

(2020) 11 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13481 Of 2019

Rajeev Ranjan Satsangi And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 309

Citation : (2020) 11 PAT CK 0004

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Kishore Kumar Thakur, Rakesh Prabhat

Final Decision : Allowed

Judgement

This writ application has been preferred by altogether 35 petitioners who are praying for the following reliefs:-

"(i) To set aside the order contained in Memo No. 2437 dated 12.09.2017 issued under the signature of Special Secretary - cum - Chairman - Grievance Redressal Committee by which, the petitioners have been communicated that their joint representation dated 30.05.2017 followed by reminder representation dated 09.08.2017 for grant of promotion to the next higher post of Principal with retrospective effect has been rejected.

Copy of each of the joint representation of the petitioners dated 30.05.2017 and the order dated 12.09.2017 passed by the respondent Special Secretary-cum-Chairman of Grievance Redressal Committee is annexed hereto, marked Annexure P- 1 and P-1/A for identification which forms part of this writ application.

(ii) For a direction to the respondents to grant promotion to the petitioners to the next higher post of Principal against the quota of 25 percent earmarked in the grade of Principal to be filled up by way of promotion from amongst the Vice-Principals of Industrial Training Institutes running under the Directorate of

Employment and Training of the respondent Labour Resources Department.

(iii) For a further direction to the respondents to grant them the same benefit of salary in the grade pay of Rs. 4800/- and further higher grades which has been allowed to those who were appointed to the post of Principals in the common unrevised pay scale of Rs. 6500-10,500/- as indicated in the advertisement for appointment to both the posts of Vice-Principal and Principal.

(iv) The petitioners further pray for a direction to the respondents to grant them promotion to the next higher post of Principal with effect from the date vacancies in that grade arose with all consequent benefits of salary and other benefits, considering that the petitioners even having become eligible in all respect on the date of availability of vacancies were, and are being denied promotion to the said grade of Principal against their quota of 25 percent vacancies earmarked to be filled up from amongst the Vice- Principals.

(v) For a further direction to the respondents to consider the case of petitioners for their further promotion to the upgraded post of Deputy Director, Training, taking into account the fact, that inspite of adequate vacancies existing in the Grade of Principal in the Industrial Training Institutes, the petitioners, even though having become eligible in all respect on the date when the vacancies in the grade of Principal arose, have been kept deprived of their promotion resulting in loss of their promotion to the further next higher post."

Case of the Petitioners

Petitioners are presently holding the post of Vice Principals in Industrial Training Institutes (in short hereinafter referred to as the 'ITIs') and are carrying additional responsibility of the post of Principal ITI in the different districts of the State of Bihar. The State respondents have established a number of 'ITIs' in different districts for providing technical education in various trades as per the requirements of the market and the industries.

It is the case of the petitioners that for the purposes of smooth functioning of the ITIs the State has in exercise of it's power under Article 309 of the Constitution of India issued a notification bearing no. 1548 dated 13th July, 2009 by which under the Bihar Industrial Training Service Rules, 2009 (hereinafter referred to as the 'Service Rules of 2009/Service Rules'), the Bihar Industrial Training Service has been declared as State Service and it includes Technical Officers of Industrial Institutes/Apprenticeship scheme and Directorate Employment and Training as the gazette members of such service. The Service Rules 2009 came to be published in Bihar Extraordinary Gazette dated 17th February, 2014. A copy of Service Rule of 2009 has been brought on record as Annexure P-2.

The Service Rule provides for the various posts with designation and grade, the required educational qualification/experiences for those posts and the ratio of direct recruitment and promotion in which vacancies in those posts are to be filled up. Minimum educational qualification and experience for direct recruitment

and the minimum educational qualification for promotion are duly provided under Rule 4(A) of the Service Rules. Rule 4(B) lays down the KALAWADHI i.e. minimum time for the promotion from one grade to another grade/post, it is to be decided by the Department of Personnel and Administrative Reforms, Government of Bihar, from time to time.

For purpose of the present case the petitioners are concerned with the filling up of the post of Principal ITIs'. In terms of the Service Rule, the total vacancies of the Principal ITI/Assistant Director (Training)/Controller of Examination/ Regional Inspecting Officer are to be filled up in the ratio of 75:25 meaning thereby that 25 out of 100 posts of Principal ITIs are to be filled up by promotion from the post given in serial number 1 and column no. 1 of the Table provided under Rule 4(A). The post given in serial no. 1 and column no. 1 is the post of Vice Principal/ Deputy Superintendent. The minimum educational qualification for promotion to the post of Principal ITI is 'A Diploma in Engineering or equivalent from any recognized University/Institution'.

In course of submissions, learned counsel for the petitioners has shown this court from Annexure '9' which is a resolution of the General Administration Department, Government of Bihar that it prescribes the efficiency bar (KALAWADHI) for the purposes of promotion on the post of Principal and according to this the petitioners being placed in the Pay Band of Rs. 4600/-, for them the KALAWADHI is two years.

The specific case of the petitioners is that they are officiating on the post of Principals ITI being eligible for the said post. In this connection Rule 20 of the Service Rules have been relied upon and it has been submitted that the service confirmation before promotion is one of the requirements which these petitioners are duly fulfilling. Learned counsel for the petitioners has also taken this court through Annexure P-10 dated 30.01.2014 which is said to be one of the notifications by which the respondents have given officiating charge/additional responsibility of the post of Principal to various eligible Vice-Principals. It is submitted that the post of Principal ITI are not being filled up by promotion. In this connection, learned counsel has further relied upon Annexure P-11 which a copy of letter no. 176 dated 14.12.2017 issued under signature of the Additional Secretary to the Government in it's Labour Resources Department. This Court has been taken through paragraph 3(d) of the letter (Annexure P-11) to submit that now the government has been proposing reconstitution of the Bihar Industrial Training Service Cadre and in the light of the recommendation of the State Pay Revision Commission some decisions have been taken for determination of the number of posts at different level, sanction of additional post and upgradation of some post. According to para 3(d) now the post of Principal has to be filled up by promotion only and it will be the first promotional post in this cadre. The post of Selection Grade Principal has been upgraded in the category of Deputy Director (Training) which will be taken as second scope of promotion. The third and last scope of promotion shall remain as earlier to the

post of Joint Director (Training) which will be the highest post in the cadre.

Learned counsel for the petitioners have also drawn the attention of this Court towards paragraph 4(d), (k) and paragraph 4(x) of the departmental circular (Annexure P-12 attached to the rejoinder of the petitioners), and it is his submission that paragraph 4(x) of Annexure P-12 clearly provides for regular promotion with effect from the date an eligible person is officiating on the higher post. One of the submissions of learned counsel for the petitioners is that while the State respondents are not denying the availability of posts of Principal ITI and the fact that these petitioners being eligible for consideration to the said post by way of promotion have been given the additional responsibility of the post of Principal ITI and they are officiating on the said post, the State respondents are not filling up the available post of Principal ITI by way of promotion. As a result of this inaction on the part of the State respondents those who have joined the post of Principal ITIs by way of direct recruitment have become eligible to be considered for promotion to the next higher post of Deputy Director, they are being granted next grade and these petitioners are being compelled to work under their juniors. The petitioners had made representation claiming that they deserve consideration for promotion to the next higher post of Principal ITIs with retrospective effect from the date they are discharging the additional responsibility but the same has been rejected by the impugned communications (Annexure 'P-1' and 'P-1/A').

Stand of Respondents

A counter affidavit has been filed on behalf of the respondent no. 1 to 7. It is the stand of the respondents that the Labour Resources Department, Government of Bihar feels it necessary to make certain amendments in the provisions of the Service Rules, 2009, therefore in terms of the recommendation of the State Pay Revision Commission some decisions have been taken vide letter no. 176 dated 14.12.2017 (Annexure P-11) and the process for the amendment of the Service Rule, 2017 is going on and the same is in advance stage.

According to the respondents these petitioners were appointed as Vice Principals in 2011 and 2013 batch in the pay scale of Rs. 9300-34800/-, pay band-2, grade pay - 4200, subsequently they were granted the pay grade of Rs. 4600/-w.e.f. 17.02.2014, now the petitioners are claiming their promotion in the grade pay of Rs. 5400/- admissible to the post of Principal. To support the impugned communications, the respondents have taken a plea that the claim of the petitioners through their joint representations is not acceptable as they are looking for retrospective promotion to the post of Principal but they do not fulfill three conditions. Those three conditions are however not mentioned in the counter affidavit but reliance has been placed on Annexure 'A' i.e. Memo No. 1685 dated 07.07.2017. According to this, a retrospective promotion may be granted only in three circumstances, the first condition mentioned in Annexure '1' is that (1) when a junior in the cadre is granted promotion for any reason, (2) the second condition is that on revision of seniority if a junior employee becomes

senior and (3) thirdly when on the basis of the eligibility and suitability an officiating charge of the higher post is given to an employee, promotion with retrospective effect may be allowed but monetary benefits may be granted only after approval of the department of finance. It is these three circumstances which are mentioned in Annexure 'A'. In paragraph '10' of the counter affidavit a statement has been made by the respondents that in similar manner the representation of Sri Sanjeev Kumar and others has been rejected. In this connection a copy of letter no. 1338 dated 11.06.2019 (Annexure 'B' to the counter affidavit) has been placed on the record. A specific statement has been made in paragraph 10 of the counter affidavit that "... ..Since the process for amendment of Bihar Industrial Training Cadre Rule 2009 is under process, hence regular promotion will be considered on finalization of said amendment in the rule"

There is no contest on the ground of eligibility of the petitioner. There is no denial that while the post of Principals ITIs within the prescribed ratio have been filled up through direct recruitment, the 25% quota available to the eligible from amongst the Vice-Principals are lying vacant since long.

Consideration

After hearing learned counsel for the petitioners and learned counsel for the State as also on perusal of the records, this Court finds that the following facts are not at all in dispute :-

(i) The petitioners were appointed on the post of Vice Principal in 2011 and 2013 batch of the Bihar Industrial Training Institute Service.

(ii) They were appointed in the pay scale of Rs. 9300-34,800/-, pay band-2, grade pay - Rs. 4200/- and subsequently they were granted the grade pay of Rs. 4600/- w.e.f. 17.02.2014. The services of these petitioners are governed by Rule framed by the Government of Bihar in exercise of its power under Article 309 of the Constitution of India. This Rule was published in the Bihar Extraordinary Gazette on 17th February 2014. According to Rule 4(A), the post of Principal ITI has to be filled up to the extent of 75 percent through direct recruitment and 25 percent are to be filled up from amongst the eligible candidates on the post of Vice Principal/Deputy Superintendent. The minimum educational qualification for promotion is also mentioned therein and the petitioners duly possess the minimum eligibility qualification. The petitioners have also been confirmed on the post of Vice Principals vide notification no. 10 dated 08.05.2017 (Annexure P-8).

Rule 20 falling under Part-III of the Service Rules, 2014 reads as under:-

"20. In case of promotion from the different cadre posts of this Bihar Industrial Training Service selection will be made in order of seniority and qualification prescribed under Rule-4 and government reservation policy. Service confirmation along with other condition before promotion is essential. The period after which a person holding a lower post may be eligible for promotion to the next higher post

shall be as prescribed by the Department of Personnel & Administration Reform of the Government time to time."

The General Administration Department has issued resolution as contained in Memo No. 1800 dated 9th June, 2011 (Annexure P-8) and according to it the KALAWADHI for granting grade pay 4800/- is two years. Admittedly the petitioners have completed the two years of KALAWADHI.

(iii) The notification no. 115 dated 30.06.2014 (Annexure - P-10) makes it clear that despite availability of large number of vacancies in the grade of Principal ITI when the petitioners became eligible to be considered for promotion to the said post, they have not been considered for promotion and responsibility of the post of Principal has been handed over by way of additional responsibility to some of the Vice Principals who are eligible to hold the post of Principal ITI on regular promotion, if considered in accordance with law. In this regard, the petitioners have specifically stated that there are different notifications and one of them is Memo No. 115 dated 30.06.2014.

(iv) In the counter affidavit though the State respondents have made a statement that the claim for promotion to the post of Principal with retrospective effect is not admissible to the petitioners as they do not fulfill the three conditions required in this regard, this Court finds that such stand of the State respondents is totally uncalled for and pre-matured. It is a matter which is to be considered by the Promotion Committee as per Rules of Service and Circulars governing the issue. Further, this Court finds that the claim for promotion is the first and foremost issue, the issue of retrospective effect comes thereafter. The three conditions about which respondents are talking are limited to the claim for promotion with retrospective effect. There is no denial at all that these petitioners possess and fulfill all the conditions required for consideration of their names for the post of Principal ITI against the promotion quota i.e. 25%. So far as claim for retrospective promotion is concerned, the third condition mentioned in the communications contained in Annexure 'A' and Annexure 'B' to the counter affidavit are rather prima-facie supporting the case of the petitioners. In this connection paragraph 4(क), (ख) and (ग) of the departmental circular (Annexure - P-12) are quoted hereunder for ready reference:-

"(क) यदि किसी सम्बर्ग के कनीय पदाधिकारी को किसी कारणवश प्रोन्नति दे दी जाए तथा वरीय पदाधिकारी किन्हीं कारणों से प्रोन्नति से वंचित रह जायें एवं बाद में प्रोन्नति के योग्य पाए जाएं, तो ऐसी स्थिति में कनीय पदाधिकारी की प्रोन्नति के उपरान्त योगदान की तिथि से वरीय पदाधिकारी का, आर्थिक लाभ के साथ प्रोन्नति अनुमान्य की जायेगी, बर्शते कि बिलम्ब से प्रोन्नति के लिए वरीय पदाधिकारी की स्वयं की गई गलती न हो, जैसे वार्षिक अभ्युक्तियों के लिए आऊट टर्न समय पर नहीं दिया जाना, विभागीय कार्यवाही में अपेक्षित सहयोग नहीं करना आदि ।"

"(ख) वरीयता पुनरीक्षण के कारण यदि कोई कनीय कर्मी वरीय हो जाता है तो नव वरीय पदाधिकारी को उनसे ठीक कनीय की प्रोन्नति की तिथि से वैचारिक प्रोन्नति अनुमान्य की जाएगी तथा कनीयतम की प्रोन्नति रद्द कर दी जायेगी, किन्तु पूर्व में प्रोन्नति पा लेने के कारण अधिक भुगतान की गई राशि की वसूली नहीं की जाएगी । यह कार्रवाई वरीयता पुनरीक्षण का आदेश निर्गत होने की तिथि से तीन माह के अन्दर पूरी कर ली जायेगी । निर्धारित समयावधि के अन्दर कार्रवाई पूरी

नहीं होने पर विलम्ब के कारण यदि अधिक भुगतान करना पड़ता है तो विलम्ब के लिए दोषी व्यक्ति से राशि की वसूली की जायगी।"

"(ग) उच्चतर पद पर प्रोन्नति के लिए अर्हता प्राप्त पदाधिकारी के उपलब्ध होने के बावजूद यदि किसी कारणवश ससमय प्रोन्नति देना सम्भव न हो, तो पद की उपलब्धता, वरीयता, आरक्षण एवं प्रोन्नति के लिए पदाधिकारी की अर्हता एवं उपयुक्तता को ध्यान में रखते हुए उच्चतर पद का कार्यकारी प्रभार दिया जा सकता है तथा बाद में नियमित प्रोन्नति पर विचार करते समय यदि विभागीय प्रोन्नति समिति कार्यकारी प्रभार ग्रहण की तिथि से प्रोन्नति देने की स्पष्ट अनुशंसा करती है तो कार्यकारी प्रभार ग्रहण करने की तिथि से आर्थिक लाभ के साथ नियमित प्रोन्नति अनुमान्य की जा सकेगी।"

This Court, therefore, finds that the case of the petitioners may be covered under paragraph 4(x). If the petitioners possess and fulfill all the eligibility conditions for promotion to the post of Principal ITI but they are not being considered though they have been given additional responsibility and officiating charge of the post of Principal, this Court finds no reason as to why while considering their names of promotion to the post of Principal ITI the departmental promotion Committee would not consider their claim to recommend their names for promotion with retrospective effect from the date the petitioners have assumed officiating charge of the post of Principal ITI. In the opinion of this Court, the departmental promotional committee would be obliged to conduct itself in the matter of recommendations keeping in view the provision as contained in paragraph 4(d), ([k) and (x) of Annexure P-12.

The only plea which has been taken on behalf of the State respondents for not considering the case of the petitioners for promotion to the post of Principal is that there are some recommendations of the Labour Resources Department, Government of Bihar as contained in Annexure - P-11 dated 14.12.2017 and the Service Rules 2014 are going to be amended accordingly. This is the only reason which has been pleaded in the counter affidavit for not considering the case of the petitioners. In fact a specific statement has been made in the counter affidavit that the regular promotion will be considered on finalization of the amendment in the Rule. In the opinion of this Court, the plea taken by the State respondents to deny the claim of the petitioners for consideration to the post of Principal is only against the basic tenets of the Service Jurisprudence. Once the petitioners are eligible for consideration of their names to the post of Principal ITI, in the admitted facts of this case that there are available posts of Principal ITI to be filled up by way of promotion from amongst the Vice Principals, the respondents State and its authorities cannot be allowed to take a plea that they would be sitting over the matter for all these period in the name of a proposed amendment in the Rule which were suggested three years ago vide Annexure P-11, this is wholly unjust and unfair stand on the part of the State respondents. A welfare State is not supposed to deprive its employees from getting their due if they are eligible to be considered for promotion to the next higher grade. The stand of the State worsens when this Court finds that instead of filling up the posts available in the promotion quota (25%) the State respondents are compelling the eligible and suitable candidates from amongst the Vice-Principals to discharge the additional responsibility of post of Principal ITIs over the years

together. Denial of the benefit of such service is bound to have a demoralising effect in the service of the eligible candidates. For proper functioning of the service the additional responsibilities have been given to the eligible and suitable from amongst the Vice-Principals, therefore as a model employer the State has to take a view which should preserve the efficient functioning of the service.

The State respondents are, thus obliged to convene meeting of the Promotion Committee. In several judicial pronouncements it has been held that meeting of Departmental Promotion Committee is liable to be convened each year when vacancy arose.

In result, the impugned communications as contained in Annexure P-1 and P-1/A are hereby set-aside. The respondents are directed to take necessary steps to convene the Meeting of 'Departmental Promotion Committee'/'Promotion Committee' to consider filling up the vacant available post of Principal ITIs against the 25% quota from amongst the eligible and suitable Vice-Principals and consider the claim of the petitioners for promotion to the post of Principal ITI in accordance with Rule 4(A) read with the procedures for grant of promotion as contained in Part-III of the Service Rules of 2009. The Proposal for consideration of promotional cases be placed within a period of one month and the entire process for grant of promotion to the post of Principal ITI and notification thereof shall be completed within a period of three months from the date of receipt/production of a copy of this order. As regards the claim for granting promotion with retrospective effect, the Promotion Committee shall consider the claim keeping in view the Departmental Circulars as regards grant of retrospective promotion with monetary benefits if permissible as discussed hereinabove and shall make recommendations accordingly in accordance with law.

The respondents shall strictly abide by the time frames indicated hereinabove.

This Writ Application is allowed. However, there will be no order as to cost.