

(2011) 04 PAT CK 0029
In the Patna High Court
Case No : CWJC No. 9097 of 2010

Satyadeo Mistry and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Citation : (2011) 4 PLJR 159

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.N. Singh, J.—Petitioners have filed this writ application for a direction to the respondents to grant them promotion to Junior Selection Grade and Senior Selection Grade, in terms of the recommendation made by the Board in its meeting held on 23.3.1998, a copy whereof is annexed as Annexure-1 with the writ application. They have also prayed for quashing of letter no. 1364 dated 30.3.2010; as contained in Annexure-6, by which their request for promotions has been rejected on the ground that the resolution of the Board dated 23.3.1998 cannot be acted upon now.

2. The facts of the case lie in a very narrow compass. From Annexure-1, it appears that in the Vigilance Department a Board was constituted for consideration of cases of Sub-Inspectors of Police working in the Department for grant of promotion to them in Selection Grade, Senior Selection Grade and Super Selection Grade. It also appears that the last such consideration was made in the Vigilance Department in 1983. It has been noticed that on account of delay in decision in such matters, many a times it was found that the employees superannuated without getting the due promotions and as the service records could not be updated many a times a state of uncertainty prevailed in respect of their entitlements. Hence this Board was constituted for consideration of all those Sub-Inspectors or Inspectors who were junior to the Sub-Inspectors granted promotion in 1983. This Board considered individual cases and recommended the

five petitioners for their promotions, as contained in Annexure-1. This recommendation of the Board was not acted upon and some of the petitioners superannuated before filing of the writ application and some have superannuated after it.

3. From Annexure-2, it appears that as late as in 2009, the matter of grant of Selection Grade as per the recommendation of the Board was under consideration in the Vigilance Department at some level and the file was still pending with some query of the Department. As such the matter had not been sent to the Finance Department as yet. This Annexure-2 is a letter of the Superintendent of Police, Vigilance Department, addressed to the Deputy Secretary of the Government, and is dated 8.7.2009. It appears that, thereafter, petitioners filed some representation before the Lokayukt from, where a query was made from the Department and, by the impugned Annexure-6, it was replied with a stand that the recommendation of the Board dated 23.3.1998 is not in operation now and, therefore, cannot be considered. Hence, petitioners moved this Court.

4. The Department has filed a counter affidavit. The main stand of the Department in the counter affidavit is that the writ application suffers from delay and laches. The petitioners have moved this Court almost 12 years after the said recommendation of the Board and, therefore, they are not entitled for the reliefs as prayed. It is also stated that the Time Bound Promotion Scheme was abolished by the resolution of the Finance Department dated 8.2.1999, as contained in Annexure-A. Hence, petitioners are not-entitled for any benefit of the Scheme now. The respondents have annexed an order of a learned Single Judge and an order of a Division Bench as Annexures-B and C in support of their contention that the writ application is fit to be dismissed on account of delay only.

5. Delay in approaching the Court is taken as a relevant consideration by this Court for entertaining the prayer for any relief to the person approaching this Court. But it is always a question of fact as to whether the delay is fit to be condoned or stands explained or not. If on facts, the Court finds that the delay is unexplained or does not stand condoned then the writ applications are dismissed. Therefore, any judgment or order of this Court or of any Court, dismissing the writ application on the ground of delay, cannot be treated as a law laid down in rem, to be applicable in all cases uniformly. In the present case, from Annexure-1 itself, it appears that the last consideration in the Department for such promotions was made in 1983. After 1983, this Board was constituted after 15 years for consideration of all those incumbents who became eligible for such promotions after 1983 onwards. Therefore, the Board met on 23.3.1998 and considered all such cases and submitted its recommendations.

6. From Annexure-2, it is apparent that the said recommendation of the Board was pending in the Department and was still being considered at different levels. Once the Board had recommended the cases of the petitioners, there was no occasion for the petitioners to make any formal application for the same. Since

the recommendation of a validly constituted Board was available in the Department, it was bounden duty of the functionaries of the Department to proceed with the same and take it to its logical conclusion, by issuing appropriate final orders as they deemed fit and proper. As noticed earlier, from Annexure-2, it appears that as late as in 2009, the matter was under consideration and being dealt with at different levels. In the circumstances, no onus lay on the petitioners to file any representation or to appeal to the respondents to proceed expeditiously in the matter, in absence of which it could be held that their claims before this Court suffers from any delay and laches. In fact delay is on the part of the respondents in performance of their statutory duties, for which they cannot blame the petitioners. The said ground of the respondents is, therefore, rejected.

7. Once having held as such, this Court finds hardly any objection of the respondents on record to the claim of the petitioners on the basis of recommendation of the said Board made on 23.3.1998. It may be that after the Time Bound Promotion Scheme ended with effect from 1.1.1996, petitioners may not be entitled for some of the benefits. Both the parties agree that the petitioners have been allowed the benefits accruing to them of the new scheme which came into force after 1.1.1996. But the fact remains that their entitlements prior to 1.1.1996, and in terms of the Scheme as may be in operation at the relevant time, has not been considered in spite of the recommendation of the said Board made on 23.3.1998. As to what will be their entitlement has to be considered by the Department, but this Court finds that only on account of delay the same cannot be denied to them by the respondents in the facts and circumstances of this case..

8. In the circumstances, the writ application is allowed. The respondents are directed to consider the entitlement of the petitioners on its merits, in the light of the said recommendations made by the Board on 23.3.1998 in accordance with law and pass appropriate orders with consequential orders of release of pecuniary benefits to them positively within a period of two months from the date of receipt/production of a copy of this order.