

(2005) 08 PAT CK 0076

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9094 of 2004

Ram Swarup Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 3 BLJR 1927 : (2005) 3 PLJR 728

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Shashi Shekhar Tiwary, for the Appellant; P.K. Singh, JC to SC III, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioner, in fact, is aggrieved by the order, contained in Annexure 3, whereby his claim for second time bound promotion has been rejected.

2. Bare perusal of Annexure 3 shows that the petitioner was initially appointed as Amin on 2.2.1965. Later, he on promotion to the post of "Parimapak" (surveyor) was given higher scale of Rs. 1320-2040/- with effect from 1.1.1986. As such, his said claim has been rejected on the ground that the said benefit could have been available to him, if he would have been continuing on his initial post of Amin.

3. Learned counsel for the petitioner has submitted that as per provision laid down in the Government resolution dated 30th December, 1981, a Government servant is entitled for two promotions; first by the end of 10 years of service and the second by the end of 25 years of service. If he is otherwise fit for promotion and has not been able to get a single promotion by 10 years of service notwithstanding the fact that a specified percentage of the cadre is already provided in the different levels of promotion inclusive of the selection grade, he is

to be promoted to the junior selection grade at the end of the tenth year. Sub-clause (iii) of Clause 11 provides that if an employee is otherwise fit for second promotion and has not been able to secure second promotion by the 25th year of his service notwithstanding the fact that a specified percentage of the cadre is already provided in the different levels of promotion inclusive of the selection grade, he should be promoted to the senior selection grade at the end of 25th year. Sub-clause (iv) provides that the aforesaid facility should be extended to all employees whether they belong to any formally constituted service or cadre, or not and including employees holding isolated posts. In their case, the pay scale immediately higher than the pay scale prescribed for the basic post is to be considered as the pay scale for the junior selection grade, and the pay scale immediately higher to that of the aforesaid junior selection grade would be deemed to be the pay scale for the senior selection grade. However, the said scheme is not applicable to services, cadres and posts of which the maximum of the pay scale of the basic grade exceeds Rs. 2,000/-. The other conditions, Rules and procedures meant for usual promotion are to be followed in case of the aforesaid time bound system also. Sub-clause (vii) however, provides that the aforesaid scheme meant as an anti- stagnation measure, it should be applicable in case of only such employees who have not been able to get the first or the second promotion, as the case may be. The Scheme is obviously not intended to deny any employee earlier promotion that comes in his favour in the usual course. As per the Government decision the benefit of time bound promotion is to be allowed to eligible employees only after first exhausting the possibility of accommodating such employees against the vacancies available in the selection grade.

4. However, according to learned counsel for the State as per Sub-clause (vii) the benefit of time bound system is to be extended to those who are stagnating in the same pay scale to which they were appointed or its corresponding revised pay scale and not applicable to such employees, who after once joining Government service have, for any reason, been elevated to a higher pay scale, by promotion, merger or even upgradation. As such, learned counsel for the State has submitted that since the petitioner had already been elevated to a higher pay scale since after his joining as Amin as per the aforesaid provision in Sub-clause (vii) his case is not covered by the scheme and he is not entitled for the benefit of second time bound promotion.

5. I am unable to accept the submission of the learned counsel for the State. The very first sentence of Sub-clause (vii) provides that the aforesaid scheme is applicable in case of employees, who have not been able to get first and second promotion, as the case may be. Thus, latter part which provides that the benefit of time bound system should be extended to those who are stagnating in the same pay scale to which they were appointed or its corresponding revised pay scale and not to such employees who after once joining Government service have for any reason elevated to higher pay scale, by promotion, merger or even upgradation obviously means that stagnation relates to either first or second

promotion, as the case may be and not that the benefit of second time bound promotion to an employee would not be given, if he is elevated to a higher pay scale. Any such interpretation of the provision would make the earlier part which provides for grant of two promotions first at the end of 10 years of service and the second at the end of 25 years of service redundant, as is also evident from the very first sentence of Sub-clause (vii) which provides that the scheme should be applicable in case of employees who have not been able to get first and second promotion as the case may be. However, the provision relating to elevation to higher pay scale by promotion, merger or even upgradation has later been amended vide Finance Department's resolution No. 3/P/R-7/84/4245 vi (2) (3) dated 16th July, 1985 and the bar of merger/ upgradation have been deleted. Apart from this, learned counsel for the petitioner with reference to Finance Department's resolution No. 3/P-RC/84/1871 vi (2) dated 28th March, 1985 rightly contended that no employees can be denied of the benefit of two time bound promotions which the scheme provides. This is also evident from the said Government resolution dated 28th March, 1985 which provides that the only rider for two promotions is that no employee can get both simultaneously. The said Government resolution provides that there should be difference between two promotions of the period (Kalavadhi) as is provided for regular promotions. This also shows that latter part of Sub-clause (vii) referred to by learned counsel for the State which provides that the benefit is to be extended to those who are stagnating in the same pay scale to which they were appointed or in corresponding revised pay scale is concerning both promotions, namely, first or second promotion, as the case may be. It is also evident that the said provision does not provide that it is to be extended to those who are stagnating in the same pay scale in which they were initially appointed. Any other interpretation, in my opinion, would frustrate the very object of the scheme which clearly envisage for providing at least two promotions to each and every employee in Government service, the first by the end of 10 years of service and second by the end of 25 years of service.

6. Thus, in my opinion, the denial of the benefit of second time bound promotion on completion of 25 years of total service of the petitioner with effect from 2.2.1990 is contrary to the scheme, arbitrary and violative of Articles 14 and 16(i) of the Constitution.

7. Accordingly, writ application is allowed. The impugned order, contained in Annexure 3 whereby the claim of the petitioner for second time bound promotion has been rejected is quashed. The Respondents are directed to reconsider the case of the petitioner for second time bound promotion with all financial benefits including consequential refixation of pensionary benefits with effect from the due date within four weeks of the receipt/production of a copy of this order.

8. Learned counsel for the petitioner has, however, submitted that he has not pressed the claim for grant of benefit under Assured Career Progression, which has been raised in sub- paragraph (iii) of paragraph 2 of the writ petition on

account of non-availability of full details and, as such, the petitioner may be given liberty to move the authority concerned. However, learned counsel for the State has submitted that as per clause 8 of Bihar Rajya Karamchari Seva Sart (Sunischit Briti Unnayan Yojna) Niyamawali, 2003, petitioner is not entitled for the said benefit as he has already got the benefit as per the earlier scheme relating to time bound promotion. However, according to learned counsel for the petitioner as per his instruction later the Government has issued some more Circulars in this regard and, as such, the petitioner may be given liberty to move the authority concerned.

9. In the facts and circumstances, petitioner is given liberty to move the authority concerned.