

(1998) 01 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 9075 of 1991

Ram Chandra Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-01-1998

Acts Referred:

Constitution of India, 1950 — Article 30

Citation : (1998) 1 PLJR 862

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Tarkeshwar Dayal, Lala Sachindra Kumar and Ashok Kumar Sinha No. 2, for the Appellant; F.A. Khan and Indeshwar Pd. Mandal, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This writ petition relates to time bound promotion and the arrears thereto. The case filed by the Petitioners in the year 1991 but in the meantime, different decision on this respect have been given be thus Court, so it is not necessary to discuss and the facts except the relevant one.

2. Under the Respondent state of Bihar in its Road Construction Department (earlier known as P.W.D.), there is a Work Charge Establishment apart from temporary" and "permanent" establisment which are commonly known as region establisment Admittedly all Petitioners were initially appointed on the Work Charge Establishment as Research Assistant in between the year 1964-1965. Subsequently, Petitioners were taken in the permanent/regular establishment some time in the year 1978. The nomeclature of the post of Research Assistant was also changed to that of Assistant Research Officers and the Petitioners are now designated with such changed nomenclature.

3. The 4th Pay Revision Committee for the first time made recommendation to make provision for time bound promotions taking into note that a number of Government employees were facing stagnation in one post throughout the

service career. Such recommendation of the 4th Pay Revision Committee was accepted by the State of Bihar by Finance Department resolution dated 30th December, 1991. Provisions were made to grant at least two promotions to the State Government employees during the service period. It was stipulated that if no promotion is granted to an employee to the higher posts for about 10 years then to grant at least the next higher scale of pay on completion of 10 years of service, by way of first time bound promotion. Similarly, it was provided that if no second promotion is granted to a State Government employee within 25 years then to grant at least the second higher grade on completion of 25 years of service, by way of second time bound promotion.

4. For the purpose of counting the period of 10 years and 25 years of service in the matter of time bound promotion a question arose whether duty performed by a State Government employee in Work Charge Establishment should be counted or not. The State Government initially answered the question against the employees by Finance Department letter dated 27th February, 1984 (Annexure-14) and held that the period rendered by an employee in the Work Charge Establishment be not counted for the purpose of time bound promotion.

Subsequently, the matter was reconsidered by the State Government and it came out with another resolution dated 27th March, 1987 issued by the Finance Department and held that once Work Charge Employee is taken in the regular establishment, then in their case, the period rendered by such employee in the Work Charge Establishment is to be counted for time bound promotion with a rider that no arrears of salary will be paid on such time bound promotion.

5. On the basis of aforesaid resolution dated 27th March, 1987, the Respondents came out with one notification of time bound promotions dated 29th December, 1989 with corrigendum dated 10th January, 1990 and granted the Petitioners and others first time bound promotion, with effect from 1.4.1981, counting the period of service rendered by the Petitioners and others in the Work Charge Establishment, but was ordered to pay arrears of salary only with effect from 27th March, 1987 and not of the earlier period.

6. In this case, the Petitioners are aggrieved only with respect to part of the aforesaid resolution dated 27th March, 1987 and notification dated 29th December, 1989 by which it was ordered that they will get arrears of salary with effect from 27th March, 1987 and not of the earlier period from 1.4.1981.

7. In the counter affidavit, the Respondent State supported the notification dated 29th December 1989 giving reference to the resolution dated 27th March, 1987. According to the counsel for the State, there was no provision to grant time bound promotion to the Work Charge Employees. The petitioners having been taken in regular establishment and granted promotion in pursuance of resolution dated 27th March, 1987, the earlier period rendered by the petitioners in the Work Charge Establishment has been counted but they cannot claim arrears of salary prior to the period that of 27th March, 1987.

8. Exactly, the same question fell for consideration before a Bench of this Court in the case of Braj Nandan Kumar Sinha and Ors. v. The State of Bihar and Ors. reported in 1997 (1) P.L.R 154 : 1996(2) PLJR 231. This Court took into note the original resolution of the State of Bihar issued from Finance Department on 30th December, 1981 by which the provision of time bound promotion was laid down. Taking into consideration the paragraph Nos. 11 and 12 thereto, this Court held that all the State Government employees are entitled for time bound promotion, including those who are in the Work Charge Establishment. Reference of the case of Smt. P. Grover Vs. State of Haryana and Another, and the case of Dr. Paras Nath Prasad v. The State of Bihar and Ors. reported in 1990(2) RLJ.R. 248 were also cited to hold that once promotion is granted for retrospective date, the incumbent is entitled to arrears of salary from such retrospective dates.

9. In the case of Purshottam Lal and Others Vs. Union of India (UOI) and Another, , the Supreme Court held that no discrimination can be made in the matter of implementation of report of Pay Commission.

10. Apart from the aforesaid fact it will be evident from circular issued by the State Government from its Public Works Department number 1344-E dated 4th February, 1949 that the employees appointed in the Work Charge Establishment were ordered to be treated at par with those employees, who were on appointed temporary basis in the temporary and permanent establishments. It held that the condition of service of work Charged Employees will be identical to those of temporary Government servant. The aforesaid circular now been made a Rule under proviso of Article 30th of the Constitution of India in pursuance of circular dated 15th April, 1950 and is binding on the State Government. Therefore I hold that even the employees of the Work Charge Establishments are entitled to the bound promotion in terms with resolution dated 30th December, 1981, such condition of service having been provided to, temporary Government employees.

11. For the reasons stated above. I set aside the part of the notification dated 29th December, 1989 (Annexure 18) to the extent it has been ordered not to pay the arrears of salary in favour Petitioners and others with effect 1.4.1981. The Respondents are directed to 10 pay the Petitioners and other similarly situated persons arrears of salary from the date they have been granted time bent promotion to higher grade from 1.4.1981, within a period of three months from the date of receipt production of a copy of this judgment.

12. The writ petition is allowed with the aforesaid observations and direction. However, on the facts and circumstance of the case, there shall be no order as to cost.