
(1992) 11 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7554 of 1990

Rana Raghunath Pd. Singh and another

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 05-11-1992

Acts Referred:

Constitution of India, 1950 — Article 15, 226
Contempt of Courts Act, 1971 — Section 11, 12

Citation : (1993) 1 PLJR 519

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Sada Nand Jha, Bimlendu Mishra and Ashim Jha, for the Appellant;
Prabhat Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha and G.C. Bharuka, JJ.—The question as to whether the petitioners are entitled to monetary benefits by way of enhancement of salary, increments etc., with effect from 31.12.1981 and consequent upon their payment in the aforementioned date is the question involved in this application. Bereft of all unnecessary details the fact of the matter is as follows.

2. The petitioner no. 1 was appointed in the Bihar Military Police Service on 11.8.1955 and was promoted to the post of Subedar on officiating basis on 16.5.1975. He was also confirmed subsequently from that date.

3. The petitioner No. 2 was initially appointed in Bihar Military Police Service on 6.1.1957 and was ultimately promoted to the post of Subedar on officiating basis with effect from 1.7.1975 and was conformed on that post with effect from 26.7.1976.

4. The petitioners claim themselves entitled to be promoted as Dy. Supdt. of police in the police service on the basis of their respective seniority on other employee.

5. The State issued two circulars dated 5.11.1980 and 20th July, 1981, in terms whereof the seniority was directed to be counted from the date from which the incumbent started his substantive officiation and consequently the petitioner was not considered for promotion. The said circulars came up for consideration in CWJC No. 3130 of 1981.

6. A Learned Single Judge of this Court upon taking into consideration the Sergeant-Major Rules of 1944 held as follows :--

I. therefore, feel that the authorities should re-examine their stands in the light of the aforesaid observations and deeper study of the decisions involved before setting any criteria to be followed in the cases for determining the seniority of the members of the Police force at all levels. I have, therefore, no hesitation in quashing Annexures-5 and 6 and directing the respondents concerned to re-examine the situations the light of the above discussions and to give a final decision in accordance with law in this regard. Before they do so, they should refrain from disturbing the method prescribed in the 1944 Sergeant Major Rules. I may state that in the Police manual also there is no rule to indicate as to in what manner it would effect that Sergeant-Major Rules. Needless to say that in view of the interim order of this Court the promotions, if any, made shall be subject to the re-appraisal of the principal involved in Annexures 5 and 6.

7. As the respondents allegedly did not comply with the said order, an application for initiation of a proceeding under the Contempt of Courts Act was filed on 10.7.1981 which was registered as MJC No. 97/87.

In the meanwhile, it appears, ad hoc promotions were being given to the persons junior to the petitioners.

8. By an order dated 21.4.1987 this Court, therefore, granted three months" time to the State to enable the Director General of Police and his subordinate officers concerned to rectify the situation, which, unless that is done, would in all likelihood, amount to disobedience of the order of this Court.

9. As despite the said notice no order of promotion was issued, the said petition was admitted and the notices were issued to Opp. parties 2 to 5 thereof. On 22.9.1987 a notification was produced in the court to indicate that this Court"s order passed in CWJC No. 3130 of 1981 has been complied with in terms whereof the petitioners were allegedly promoted on temporary and/or ad hoc basis.

10. this Court thereafter made certain observations in its order dated 16.10.1987 in the aforementioned application. By an order dated 1.11.1987 which is contained in Annexuere 5 to the writ application, however, 11 Subedars including the petitioners were given promotion with effect from 31.12.1981.

11. The petitioner have however, contended that in terms of the aforementioned order they have not been given any monetary benefits by way of enhancement of salary, increments etc. with effect from 31.12.1983.

The petitioners filed a representation on 16.12.1987 to the Home Secretary, Police Department which is contained in Annexure-7 to the writ application. Another representation was filed by the petitioners on 9.11.1989 wherein it was pointed out that they had come to learn that their claim had been turned down by the department.

12. In this situation, the petitioners filed another application under Article 15 of the Constitution of India and Sections 11 and 12 of Contempt of Court Act which was registered as MJC No. 39/90.

13. However, by an order dated 13.2.1990, it has been directed as follows :--

It appears that the relief sought by the petitioner is not only confined to the issuance of contempt of court but goes beyond it. Direction is sought to the State Government to pay arrears of salary etc. from 31.12.1981 and the date from which promotion has been granted on the basis of the order of this Court and not from the date of joining to the promotional post. I make it clear that my judgment did not contain any direction with regard to the period from which salary etc. would be paid. In a subsequent application being MJC No. 97 of 1987 I had merely issued a direction that what has been paid to the juniors also be paid to the petitioners but it appears that persons who were juniors had joined the post earlier i.e. from 31.12.1981 itself and, therefore they were paid their salary etc. from that date. According to the State rules prohibit payment of any arrear to a person who gets notional confirmation from an earlier date joined later. This matter deserves to be examined in a properly heard application as if it is a matter under Article 226 of the Constitution.

I therefore, direct that this MJC application be placed before a Division Bench dealing with the admission cases under Article 226 of the Constitution to examine the submissions of the parties.

Originally I had said that the counter affidavit will not be entertained but since the petitioner has also filed a rejoinder both of them may not be looked into.

Let the file be placed before Hon"ble the Chief Justice so that if he wishes an early date may be fixed

14. Thereafter the said petition was converted into a writ application.

15. Dr. Sada Nand Jha, Learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The Learned Counsel submitted that as, the petitioners were promoted with retrospective effect, they are entitled to all monetary benefits with effect from the said date.

16. The Learned Counsel in support of his contention has strongly relied upon a division Bench decision of this Court in Dr. Paras Nath Prasad Vs. State of Bihar and Others, and R.M. Ramaul Vs. State of Himachal Pradesh and Others, .

17. On behalf of the State, however, it has merely been pointed out that the petitioners are not entitled to monetary benefits in view of Rub 58 of the Bihar Service Code.

18. Rule 58 of the Bihar Service Code is a general rule. The said rule is applicable in a case where a Govt. servant does not join the post of his own. Ordinarily the said rule will have no application in a case where an employee although is ready and willing to work on the post is prevented from doing so. This aspect of the matter has been considered by the Supreme Court recently in Union of India Vs. K.V. Jankiraman, etc. etc., .

19. In that case the Supreme Court inter alia was considering the provision of F.R. 17(1) of Fundamental and Supplementary rules which reads as follows:--

FR. 17(1) :--Subject to any exceptions specifically made in these rules and to the provisions of sub-rule (2) an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to am pay and allowances during the period of such absence.

20. Before the Supreme Court it was pointed out that the normal rule is "no work no pay".

The Supreme Court however, observed ;--

We are not much impressed by the contention advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

21. The Supreme Court further observed :--

We are, therefore, broadly in agreement, with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blame worthy the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post alongwith the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings.

22. In this case, it is clear that the petitioners were denied promotion unjustly. They had to approach this Court and the writ application was allowed. Despite the Judgment of this Court passed in CWJC No. 3130 of 1981 which is contained in Annexure-1 to the writ application, the orders of promotion were not issued for a long time. The petitioners have to file an application for initiation of a proceeding under the Contempt of Courts Act and only thereafter the order dated

1.11.1987 as contained in Annexure-5 to the writ application was issued.

23. It is, therefore clear that the petitioners are not to be blamed for not being able to work on a higher post although persons juniors to them had been promoted.

24. In Dr. Paras Nath Prasad Vs. State of Bihar and Others, a division bench of this Court upon taking into consideration a large number of decisions held :--

The other contentions of the Learned Counsel for the respondents that Rule 58 of the Bihar Service Code prohibits any grant of pay and allowances to the petitioner on a fictional and notional promotion granted to him, is in my view misconceived. A notional promotion has to be as it for service benefit he had been given due promotion, A person, who is entitled to promotion and is not promoted, can always invoke the jurisdiction of this Court under Article 226 of the Constitution for a mandamus to the employer State to consider his case for such promotion. Such due promotion is not a claim of anything notional but it is something that is really attached to the status and the service contract of the employee concerned.

25. this Court thereafter took into consideration the decision of the Supreme Court in Alappal Narana Menon v. State of Kerala reported in 1977 (II) SLR 656 and directed the respondents in the following terms ;--

That being the position that is a fit case in which a direction may be issued to the respondents to promote the petitioner With the effect from due date, accordingly, fix his salary, allowances and other benefits and finally fix his position in the service at the end of his service tenure so that the consequential benefits may also be given to him.

26. In R.M. Ramaul Vs. State of Himachal Pradesh and Others, the Supreme Court while dealing with a contempt application held that although technically the State might not have been guilty for commission of contempt of this Court for not paying due salary admissible to the higher post, gave such a direction in the following terms :--

Since there was no specific direction in this behalf in the order, technically there may be no case for punishment for contempt; but we make it clear that the promotion for the period from 28.5.1982 to 3.9.1986 should be accompanied by the monetary benefits. If a specific direction is necessary we issue it here and now. The appropriate monetary benefits shall be granted within 2 months from today.

27. For the reasons aforementioned, the contentions raised on behalf of the petitioner has to be accepted and consequently the respondents are hereby directed to pay their salary allowances and other benefits with effect from the date when they were promoted to the higher post, with utmost expedition and preferably within a period of two months from the date of the receipt of a copy of this order. However, in the facts and circumstances of the case, there will be no

order as to costs.