
(2007) 08 PAT CK 0154
In the Patna High Court
Case No : LPA No. 1093 of 1998

Ramdeo Lall

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Citation : (2008) 3 PLJR 569

Hon'ble Judges : Barin Ghosh, J;Anwar Ahmad, J

Bench : Division Bench

Advocate : Ramakant Sharma, for the Appellant; Manu Shanker Mishra, N.N. Jha for the State and Mr. J.P. Karn for the Accountant General, Bihar, for the Respondent

Judgement

Barin Ghosh & Anwar Ahmad, JJ.—The appellant was due to retire on 31st March, 1989. Before that, by an order dated 4th January, 1985, the appellant was compulsorily retired. The decision to compulsorily retire the appellant was the subject matter of a writ petition, registered as CWJC No. 8688 of 1988 filed by the appellant. This Court by an order dated 12th April, 1989 quashed the order dated 4th January, 1985 compulsorily retiring the appellant. By reason of the said judgment and order of this Court dated 12th April, 1989 passed in CWJC No. 8688 of 1988, the appellant became entitled to retire upon attaining the age of superannuation on 31st March, 1989. On 9th December, 1993 the State Government accepted the said judgment of this Court and permitted the appellant to retire on 31st of March, 1989. In between 4th January, 1985 and 31st March, 1989 promotions were accorded to people similarly situate to that of the appellant. One of those promotes, according to the appellant, is junior to the appellant. The appellant made representations seeking such promotion, which if accorded would only entail monetary benefit to him. The State Government refused to consider such representations of the appellant and accordingly the appellant came to this Court for the second time by filing yet another writ petition, registered as CWJC No. 4723 of 1997. The said writ petition was dismissed solely on the ground of delay and laches. Against the order dismissing

the second writ petition, the present appeal had been preferred. A Division Bench of this Court by an order dated 3rd November, 1998 dismissed the appeal. The appellant, therefore, went before the Hon''ble Supreme Court. The Supreme Court on 13th September, 1999 remitted back the matter to this Court after granting special leave to appeal. While doing so the Hon''ble Supreme Court observed as follows:-

"The limited question in this case was whether the appellant who was compulsorily retired on 4.1.1985 was entitled subsequent to the quashing of the said order by the High Court on 12.4.1989 for consideration of his case for promotion and to the financial benefits relatable to the period 4.1.1985 to 31.3.89. This question, even if now gone into will not disturb any of the other officers inasmuch as the appellant has since retired from service with effect from 31.3.1989."

2. The fact remains that while the appellant was entitled to serve upto 31st of March, 1989, he was permitted to serve only upto 3rd of January, 1985 and by reason of the order dated 4th January, 1985 was prevented from serving since 4th January, 1985 without any justification. The fact that the appellant was prevented from discharging his duties from 4th January, 1985 without any justification was established only on 12th April, 1989. If the services of the appellant had not been interfered with in the manner the same had been wrongly interfered with, the appellant would have received all benefits of his service including promotions to which he was otherwise entitle. For no fault on the part of the appellant, but for a wrongful action on the part of the respondents, the appellant cannot be denied of his lawful entitlement, including his right to be considered for promotion alongwith others.

3. Under these circumstances, we allow the appeal, set aside the judgment and order under appeal and at the same time allow the writ petition by directing the respondents to consider and decide the claim of the appellant for promotion, being the subject matter of the writ petition.

4. The appellant is directed to submit a representation to the Secretary, Public Health Engineering Department giving details of his claim including all particulars pertaining to the junior of the appellant, who was allegedly promoted, giving rise to the claim for promotion of the appellant, alongwith a copy of this judgment and order and in the event such representation is filed, the Secretary concerned is directed to consider and decide the said representation including the claim contained therein within a period of three months therefrom. While considering the claim for promotion, the Secretary concerned shall keep in mind the observations of the Hon''ble Supreme Court as referred to above and also the fact that for no just reason the appellant was prevented from discharging his services with effect from 4th January, 1985 and in the event of grant of promotion the appellant shall only be entitled to the monetary benefits of such promotion. It is made clear that in the event, the Secretary decides not to accede to the claim of the appellant, he must give detailed reasons in support

thereof and communicate the same within the time mentioned above.