
(1998) 11 PAT CK 0085
In the Patna High Court
Case No : C.W.J.C. No. 4141 of 1997

Ranjit Sahay Jamuar and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Bihar Financial Rules — Rule 74
Bihar Service Code, 1952 — Rule 58

Citation : (1999) 1 PLJR 272

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Once again this Court has before it a case where the two Petitioners though granted promotions, after their retirement, from retrospective dates are denied any material benefits accruing from the promotions.

2. The facts are simple and without any controversy. These can be stated thus; A dispute on the question of seniority between the Petitioners and other employees of the department came to this Court in C.W.J.C. No. 2107/82. The matter was finally concluded by judgment and order dated 9.3.1995 passed by a bench of this Court in Letters Patent Appeals (L.P.A. Nos. 106, 108 and 117/88) arising from the judgment and order passed in the aforesaid writ petition. The judgment of the Division Bench was evidently in favour of the Petitioners and on the basis of the directions given in that judgment the Petitioners' seniority was redetermined and consequently their orders of promotions were issued.

3. In the meanwhile the two Petitioners retired from service, Petitioner No. 1 on 31.1.1992 and Petitioner No. 2 on 31.1.1996; and it was after their retirement that the orders of their promotions were issued. By order dated 16.8.1996 (Annexure-2) the Petitioners were promoted to the post of Registrar or equivalent post in the pay scale of Rs. 940-1660 w.e.f. 3.5.1982.

4. By order dated 12.2.1996 (Annexure-3) the two Petitioners were promoted to the post of Under Secretary in the pay scale of Rs. 3C00-4500, w.e.f. 5.10.1989 and by another order of the same date (Annexure-4) Petitioner No. 2 was further promoted to the post of Dy. Secretary in the pay scale of Rs. 3700- 5000. w.e.f. 24.12.1992.

5. The rider attached to all the three promotion orders was that the benefit of promotions would be available to the Petitioners only in connection with their retiral benefits and no other material benefits would flow to them on the basis of those promotions.

6. A counter affidavit has been filed on behalf of the Respondent authorities in which reliance is placed on Rule 58 of the Bihar Service Code and Rule 74 of the Bihar Financial Rules for denying the Petitioners the benefits flowing from the promotions given to them with retrospective effect.

7. The stand taken by the Respondent authorities and the reliance placed on the aforesaid rules is not acceptable to me. In my view the provisions of Rule 58 of the Service Code and Rule 74 of the Bihar Financial Rules have no application to the case of the Petitioners for the simple reason that those rules envisage promotions given in the normal course of administration and at due time when the right of promotion accrued to the concerned employee. The two rules do not, by any stretch of imagination, deal with cases where promotions were given not at the due time but with retrospective effect not for any fault on the part of the concerned employee but due to the laches and mistakes committed by the department.

8. In a number of decisions, this Court has observed that an employee being given promotion with retrospective effect cannot be denied the material benefits accruing from the promotion and the position is now well established. If any authority is needed on this point one may see Dr. Paras Nath Prasad Vs. State of Bihar and Others,

9. This writ petition is accordingly allowed and the concerned Respondents are directed to pay to the Petitioners all arrears of salary etc. on the basis of the three promotions orders. The payment must be made within three months from the date of receipt/production of a copy of this order.