

(2013) 06 PAT CK 0043

In the Patna High Court

Case No : Letters Patent Appeal No. 216 of 2013

Rameshwar Prasad Sinha

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-06-2013

Acts Referred:

Citation : (2013) 3 BLJud 244

Hon'ble Judges : Navin Sinha and Vikash Jain, JJ.

Bench : Division Bench

Advocate : Mr. Utsav Kumar, Advocate, for the Appellant; Mr. Rajesh Kumar, GP 8, for the Respondents

Final Decision : Allowed

Judgement

Navin Sinha, J. (Oral)—We have heard Counsel for the appellant and the respondents.

2. The present appeal arises from the order dated 3.1.2013 dismissing CWJC No. 189 of 2012 declining the relief for promotion to the post of Additional Superintendent of Police in view of his superannuation.

3. The appellant while holding the post of Senior Deputy Superintendent of Police is stated to have become eligible to be considered for the post of Additional Superintendent of Police in 2007. He could not be considered in 2008 as he fell beyond the zone of consideration in view of the available vacancies. He was again considered by the Departmental Promotion Committee on 28.9.2010 which did recommend him for promotion finding him to be eligible. Administrative approval for the same came on 4.10.2010. In the meantime the appellant superannuated on 30.9.2010. The respondents have therefore opined that he is not eligible to be promoted in view of his superannuation and that no person junior to him has been promoted from a date prior to 30.9.2010.

4. Learned Senior Counsel for the appellant submitted that eligibility for promotion was acquired in 2007. If the respondents delayed consideration, that

cannot be sufficient justification to deny promotion on the ground that the appellant superannuated in the meantime. Our attention has been invited to the pleadings in the writ application, not answered in the counter affidavit, that the respondents have not only granted retrospective promotion but even posthumously. Service jurisprudence well recognises grant of both kinds of promotion if reasons for delay are not attributable to the government servant. The consideration having been done in service, subsequent superannuation was irrelevant.

5. Counsel for the State submits that the appellant had no right to promotion but only to be considered. If by the time his case has been considered superannuation intervened it would be unfortunate but the appellant shall not be entitled to relief. It is not the case of the appellant that there has been delay in consideration. He was considered in 2008 but found beyond zone of consideration. No person junior to him has been promoted from a date prior to his superannuation.

6. Undoubtedly the appellant having become eligible in 2007 was considered in 2008 but found ineligible on the ground that he fell beyond the zone of consideration vis-a-vis available vacancies. Unfortunately no material has been placed before us by either side with regard to years between 2008 to 2010 with regard to fresh consideration. Without going into that aspect, we find that the Departmental Promotion Committee met on 28.9.2010 and did find the appellant eligible for promotion. The ministerial act for approval of the promotion was granted on 4.10.2010. The appellant superannuated in the meantime on 30.9.2010. On the facts of the case, we are of the opinion that no sooner that approval was granted, it dates back to the date of recommendation of the Departmental Promotion Committee prior to superannuation of the petitioner.

7. A person in government service aspires for promotion as a reward for fulfilment of duties. The prospect of promotion which in its wake brings both status and financial benefits is what motivates a person in service for efficient discharge of duties. Stagnation is an ante thesis to performance. Once the Departmental Promotion Committee found the appellant fit for promotion before his superannuation, we see no reason why the benefit of the same cannot be made available to the appellant and how in the facts of the case superannuation defeats that benefit. The mere fact that he superannuated before issuance of formal orders cannot be sufficient justification to withheld the benefit of the recommendation. The appellant had a right to be considered. If the consideration is in his favour, we find no reason why he shall not be entitled to the benefit of the same.

8. In the peculiar facts of the case, it cannot be any succour to the appellant that no junior to him had been promoted from a date prior to his superannuation. In any event, he does not allege any arbitrariness or discrimination on that ground.

9. Retrospective promotions are well accepted in service jurisprudence. The

assertion on behalf of the appellant along with the details granting retrospective and even posthumous promotions to certain others has not been denied by the respondents. In any event, the appellant now only can be given notional promotion. Since it pertains to a period of two days only and he has not worked on the promotional post, balancing equity we come to the conclusion that he shall not be entitled to salary of the promotional post for two days but his last pay that he would have drawn on the promotional post shall be the basis for fixation of pension along with arrears which must be paid to him within a maximum period of 12 weeks from the date of receipt and/or presentation of a copy of this order, failing which the appellant shall be entitled to interest @ 8% per annum, the liability for which shall necessarily have to be individual on those who may have delayed compliance of the order rather than institutional on the State Government.

10. Reference in support of our conclusion may be made to (1990) Suppl. SCC 165 (Kishan Lal Kalal v. State of Bihar). It has been held in the same that mere fact that 5 superannuation intervened before issuance of final orders cannot be a ground to deny benefits of promotion.

11. The order dated 3.1.2013 in CWJC No. 1879 of 2012 is set aside. The appeal stands allowed.