

(1998) 12 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 478 of 1995

Satyendra Narain Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-12-1998

Acts Referred:

Citation : (1998) 12 PAT CK 0040

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Advocate : Shukhdeva Narain and Dineshwar Prasad, for the Appellant; N.K. Sinha, R.K. Sinha and Ravi Ranjan for Accountant General, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this writ application the Petitioner has challenged the order dated 31.12.86 as well as the order dated 29.1.94 passed by the Respondents authority, whereby and whereunder the Petitioner has been granted pension on the basis of his basic post of his appointment at a lower rate and further for a direction to the Respondents to sanction pension to the Petitioner in the pay scale of Rs. 1000-1820/ - by allowing him paper promotion at least at par with his junior appointees of the Industries Department. Copies of the orders are made Annexures 1 and 2 respectively to this writ application.

2. The case of the Petitioner, in short, is that he was appointed as Senior Instructor (Tanning) in the department of Industries in which post he was confirmed and was subsequently deputed in the Bihar State Leather Industries Corporation (hereinafter referred to as the "Corporation") on foreign service terms having lien on the permanent post in the parent department. Letter of appointment, orders of confirmation and deputation are marked as Annexure-4 series to this writ application. During the period of deputation he was holding the post of Manager Grade II thereafter Manager Grade I and lastly superannuated from the services of the Corporation as Development Officer on 30.9.83, which is Class I post in the pay scale of Rs. 1350-2000/ -. It is alleged that while he was

in the Corporation's service on deputation he filed several representations before the Respondent State authority with a prayer to give him paper promotion in the parent department, so that his rightful claim for promotion may not be ignored particularly when he was having lien in the parent department which was never terminated till the date of his superannuation, copy of such representation is made Annexure-5 to this writ application. It is alleged that the juniors to the Petitioner in the parent department after giving them promotion from time to time against the pay scale of Rs. 1000-1820/ - and onwards, when the grant of pension of the Petitioner came for consideration, the department neither considered the last pay drawn by the Petitioner nor considered his case for grant of paper promotion against the higher post. However, the Respondent Personnel and Administrative Reforms Department has agreed to determine the service condition etc. of the Petitioner as it appears from Annexure-6 to this writ application. It further appears that the Additional Director of Industries while examining the representation filed by the Petitioner has specifically pointed out in his note the lapses of the State Respondents so far grant of paper promotion and allowed him the scale of pay of Rs. 1000-1820/ - against the post of Assistant Development Officer (Leather) and, accordingly, suggested for obtaining Govt order. While taking into consideration the recommendation of the Additional Director of Industries, the department of Personnel and Administrative Reforms agreed with the recommendation of the Additional Director. It further appears from the note submitted by the department of Personnel and Administrative Reforms dated 29.10.94 that the lien of the Petitioner against the post held by him in the parent department was never terminated and the Petitioner would be treated to have retired from the parent department, namely, the Industries itself, with all the facilities including the paper promotion against the suitable post. It was further observed in the note that it is incumbent upon the State to give paper promotion to such employee who holds lien on their permanent post. It is submitted that in spite of the recommendation having been made by the Director of Industries including the department of Personnel and Administrative Reforms which is the competent authority in this regard, the State Respondents has neither allowed him promotion nor fixed his salary at Rs. 1080/ -, which is the prescribed scale against the post of Senior Instructor (Tanning) which the Petitioner was holding in the year 1953 from the date of his first appointment. It is alleged that when the State Respondent did not take any step pursuant to the recommendation aforesaid, the Petitioner approached this Court by filing writ application being C.W.J.C. No. 3092 of 1992 which was disposed of by a Division Bench of this Court by its order dated 22.6.93, copy of the order is made Annexure-7 to this writ application. The concluding portion of the order reads thus:

We direct the Accountant General, Bihar to give personal hearing to the Petitioner's representative and pass an order on the question of pay scale to be payable with a notice to the Petitioner whose representative shall also be heard by the Accountant General's Office. Such decision is to be taken by 31st July,

1993 and the Petitioner shall be paid accordingly. Such decision must be speaking order.

Pursuant to the direction aforesaid the written submission was submitted by the counsel for the Petitioner for consideration by the Accountant General. In compliance of the order aforesaid, the Accountant General disposed of the matter vide his order dated 4.10.93, as it appears from Annexure-9 to this writ application. Being dissatisfied with the order of the Accountant General, the Petitioner filed a contempt petition being M.J.C. No. 56/94 which was finally heard and disposed of on 8.12.94 with an observation that if he is so advised, can challenge the order of the Respondent Accountant General. Photo copy of the order passed in the contempt petition dated 8.12.94 is made Annexure-10 to this writ application.

3. In this case, a counter affidavit has been filed on behalf of the Respondents wherein, inter alia, the fact stated above has not been denied. However, it is stated that the Petitioner joined the said post in November, 1953 and thereafter, he was posted as Foreman. It is further stated that the Petitioner was appointed to the post of Senior Instructor (Tanning) in the then department of Cottage Industry in the pay scale of Rs. 75-140/ - vide Govt. order dated 2.9.53 and accordingly, he joined the post on 9.11.53. The Petitioner was thereafter appointed to the post of Foreman in the pay scale of Rs. 125-250/ - w.e.f. 21.6.58. In 1962 the services of the Petitioner were transferred to the Bihar State Small Industries Corporation on deputation as foreign service w.e.f. 1.2.62 and therefrom he was transferred to the Leather Industries Corporation w.e.f. 1.4.74 on the existing terms and conditions of service. It is admitted that after retirement the Petitioner was given time bound promotion w.e.f. 1.4.81 in the pay scale of Rs. 730-1080/ -. It is stated that the post on which the Petitioner was working and confirmed in the parent department was a single post and since there was no Selection and/or super selection grade post in the cadre the Petitioner could not be considered eligible for promotion to any selection grade or super selection grade post and, accordingly, his pension was fixed in the pay scale of Rs. 730-1080/ - vide department order dated 31.12.86. The Petitioner was drawing pay scale of Rs. 1380-2000/ - at the time of his retirement, which fact has not been denied rather it has been accepted. It is further stated that the Petitioner before his retirement from service never prayed for any higher scale of pay and/or to and back to the parent department. It is further stated that the Petitioner is entitled to only one time bound promotion which was, in fact, allowed to him on 1.4.(sic) and the Petitioner is not entitled to any second time bound promotion. Accordingly, it is submitted that the Petitioner is not entitled to the reliefs sought for in this writ application. No counter affidavit has been filed on behalf of Respondent Accountant General in the case.

4. From the counter affidavit filled on behalf of the State Respondents appears that since there is only one pay in the cadre the Petitioner could not have been promoted on the higher post. Further stand of the State Respondents that since

the first time bound promotion as allowed to the Petitioner only in 1981 and retired on 21.6.83 and, accordingly, the Petitioner is not entitled to any second time bound promotion without completing the prescribed period of 3 to 5 years after granting of the first time bound promotion.

5. Learned Counsel for the Petitioner has challenged the orders of the Respondent authority and has submitted that the lien held by him in the parent department was never terminated which has also been admitted by the Respondent authority and, as such, the Petitioner deemed to have retired from his parent department itself and, accordingly entitled to paper promotion against suitable post as and when due, particularly when the junior to him in the department has been promoted from time to time giving him higher scale of pay. In opposition, however, learned Counsel for the State with reference to the stand taken in the counter affidavit has submitted that since there is only one post in the cadre the Petitioner could not have been promoted to higher post with higher scale of pay in the department. Having regard to the rival contentions, the question falls for consideration in this writ application is as to whether the Petitioner is entitled to pension on the basis of pay scale which he was drawing at the time of his retirement from the Corporation. Admittedly, as stated above, the lien of the Petitioner remains with the parent department till his superannuation as Development Officer which is equivalent to Class I post in the department with pay scale of Rs. 1000-1820/ -. It further stands admitted that the junior to the Petitioner in the parent department were promoted to the higher ranks with higher scale of pay. It also stands admitted that the Petitioner was holding the post of Development Officer in the pay scale of Rs. 1000-1820/ - which was being drawn by the Petitioner at the time of his retirement. Merely because there is no cadre post in the department, the Petitioner cannot be allowed to suffer the matter of promotion and/or grant of (sic) benefits. It is also not correct to say the since there is only one post in the department the Petitioner could not have been granted promotion. The submission and the stand taken by the Respondent Corporation is not substantiated in view of the fact that the Petitioner was subsequently promoted on the post of foreman in the higher pay scale. The stand taken by the Respondent authority for the purpose of grant of time bound promotion has to be rejected having regard to the fact that the Petitioner was admittedly appointed in September, 1953, to the permanent post of Senior Instructor (Tanning) and retired in September, 1983, i.e., after completing more than 30 years of service. According to Govt. circular an employer is entitled to second time bound promotion after completing 25 years of service. If the first time bound promotion was given in the year 1981 by the Respondent authority, they themselves are to be blamed and not the Petitioner. After completing of 10 years of service the Respondent authority is bound to give him first time bound promotion and the second time bound promotion after 15 years from the date of first time bound promotion. Due to laches on the part of the authority the Petitioner cannot be allowed to suffer for the purpose of grant of pensionary benefits. In this case, as stated above, the junior to the Petitioner was promoted

from time to time and was allowed to draw higher pay scale, as a result they are getting higher pensionary benefits whereas the rightful claim of the Petitioner has been denied in spite of the recommendation of the Personnel and Administrative Reforms department for the reasons best known to them. As stated above, no counter affidavit has been filed on behalf of Accountant General. However, learned Counsel appearing on his behalf has submitted that in view of the stand taken by the State Respondents the Accountant General has considered the claim of the Petitioners and negated the same. No provision has been cited and/or relied upon by the learned Counsel for the Respondents including the Accountant General in support of their contention. Since the junior to the Petitioner in the department were allowed the pay scale of Rs. 1000-1820/-, I fail to understand as to why the same facility has been denied to the Petitioner.

6. After having heard the learned counsel for the parties and going through the pleadings filed on their behalf including the materials available on record, this Court has no alternative but to hold that the Petitioner is entitled to the reliefs sought for in this writ application. Accordingly, I direct the State Respondents to issue sanction order with respect to all the retrial benefits on the basis of the last pay drawn by him, i.e., pay scale of Rs. 1000-1820/- within two weeks from the date of receipt/production of a copy of this order and forward the same to the Accountant General who will issue authority slip within two weeks there from. Since the Petitioner retired in 1983 and even the admitted dues has not been paid to him, he is entitled to interest at the rate of 12% per annum from the date of retirement till the date of respective payments on the balance amount payable to the Petitioner along with cost assessed at Rs. 2500/-. Both interest and cost shall be paid to the Petitioner along with the principal amount within the time aforesaid.

7. In the result, this writ application is allowed to the extent indicated above.