

(2013) 06 CAL CK 0069
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Original Sides W.P. No. 1851 of 2008

Ram Deo Tiwari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2013) 139 FLR 150 : (2013) LabIC 4168

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Bharati Ghosh, for the Appellant; Anirban Datta, for the Respondent

Judgement

Dr. Sambuddha Chakrabarti, J.—By the present writ petition the petitioner inter alia prays for a writ in the nature of Mandamus commanding the respondents to forebear from giving any effect or further effect to the orders dated November 20, 2007 and April 7, 2008, a writ in the nature of Mandamus commanding the respondents to cancel and rescind the said two orders and for other reliefs.

The case of the petitioner inter alia is this that he was selected as a Sub-Inspector by the Railway Service Commission in the year 1958. He retired from his service on January 1, 1987. He was on sick leave from June 23, 1971 to September 26, 1971 and after he had joined he was required to handover the charge to one Mohd. Ishar Khan, Sub-Inspector and the petitioner reported to the appropriate authority on the next date. He was then asked to join his duties at Dhanbad. After he had joined his duties there he had written to the Chief Security Officer, Railway Protection Force (hereinafter referred to "RPF", for short), Eastern Railways that he had assumed the charges. On or about February 5, 1973 the petitioner was placed under suspension on the ground that a CBI case was pending against him and a charge-sheet had been issued against him. Subsequently this charge-sheet was revoked and it was ordered that the petitioner would be entitled to get the difference of salaries if and when he would be discharged from the case. Such payment, however, had not been made.

After his conviction and resultant sentence of imprisonment and fine by a Criminal Court the petitioner was dismissed from his service on 31st December, 1986. Against said conviction and sentence the petitioner filed an appeal in the Patna High Court in the year 2000. In appeal he was acquitted. Since the petitioner's request for reinstatement was not acceded to he had earlier filed a writ petition before this Court and the learned Single Judge by a judgment and order dated April 18, 2001 inter alia held that there was delay on the part of the petitioner in the institution of the present proceeding and admittedly the petitioner had not worked in the post till date as he was not reinstated. His Lordship held that the petitioner would be entitled to be paid 75 per cent of his salary and allowances collected on the basis of last pay drawn by the petitioner as and by way of back wages from the date of filing of the writ application. The respondents were directed to make the payment within three months. The learned Single Judge further granted liberty to the respondents to initiate such action as might be upon to them in law against him under the relevant rules. By the said order the writ petition was allowed and the impugned order dated December 31, 1986 was set aside. It was directed that the petitioner should be deemed to be in service continuously for all purposes except for back wages.

2. The respondents had filed an appeal against the said order and the Division Bench by a judgment and order dated January 8, 2004 had dismissed the appeal. On March 13, 2004 the petitioner was reinstated in service and the petitioner prayed for consideration of promotion to the post of Inspector for which he was already selected.

3. The case of the petitioner is that he got promotion to the post of Inspector Grade-in, Protection Force, in the year 1973 and as such he is entitled to get the benefit of promotion to Grade-II with effect from 1973 and also entitled to get the promotion to the post of Inspector Grade-I, Protection Force with effect from April 1, 1983.

4. The respondent No. 2 herein issued an order dated November 20, 2007 inter alia to the effect that the appeal of the petitioner should not be considered in view of the fact that the petitioner prayed for his promotion in his writ petition before this Court and the Court passed an order of reinstatement and back wages but nothing relating to his promotion. The petitioner alleges that in the writ petition that he filed there was no prayer for promotion but the concerned officer without applying his mind issued the order impugned.

5. On February 22, 2008 the petitioner filed another appeal against that order. By an order dated April 7, 2008 the respondent No. 2 passed an order that there was no mention in the High Court's order about the promotion and as such his appeal for providing due promotion and payment of arrear could not be considered. The petitioner has assailed these two orders in the present writ petition.

6. The petitioner filed a supplementary affidavit wherein he stated that after

filing the writ petition he obtained a seniority list dated July, 1961 wherein his name appeared at serial No. 33 and the date of promotion to the grade was shown on November 18, 1959. But the authorities had fixed the pensionary benefits with effect from 1960 which the petitioner alleged was improper and impermissible. He further alleged that he was entitled to get the benefits of promotion under the restructuring scheme as per the concerned letter of the authorities dated August 21, 1984 by which several employees got the benefit of promotion but the same has been denied to the petitioner.

7. The respondents had contested this application by filing an affidavit-in-opposition. According to the respondents the petitioner while functioning as the Sub-Inspector of the RPF in North-Eastern Railways was involved in a criminal case which was initiated through a CBI investigation in the year 1971. The petitioner was convicted by the CBI Court which was set aside in appeal by the High Court at Patna by judgment and order dated December 13, 1983- Consequent upon the order of conviction passed by the CBI Court at Patna the petitioner was dismissed from service in the year 1986.

8. In terms of Rule 161 of the RPF Rules, 1987 special procedure was stipulated for imposing punishment in certain cases which were not dealt with in any of the rules. The petitioner's dismissal from service was consistent with the provisions of those rules. The High Court at Patna acquitted the petitioner on the ground of benefit of doubt and it was not a clear case of acquittal from the charges. The respondents contended that there was no bar for the petitioner to obtain an order of stay restraining the authorities from proceeding with the provisions of Rule 162(2) of the RPF Rules as soon as he was convicted by the CBI Court But no stay was obtained by the petitioner although he filed an appeal against the order of conviction and sentence. As such the disciplinary authority was free to exercise the power and dismissed the petitioner as there was no stay order from any Court. The respondents have submitted that pursuant to the order of this Court all dues and the post retirement benefits have already been disbursed to the petitioner. In terms of the order of this Court the petitioner is not entitled to full back wages by the judgment of the learned Single Judge and he is not entitled to promotion as there was disruption of service from 1986 to 2001. It was specifically asserted that the claim of the petitioner has no ground as the due date of superannuation of the petitioner was December 31, 1986. So the question of making any payment within the period from September, 2000 to April 30, 2001 does not arise.

9. Against the said affidavit-in-opposition the petitioner has used an affidavit-in-reply reiterating the allegations made in the writ petition.

10. The crux of the issue involved in the writ petition is whether the petitioner is eligible to be promoted as Inspector Grade-II and Inspector Grade-I from the date of his eligibility and whether the petitioner is entitled to have his pay fixed in the higher scale of those two grades due to the promotion.

11. It may be mentioned that the petitioner's representation was turned down by the respondent No. 2 on November 20, 2007 on the ground that this Court had directed that the petitioner should be deemed to be in service continuously for all purposes except for back wages. The petitioner shall be entitled to be paid 75 per cent of the salary and allowances as per the salary and wages and payment of such arrear was to be made by three months from the date of the communication of the judgment. The very specific point made out by the said respondent No. 2 was that the writ petition contained a prayer for his promotion. But the High Court had passed an order for reinstatement and back wages but mentioned nothing about the promotion and as such his prayer was turned down.

12. The prayer portion of the said writ petition as annexed to this petition does not reveal that the petitioner therein made any prayer for promotion. As such the main reason for turning down the petitioner's prayer cannot be held to be valid and must be deemed to be the result of total non- application of mind. It must be mentioned that the learned Single Judge of this Court while disposing of the earlier writ petition had passed the order for back wages after holding that the order of acquittal was passed by the Appellate Court on December 13, 1993 and no action was taken thereafter by the respondents authorities despite representations having been made in that behalf by the petitioner and there was also delay on the part of the petitioner for about seven years in moving the High Court and, therefore, the order of the back wages was passed.

13. But it cannot be lost sight of that the learned Single Judge while disposing of the writ petition had specifically directed that the petitioner should be deemed to be in service continuously for all purposes except for back wages and this judgment was affirmed by the Court of appeal. The appellate Court further held that the conviction having been set aside on appeal by the High Court at Patna the basis on which the petitioner was dismissed from service had been removed and the disability did not survive for continuation of dismissal from service.

14. In such view of the matter the mere fact that the High Court did not issue any order for promotion must be read to be in the proper context that there was no such prayer for it. On the other hand the High Court had specifically directed that the petitioner shall be deemed to be in continuous service for all purposes except for back wages. As such I consider that there is no bar in considering the case of the petitioner for being promoted to the posts as prayed for by him. The orders impugned in the writ petition are hereby set aside and the respondent No. 3 is directed to consider the case of the petitioner for promotion to the said post after giving the petitioner an opportunity of being heard within a period of eight weeks from the date of the communication of the order and to intimate the decision to the petitioner within a week thereafter. The writ petition is allowed and there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.