
(1998) 11 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 9055 of 1993

Shambhu Sharan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1998) 3 PLJR 908

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

Bench : Single Bench

Advocate : Durga Nand Jha, for the Appellant; Jawahardhari Singh and Chandra Shekhar Pd. Singh and Chakradhari S. Sinha, for Accountant General, for the Respondent

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this writ application under Articles 226 and 227 of the Constitution of India the Petitioner has prayed for a direction to the Respondent to pay all the retirement-cum-death benefit legally payable to the deceased employee who died in harness on 6.1.1980 after completing 6 years of service as work-charge employee. The Petitioner is the son of the deceased employee who was initially appointed on 14.4.73 as Choukidar-cum-Nightguard in the work-charge establishment. Further prayer of the Petitioner in this case is for payment of difference of salary w.e.f. 1.1.71 as also the salary for the month of February, 1990, which are due to the Petitioner. It is submitted that the salary was revised w.e.f. 1.1.71 and the said revised salary is payable to the Petitioner from the aforesaid date. Further prayer has been made for a direction to the Respondents to appoint the Petitioner on compassionate ground as the father of the Petitioner died in harness.

2. Shortly stated the case of the Petitioner is that father of the Petitioner was initially appointed in 14.4.73 and was posted as Choukidar-cum-Nightguard in the Tube Well Division, Barh. He died while he was in service on 8.1.80. After

death of the father, the Petitioner being a son of the deceased employee, has approached the Executive Engineer, Tube Well Division, Barh, for payment of the entire retiral-cum-death benefits. The Executive Engineer, accordingly, issued sanction order for withdrawal of the provident fund amount, as it appears from the order dated 18.3.80 copy of which is made Annexure-1 to this writ application. The Executive Engineer, thereafter, has sent a letter to the Superintending Engineer requesting him for allotment of fund so that the legal dues of the Petitioner will be paid to him. The Superintending Engineer, accordingly, requested the Financial Adviser-cum-Chief Account Officer, Water Development Corporation, Patna (hereinafter referred to as the "Corporation"), for allotment of fund so that the payment could be made to the Petitioner, as it appears from the letter dated 9.5.81, copy of which is made Annexure "2" to this writ application. Thereafter w.e.f. 1.3.74 the Tube Well Division of Minor Irrigation was merged in Bihar Water Development Corporation and, accordingly, the service of the Petitioner's father were transferred to the said Corporation where the pay scale was revised w.e.f. 1.4.71 on the basis of the 3rd Pay Revision Committee Report, which was accepted by the Government. In view of the Circular issued by the State Respondents the Petitioner, being a non-matric, has applied for appointment on class IV on compassionate ground which was recommended by that Executive Engineer and forwarded to the Respondent Superintending Engineer and the Superintending Engineer, in turn, has referred the matter to the Chief Engineer praying therein for taking a final decision in the matter. The Respondent Chief-Engineer on receipt of the recommendation for appointment of the Petitioner on compassionate ground has referred the matter to the Administrator-in-Chief of the Corporation with a request to the Administrator-in-Chief for according necessary sanction. Thereafter, the Board of Directors of the Corporation has finally appointed the Petitioner along with the similarly situated persons as daily rated employee for the time being till the final decision is taken in this regard, copy of such decision made by the Board of Directors is made Annexure-5 to this writ application. The Administrator-in-Chief has finally decided to appoint the Petitioner on compassionate ground, which will be apparent from Annexure-6 to this writ application. The Petitioner, thereafter, approached the authorities concerned repeatedly but in spite of the recommendations having been, made by the competent authority, neither he has been appointed on compassionate ground nor the legal dues payable to his deceased father has been paid to him till date. Hence this writ application.

3. In this case, a counter affidavit has been filed on behalf of the State Respondent wherein, inter alia, it is stated that since the Petitioner's father has worked in the work-charge establishment and being a work-charge employee the Petitioner is not entitled either to the retiral benefits or any appointment on compassionate ground.

4. In the light of the pleadings of the parties, the question falls for consideration in this writ application is as to whether the Petitioner is entitled to the reliefs sought for in this writ application, as mentioned above, Admittedly, the deceased

employee was initially appointed by the competent authority in April, 1973 as Choukidar in the work-charge establishment. While he was discharging his duties on the post, in question, he died on 6.1.80 after more than six years of continuous service. The question arises as to whether the Petitioner is entitled to the retiral-cum-death benefits of his father. In this case, the Government has taken a decision vide Resolution dated 22.10.84 to the effect that the work charge employees who have completed 5 years of continuous satisfactory service, their service shall be regularised and they are entitled to all the retiral benefits including all facilities as of the permanent Government servants, copy of such decision is made Annexure-15 to the reply to the counter affidavit. Pursuant to the decision taken by the Government aforesaid, several work-charge employees similarly situated like the Petitioner have been absorbed permanently in the service and retiral benefits were also given to them who retired from their service"s. In one of the cases it appears that after the death of the employee his son was appointed on compassionate ground, as it is evident from Annexure 11/ E to the reply to the counter affidavit. Similarly situated employees have been given such benefits who retired as work-charge employees, as it is evident from different orders passed by the Respondent authorities from time to time, as contained in Annexures-8 to 14 to the reply to the counter affidavit. In that view of the matter, it is difficult to accept the contention of the State Respondents that the Petitioner is not entitled to any relief sought for in this writ application. The Government itself has taken a decision that the work-charge employees who have completed five years of satisfactory continuous service will be given benefits of permanent employees and, in fact, they have given this benefit to all those employees similarly situated like that of the Petitioner.

5. In that view of the matter, I direct the Respondent authority to issue sanction order with respect to all the retiral benefits, legally payable to the deceased father of the Petitioner 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 therefrom. Since the Petitioner"s father died in harness and the legal dues has not been paid till date, the Petitioner is entitled to interest at the rate of 10% per annum from the date of death till the date of respective payments along with cost which I assess at Rs. 1900/-. Both interest and cost shall be paid to the Petitioner within the time aforesaid along with the principal amount. As regards the appointment of the Petitioner on compassionate ground, from the facts stated above, it is apparent that all the Respondent authorities have recommended the Petitioner for appointment on compassionate ground relying upon the decision of the Government but in spite of that, no positive order has been passed in this regard. Accordingly, I direct the Respondent authority to take a final decision in this regard in terms of the decision taken by the Government and also in the light of the fact that similarly situated persons have been appointed on compassionate ground after death of their father. Decision in this regard must be taken within six weeks from the receipt and production of a copy of this order.

6. This writ application is allowed to the extent indicated above.