 2003

Rajbans Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:

Citation : (2004) 3 PLJR 29

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

2. The Petitioner who has joined the services with Bihar State Tribal Development Corporation, Ranchi was transferred to Bihar State Scheduled Caste Co-operative Development Corporation Limited (for short "the Co-operative Corporation"). The case of the Petitioner is that he was absorbed in the said Corporation and thereafter on 21.11.1986 he was given promotion as Assistant Engineer which was made effective from 8.6.1987, According to the Petitioner after sometime it was found that the said order issued in favour of the Petitioner suffers with a technical defect therefore, the very same Co-operative Corporation vide its order No. 81 dated 12.5.2000 issued by the then Administrator issued yet another order saying that the earlier, order dated 30.12.1986 stood modified and the Petitioner is given promotion with effect from 8.6.1987. According to the Petitioner in light of the first order which was rectified by order dated 12.5.2000 the Petitioner's promotion for all practical purposes was made effective from 8.6.1987. The Petitioner's further case is that vide order No. 180 dated 10.4.2002 issued by the Co-operative Corporation without issuing any notice to the Petitioner or affording him any opportunity of hearing the present Administrator recalled the order dated 21.11.1986 reverted the Petitioner from the office of Assistant Engineer to Junior Engineer and then further directed that the Petitioner's services be referred back/returned back to the Welfare

Department, Government of Bihar. According to the Petitioner whether the Petitioner could be repatriated to the Welfare Department or not would be a second issue but in any case the Respondent Co-operative Corporation could not nullify the effect of the promotion which was, earlier given and was later on rectified and that too by the officer of same grade. It is further submitted that by order No. 183 dated 20th April, 2002 passed by the Cooperative Corporation the order dated 10.4.2002 was modified and Petitioner has been relieved to report to Jharkhand State Scheduled Tribes Co-operative Development Corporation, Ranchi. According to the Petitioner all these orders are illegal because neither the Petitioner's promotion could be transferred to any other Corporation or Department as he was absorbed in the services with the Co-operative Corporation. His submission is that if because of the dying condition of the Respondent Corporation the Petitioner is required to be sent to some other Corporation or Government in accordance with the policy of the State Government then the Petitioner's services are to be transferred showing him to be an Assistant Engineer.

3. Learned Counsel for the Respondent Co-operative Corporation submitted that the order dated 10.4.2002 is in accordance with law and the Respondent Corporation was justified in reverting the Petitioner from office of Assistant Engineer to the office of Junior Engineer. The Respondent's have also placed reliance upon a Government circular No. 526 dated 9.2.1989 to submit that the promotions could not be given to the Petitioner. The Petitioner taking an exception to the said plea has filed his additional affidavit along with it he has filed Annexure-39 in which the proceedings dated 3.6.2003 have been recorded. Under Item No. 12(Ka) the impact and effect of the Government notification No. 526 dated 9.2.1989 has been considered. It has been resolved that the said notification No. 526 dated 9.2.1989 would not apply to the cases of promotion. It has already been resolved that in view of the said notification whenever and wherever the promotions have been cancelled, the benefit of the promotion, be given to those persons. Finding that this circular resolution was protecting the Petitioner's promotion this Court required the Respondent Corporation to file a further affidavit that in fact what is the stand of the Corporation. Today the Respondent No. 2 and 3 have filed an additional affidavit sworn by one Anil Kumar Choudhary, presently posted as Director (Project), Bihar State Scheduled Caste Co-operative Development Corporation Limited. Along with the said supplementary counter affidavit Annexure-D letter No. 2297 dated 17.8.2002 has been filed. From a perusal of that letter it would clearly appear that the Co-operative Department of the Government of Bihar has informed the Respondents that the circular No. 526 dated 9.2.1989 would not be applicable to the cases of promotion.

4. From this letter of the State Government the issue would stand clinched that notification No. 526 dated 9.2.1989 would not apply to the cases of promotion and if that be so the Respondents No. 2 and 3 vide their order No. 180 dated 10.4.2002 could not withdraw the effect of the promotion earlier given to the

Petitioner and the order of rectification under which the promotion was made effective with effect from 8.6.1987.

5. The order contained in Annexure-24 so far as it relates to reversion/demotion of the Petitioner is concerned, can not be allowed to stand, firstly, because no opportunity of hearing was given to the petitioner and secondly because it is the case of the Co-operative Department so also of the Government of Bihar that the circular NO. 526 dated 9.2.1989 would not be applicable to cases of promotion. The order contained in Annexure-24 dated 10.4.2002 is quashed to that extent. The Respondents, in accordance with the submission made by 13 Petitioner that the Corporation is entitled to transfer their services for their absorption by the Government and other departments is given liberty to issue a fresh order wherein they shall propose the transfer/adjustment of the Petitioner in any other department of the Government and would transfer the Petitioner's services as an Assistant Engineer. While issuing the fresh order the Respondent Corporation would also be required to consider that if the Petitioner's services were absorbed then could he be transferred to Co-operative Corporation.

6. The Petitioner has also raised grievances that since after the order dated 0.4.2002 contained in Annexure-4 the Petitioner is being tossed from one Department to another Department and the salary is not being paid to him. On one side the State Government says that the salary is to be paid by the Respondent Corporation as the Petitioner was working with them up to 30th April, 2002 and the salary subsequent to 30th April, 2002 is to be paid by Jharkhand. Tribal Co-operative Development Corporation Ranchi because the Petitioner was directed to report to Ranchi Corporation. Learned Counsel for the Respondent Corporation submits that as the Petitioner's services have been returned back to the parent Corporation they are not answerable to the claim of the Petitioner. Unfortunately, the Respondents are not alive to the situation that if the order dated 10.4.2002 is held to be illegal and is to be quashed then the Petitioner would be deemed to be in services of the Respondent, Bihar State Scheduled Caste Co-operative Development Corporation and so long as fresh orders of his transfer for his absorption and adjustment are not issued he can not be tossed from one place to another. The Respondent Corporation certainly would be responsible to make the payment of the salary to the Petitioner.