

(2015) 02 JH CK 0164
In the Jharkhand High Court
Case No : WP(S) No. 3219 of 2014

Shankar Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Citation : (2015) 3 AJR 120 : (2015) 2 JLJR 241

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

Bench : Single Bench

Advocate : Arvind Kr. Mehta and Nayer Eqbal, for the Appellant; Manoj Kumar Choubey, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sujit Narayan Prasad, J.—The petitioner has approached this Court for the following reliefs:--

"(i) To grant promotion to the petitioner with all consequential benefits on the ground that the juniors have been granted such promotion.

(ii) For declaration that notional promotion in the order dated 28.8.2014 (Annexure-11) is redundant and is fit to be quashed.

(iii) Issuance of direction upon the respondents to treat the petitioner in senior selection grade w.e.f. 31.8.2009 as also Joint Secretary Grade w.e.f. 25.6.2014 on the ground that junior to the petitioner has been granted such promotion with effect from the said date."

Heard the parties and perused the documents on record.

The brief fact of the case is that the petitioner has been appointed after being successful in the combined competitive examination conducted by the Bihar Public Service Commission in the 31st batch and he was given Bihar Administrative Service.

2. A seniority list was published in which the petitioner stands at serial No. 419/2003. The petitioner being eligible to be considered for promotion to the junior selection grade w.e.f. 6.5.2005, the date from which the other juniors have been granted promotion. A Departmental Promotion Committee convened its meeting on 1.12.2004 and on one pretext or the other the case of the petitioner was not sent for its consideration before the said meeting of the Departmental Promotion Committee. The case of the petitioner has been considered in the meeting of Departmental Promotion Committee held on 31.8.2009 and the decision was taken to keep the promotion of the petitioner in the sealed cover on the ground of pendency of criminal case instituted in the year 1997.

3. In the criminal case being Spl. Case No. 20/2005 the final judgment was pronounced on 26.5.2014 in which the petitioner has been acquitted from all the charges. The respondents, thereafter, opened the sealed cover and issued an order on 28th August, 2014 by which the petitioner has been granted promotion in the rank of the Sub-Divisional Officer and its equivalent category i.e. pay scale of Rs. 15,600-39,100/- with the grade pay of Rs. 6,600/- w.e.f. 6.5.2005 but the said promotion was made as notional promotion with the condition that the petitioner will be entitled to get the monetary benefits from the date of joining of the said post. The petitioner being aggrieved with the part of the order dated 28.8.2014 by which the notional promotion has been granted without any monetary benefit, has filed this writ petition.

4. The further grievance of the petitioner is that during pendency of the criminal case junior to the petitioner whose name stands at serial No. 432 has been granted promotion to the Joint Secretary rank, but due to non-consideration of the case of the petitioner due to pendency of the said criminal case his case has not been placed before the departmental promotion committee although the department ought to have taken recourse of the case of the petitioner along with other junior by keeping the matter of promotion in the sealed cover as has already been resorted in the earlier occasion. Thus, the grievance of the petitioner is that the petitioner is entitled to be promoted to the rank of senior selection grade as also in the General Secretary cadre, since the junior has already been given promotion to the said post.

5. On the other hand, counsel for the respondents has submitted that the petitioner has already been granted benefit of promotion by opening sealed cover which was kept in sealed cover on the basis of circular dated 20.11.2008 and thereafter the petitioner has been given notional promotion with the direction that the financial benefit will be given from the date of joining on the promoted post.

6. It has further been submitted that due to order of sanction having been granted by the disciplinary authority, the matter of promotion of the petitioner has been kept in sealed cover.

7. After hearing the parties, the facts which is to be decided is as to whether the petitioner is entitled to be given financial benefits w.e.f. 6.5.2005 or not. For deciding the issue it is relevant to see the judgment of Hon"ble Supreme Court rendered in the case of Union of India Vs. K.V. Jankiraman, etc. etc., AIR 1991 SC 2010 : (1991) 63 FLR 767 : (1991) 3 JT 527 : (1991) 2 LLJ 570 : (1991) 2 SCALE 423 : (1991) 4 SCC 109 : (1991) 3 SCR 790 which is still a good law on the basis of" which the State of Jharkhand has also formulated a resolution being resolution No. 6227 dated 20.11.2008.

8. In the judgment referred herein above, the relevant paragraphs which are worthy to be seen is paragraphs-25, 26 and 34 which are quoted hereinbelow:--

"25. We are not much impressed by the contentions 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 away from work 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.

26. 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 blameworthy in 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 along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:--

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

34. In this case, the respondent-employee's case was considered for promotion by the DPC in August 1982. However, the result was kept in a sealed cover in view of the pending disciplinary proceedings against him. According to the employee, on October 11, 1985 the disciplinary proceedings ended in complete exoneration. Thereafter, a DPC was again constituted in March 1986 which, after consideration of the employee's case, recommended him for promotion w.e.f. July 26, 1986. This was obviously contrary even to the instructions contained in the Memorandum. He was entitled to promotion from the date his immediate junior was promoted in or after August 1982 if he was in August 1982 found fit for promotion by the DPC. The Tribunal has, therefore, rightly directed the appellant to open the sealed cover and if the DPC in 1982 had found him fit for promotion, to give him the promotion from the date on which his immediate junior was promoted. However, while doing so, the Tribunal has also directed arrears of salary to be paid for intervening period along with all consequential benefits. Since we have held disagreeing with the decision of the Full Bench of the Tribunal that the benefit of the arrears of salary will not flow automatically but will depend upon the circumstances in each case, we modify the said order to the extent it directs the payment of arrears of salary, and direct the appellant-authority to consider whether the employee in the circumstances of the case was entitled to any arrears of salary and to what extent. The authority will, of course, give reasons for denial of the whole or part of the arrears of salary. The appeal is, therefore, allowed partly with no order as to costs."

9. The Circular dated 20.11.2008 is also worth to be discussed here by which the Government of Jharkhand has taken a decision to keep the matter of promotion of an employee in sealed cover in case of pendency of a criminal case, but the moment the delinquent employee is exonerated from the charges, the sealed cover will be opened for promotion and the most junior officer will have to make place. However, in the said circular it has been provided that the promotion will be given by way of notional promotion and arrears of salary for the said period will have to be decided by the authorities on the basis of the fact and circumstances of the case.

10. The circular dated 20.11.2008 has been formulated on the basis of pronouncement of the judgment of Hon'ble Supreme Court as has been referred in paragraph-26 of the said judgment quoted hereinabove.

11. From perusal of the order dated 28.8.2014 the respondents have passed an order regarding notional promotion but without any reason.

12. The case of the respondents that due to sanction having been accorded for initiation of any proceeding on the petitioner in the year 1997, the matter of promotion of the petitioner has been considered but the same has been kept in sealed cover. The petitioner, however, has been acquitted from the criminal case as would be evident from the judgment annexed as Annexure-9 dated 26.5.2014 passed in Spl. Case No. 20/2005.

13. I have gone through the entire fact and from perusal of the said fact it is evident that Sanha was entered into on 19.12.1997 initially under the various Sections of Indian Penal Code and Police started investigating the case. On 24.11.2005 the offence under Prevention of Corruption Act has also been inserted. Thereafter, the case was transferred to Vigilance Court vide order dated 1.12.2005 and on 12.11.2008 charge has been framed against the petitioner. The petitioner after seeing the fact that he is being penalised due to long pendency of the criminal case and he was suffered a lot due to non-consideration of his case for promotion due to false implication for last 17 years, he ultimately preferred an application before this Court and this Court vide order dated 4.3.2014 directed the concerned authorities to conclude the trial within a period of three months. Thereafter the process was issued by the trial court on various dates started from 14.3.2014 for production of witnesses but out of 17 cited witnesses only 7 witnesses have come at the face and learned trial court was compelled to close the prosecution witnesses. Thereafter, the judgment has been pronounced and the petitioner has been acquitted on the basis of ocular and documentary evidences.

14. Thus, certainly the trial has continued fairly even a period of 17 years but from perusal of the judgment of the trial court it appears that the delay cannot be attributable to the petitioner.

15. The respondents have taken a decision for giving him notional promotion without any monetary benefit w.e.f. 6.5.2005 and the petitioner will also be entitled for monetary benefits with effect from the date of his joining.

16. Now if the case in hand will be compared with the ratio laid down by the Hon"ble Supreme Court at paragraph-26 of the case of K.V. Jankiraman and Ors. referred herein above as also the circular of the Government dated 20.11.2008, in my view the order dated 28.8.2014 so far as the decision of the department that the petitioner is entitled to be given notional promotion, is not sustainable in the eyes of law because in view of the ratio of Hon"ble Apex Court, the authority ought to have passed the said order with the reasons, but from perusal of the impugned order, it appears that there is no such reason mentioned therein and, as such, part of the order by which it has been directed that the petitioner will be entitled to be given the financial benefit with effect from the date of his joining, is not sustainable and is hereby quashed.

17. So far as the other contention of learned counsel for the petitioner that during pendency of the criminal proceeding although the department had kept

the matter of promotion of the petitioner in sealed cover for considering from basic cadre to the junior selection grade, but the same process has not been followed for the purpose of granting him promotion to the higher grade like senior selection grade and in the Joint Secretary cadre.

18. I find support in the contention since in the meantime the junior whose name stands at serial No. 432/2003 in the seniority list has already been granted promotion up to Joint Secretary cadre while name of the petitioner stands at serial No. 419/2003, has not been given promotion.

19. Thus, contention of learned counsel for the petitioner is that the petitioner is entitled to be considered even for promotion in the higher grade i.e. senior selection grade and in the Joint Secretary cadre with effect from the date when the junior has been granted promotion and the case of the petitioner has not been sent for his consideration before the departmental promotion committee which is in the teeth of the resolution No. 6227 dated 20.11.2008 taken in the light of judgment rendered by Hon''ble Supreme Court in the case of Union of India and Ors. v. K.V. Jankiraman and Ors. (supra), is justified.

20. In that view of the matter, the matter is remitted before the respondent-Principal Secretary, Personnel Administrative Reforms and Rajbhasha Department, Government of Jharkhand to take a fresh decision and pass a speaking order in view of observation of the Hon''ble Supreme Court as contained in paragraph-26 of the judgment rendered in the case of Union of India and Ors. v. K.V. Jankiraman and Ors. as discussed herein above as also on the basis of circular dated 20.11.2008.

21. The concerned respondent is further directed to consider the case of the petitioner for promotion to the senior selection grade and Joint Secretary cadre on the ground that junior to him has already been granted the said promotion.

22. The said decision and order shall be passed by the Principal Secretary, Personnel Administrative Reforms and Rajbhasha Department, Government of Jharkhand within a period of twelve weeks from the date of receipt/production of a copy of this order. This writ petition is disposed of with the above directions and observations.