
(2022) 02 JH CK 0023

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5638 Of 2010

Shatrughana Pathak

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 18-02-2022

Acts Referred:

Citation : (2022) 02 JH CK 0023

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Gaurav Abhishek, Vandana Singh

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Gaurav Abhishek, learned counsel appearing on behalf of the petitioner.

2. Heard Mrs. Vandana Singh, learned counsel appearing on behalf of the respondents.

3. This writ petition has been filed challenging the order as contained in memo No. 4939 dated 16.08.2010 issued by the respondent No. 2 whereby the

claim of the petitioner for promotion has been rejected on the ground that the petitioner has already superannuated from service w.e.f. 31.07.2009

while promotion has been granted in favour of others prior to 03.08.2009. A further prayer has been made to forthwith release the arrears of

difference of salary consequent upon grant of promotion to the petitioner and also to fix the pension of the petitioner by giving the entire arrears of

pensionary benefit w.e.f. 31.07.2009.

Arguments of the petitioner

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner had earlier moved this court in W.P. (S) No. 2131 of 2010 which was disposed of vide order dated 22.07.2010 as contained in Annexure-1 to the present petition and by the said writ petition it was directed that if a representation is made by the petitioner before the Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Govt. of Jharkhand, the claim of the petitioner will be considered in right perspective. He submits the impugned order in the present case has been passed pursuant to such direction issued by this court in W.P. (S) No. 2131 of 2010. The learned counsel submits that the case of the petitioner for promotion was kept pending by the appropriate committee and the petitioner was not promoted on account of the fact that departmental proceeding was still pending and his ACRs were not received by the department. Learned counsel submits that the procedure of keeping the case of the petitioner under sealed cover was not followed and accordingly the judgment passed by the Honâ??ble Supreme Court in the case of Union of India vs. K.V. Janikraman reported in 1991 (4) SCC 109 was not followed and the respondents have also not followed their own resolution as contained in Annexure-E to the counter affidavit. Learned counsel submits that so far as ACR is concerned, it is for the department to take appropriate steps and the petitioner has nothing to do in this matter.

5. Learned counsel has also referred to the case of one Ganesh Prasad whose case for promotion was also considered with that of the petitioner and decision in connection with his promotion was reserved and one post was kept vacant. He submits that in his case also, as in the case of the petitioner, departmental proceeding was initiated and the enquiry officer had recommended for his exoneration from the charges but the final order of the disciplinary authority was not passed. Learned counsel submits that case of the petitioner is similar as that of Ganesh Prasad. The learned counsel submits that subsequently the petitioner, after his retirement, has been discharged from the allegations in the departmental proceedings vide order dated 10.12.2009 and therefore refusal to grant him promotion vide the impugned order has not been passed in accordance with law and it calls for interference. He submits that said Ganesh Prasad was granted promotion after his exoneration from the charges in the departmental proceedings.

6. Learned counsel has referred to the following judgments passed by this Court:

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W.P. (S) No. 2013 of 2015 dated 11.11.2020;

L.P.A. No. 211 of 2019 dated 19th May, 2020; W.P. (S) No. 4013 of 2011 dated 18.05.2018;

W.P. (S) No. 19 of 2010 dated 20.04.2010 reported in 2010 SCC Online Jhar. 622, and

W.P. (S) No. 6055 of 2010 dated 27.08.2021.

7. Learned counsel for the petitioner submits that there has been no fault on the part of the petitioner and the claim for promotion of the petitioner was

not rejected by Annexure-6 but it was kept pending and subsequently the petitioner has been exonerated in the departmental proceeding and others

having been granted promotion and therefore the petitioner is claiming the same relief. Learned counsel for the petitioner submits that on the date of

passing of the impugned order, the ACRs were available and there is no adverse remark against the petitioner. He submits that the petitioner cannot

be made to suffer on account of delay and latches on the part of the respondents and he is entitled for promotion in view of the DPC which was held

prior to his retirement. Learned counsel for the petitioner submits that the rules which have been filed along with the rejoinder has not been followed

by the department.

Arguments of the State

8. The learned counsel appearing on behalf of the respondent State on the other hand has opposed the prayer and has submitted that merely because

the enquiry report indicated that the charge was not proved that is not sufficient and it is for the disciplinary authority to take a call on the same and

pass an appropriate order and such order was passed only after the retirement of the petitioner. She also submits that the claim of promotion of the

petitioner is not a time bond promotion and the screening committee has to exercise its powers by scrutiny of the entire records and the ACRs were

not available on the date when the screening committee has taken a decision in the matter of promotion. She further submits that on the day the

petitioner retired, the promotion was not granted to any of persons, rather it was granted on 03.08.2009 and the petitioner had retired on 31.07.2009

and the case of the other person namely Ganesh Prasad is on a different footing

due to the reason that on 03.08.2009 he was still in service. She also submits that prior to grant of promotion to Ganesh Prasad, he was fully exonerated in the departmental proceeding and thereafter his case was considered. She has also submitted that merely because sealed cover procedure was not followed, that is not sufficient for interference in the present case in view of the fact that the case of petitioner was not rejected, but was kept pending. The learned counsel also submits that even if the sealed cover procedure would have been followed, the petitioner could have been promoted only after his exoneration from the departmental proceeding and the petitioner was exonerated only after his retirement. The learned counsel also submits that the judgments relied upon by the petitioner do not apply to the facts and circumstances of this case. The learned counsel submits that the writ petition is fit to be dismissed.

Rejoinder arguments of the Petitioner

9. The learned counsel for the petitioner in response submits that even if sealed cover, if any, upon following the sealed cover procedure would have been opened after the retirement of the petitioner only, still the date of entitlement for the promotion of the petitioner is to be considered from the date on which the meeting of the departmental promotion committee was held. He submits that only reason for refusal of promotion of the petitioner is that he has retired and the ACRs were not made available on the date of meeting of department promotion committee. Learned counsel for the petitioner has also referred to para-9 of his rejoinder.

Findings

10. The petitioner was appointed as Deputy Collector and was granted junior selection grade w.e.f. 01.02.1996 and thereafter promoted on 01.11.2004 to the post of Deputy Secretary. On 17.01.2008, the petitioner was issued charge sheet for the purposes of departmental proceedings. On 04.06.2009 Enquiry report was submitted in favour of the petitioner exonerating the petitioner from all the charges. On 30.07.2009 meeting of the departmental promotion committee (DPC) was held whereby the case of the petitioner was kept pending on account of pendency of departmental proceedings and non-receipt of Annual Confidential report (ACR) of the petitioner and admittedly no sealed cover procedure was adopted. The petitioner retired on the next day i.e on 31.07.2009 and just after three days i.e on 03.08.2009

promotion was granted to the persons whose names were recommended in the DPC held on 30.07.2009 and admittedly no retrospective promotion was given. Further, it is not the case of the petitioner that any junior to him was ever given promotion and he was left out during his service tenure. After the retirement of the petitioner, the petitioner was exonerated in the departmental proceedings by the disciplinary authority. Thereafter the petitioner filed writ petition before this court being W.P. (S) No. 2131 of 2010 seeking promotion as he was exonerated in the departmental proceedings which was disposed of vide order dated 22.07.2010 with a direction to file fresh representation. Consequently, the impugned order dated 16.08.2010 (annexure-5) has been passed denying promotion to the petitioner on the ground that on the date of grant of promotion i.e 03.08.2009, the petitioner had already retired and the authority refused to grant retrospective promotion to the petitioner with monetary benefits. The authority has also relied upon the judgement passed in the case reported in (1991) 4 SCC 109 (Union of India and Ors. Vs. K. B. Jankiraman) and observed that on the date of DPC since department proceedings was pending against the petitioner, no adverse impact has been there against the petitioner while considering his claim for promotion, but the promotion was granted to other persons only on 03.08.2009 any by this time the petitioner had retired on 31.07.2009. It is not in dispute that in the DPC, the case for promotion of the petitioner was not rejected but was kept pending.

11. The main grievance of the petitioner is that sealed cover procedure has not been followed in the DPC. This court is of the considered view that even if the sealed cover procedure would have been followed, the same would have made no difference as the petitioner retired from services on the very next day after DPC i.e on 31.07.2009 and the promotion was given to others only on 03.08.2009 and since the petitioner had already retired, there can be no discrimination against the petitioner in giving promotion to his juniors after the retirement of the petitioner. It is not the case of the petitioner that any junior was promoted during the service period of the petitioner and the petitioner was left out.

12. Other grievance of the petitioner is that another person namely Ganesh Prasad who also had a departmental proceeding pending against him, a post was kept reserved for him but no such reservation of post was done in

favour of the petitioner. This court is of the considered view that not only the departmental proceedings was pending against the petitioner on the date of DPC but his ACR was also not available and in such circumstances, the case of promotion of the petitioner was kept pending. This court is also of the considered view that even if a post would have been kept reserved for the petitioner the same would not have made any difference as the petitioner retired on the very next day of DPC and the promotion was granted to others only on 03.08.2009 which had no retrospective effect. It has also come on record that said Ganesh Prasad was granted promotion while in service after he was exonerated in the departmental proceedings. Thus, the case of the petitioner is on a totally different footing than that of Ganesh Prasad and the argument of the learned counsel for the petitioner that the petitioner has been discriminated against Ganesh Prasad is devoid of any merit.

13. It is also the case of the petitioner that the enquiry report in connection with departmental proceeding was submitted vide report dated 04.06.2009 and the Enquiry Officer had exonerated the petitioner from all the charges and in spite of the fact that the enquiry of being in favour of the petitioner, the D.P.C. deferred the consideration of the case of the petitioner for promotion and so far as non-receipt of ACRs is concerned, the petitioner had no role to play and the petitioner cannot be made to suffer on account of laches on the part of the respondents. However, the petitioner was communicated a decision of the Government, exonerating the petitioner from all charges, vide Memo dated 10.12.2009 and therefore, the petitioner is seeking promotion with effect from the date on which, the decision of D.P.C. was taken i.e., on 30.07.2009 to promote others keeping the case of the petitioner pending.

14. This Court finds that the case of the petitioner was considered by the D.P.C. for promotion only just one day prior to his date of retirement and admittedly prior to his date of retirement, none of the persons whose name was recommended pursuant to D.P.C. held on 30.07.2009 were promoted rather the promotion was granted only vide notification dated 03.08.2009 which was never given retrospective effect much less from the date of DPC.

This Court is of the considered view that merely because the case of the petitioner was placed before D.P.C. on 30.07.2009 that by itself does not

entitle the petitioner for promotion from the date of D.P.C. i.e., 30.07.2009, even if, it is assumed that the case of the petitioner should have been kept

under sealed cover and one post should have been kept vacant for him. No right crystalized in favour of the petitioner merely because D.P.C. was

held on 30.07.2009 while he was still in service.

15. The other judgements relied upon by the petitioner do not apply to the facts and circumstances of this case as discussed below: -

a. The judgement passed in the case of W.P.(C) No. 2013 of 2015(Arun Kumar Sinha versus State of Jharkhand) dated 11.11.2020 does not apply to

the facts and circumstances of this case. In the said case, D.P.C. was held on 14.05.2008 and the notification for promotion was issued on 06.11.2008

and in the meantime, the petitioner of the said case had retired from the service w.e.f. 31.07.2008 and in the D.P.C., the name of the petitioner of the

said case was recommended for promotion and the grievance of the petitioner was that in spite of his retirement, the petitioner should be entitled for

promotion. In the said case as recorded in para-4 of the judgment, the promotional order was itself given retrospective effect from 20.07.2007 itself

and on 20.07.2007, the petitioner of the said case was still in service and in such circumstances, this Court, in the said case, directed the authorities to

calculate the retiral benefits considering his salary on the promoted post w.e.f. 20.07.2007 with all consequential reliefs. In the present case, the

promotion dated 03.08.2009 was not given any retrospective effect and accordingly, on the date of promotion, the petitioner being not in service, he

cannot claim any promotional benefit and the aforesaid judgment passed in W.P. (C) No. 2013 of 2015 is clearly distinguishable on facts and does not

apply to the facts and circumstances of the present case.

b. So far as the judgment passed in the case of L.P.A. No. 211/2009 (The State of Jharkhand vs. Dinesh Chandra Mahto) dated 19.05.2020 is

concerned, the grievance of the original writ petitioner was that he was not granted promotion, whereas some of his juniors were extended such

benefit. The point for consideration was if there is no fault on the part of the employee and if promotion has not been considered rather juniors to him

have been promoted and if such person approaches the court and the court passed the order for consideration of the case for promotion, can such an

employee be denied such monetary benefit retrospectively. The Honâ??ble

Division Bench was of the view that in normal circumstances, when the retrospective promotions are affected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier and if a promotion is denied to an employee because of the mistake of the State and due to no fault of such employee, then the authorities are bound to pay the arrears of salary etc. upon giving him the benefits of retrospective promotion after realizing for mistake. In the present case, the D.P.C. was held on 30.07.2009 and the petitioner had retired on the very next date i.e., on 31.07.2009 and ultimately, the promotion was granted to the other persons on 03.08.2009. The present case is neither any case of delay and laches on the part of the respondents nor a case of grant of retrospective promotion and accordingly, the aforesaid judgment does not apply to the facts and circumstances of this case.

c. So far as the judgment passed in the case of W.P.(S) No. 4013/2011 (Radha Krishna Prasad vs. State of Jharkhand) decided on 18.05.2018 is

concerned, in the said case, a prayer was made seeking notional promotion with retrospective date and to re-fix the pension of the petitioner with all

consequential benefits. In the said case, the petitioner was recommended for promotion vide D.P.C. held on 24.08.2010 which was also approved by

the Governor on 25.08.2010 and only formal notification was to be published which was published only on 18.06.2011 and at that time, the petitioner

had attained the age of superannuation on 31.05.2011. In the said case, the name of the petitioner was recommended for promotion, but he was not

granted promotion due to delay in publication of notification and thus, the petitioner suffered due to such fortuitous and avoidable circumstances and in

such circumstances, a direction was issued to take decision for grant of notional promotion to the petitioner. In the present case, on the date of D.P.C.

neither the name of the petitioner was recommended for promotion nor the same could have been recommended for promotion, on account of

departmental enquiry still pending against the petitioner and no order of the disciplinary authority was passed and by the time, the petitioner was

exonerated the petitioner had already retired. In the present case, the D.P.C. was held on 30.07.2009 and the petitioner retired on 31.07.2009 and the

persons whose names were recommended were promoted only on 03.08.2009.

d. In the judgment reported in 2010 SCC Online (Jhar.) 622 (Suryadeo Prasad

vs. State of Jharkhand & Ors.) passed in W.P.(S) No. 19/2010 decided on 20th April, 2010, the D.P.C. was held on 22.04.2006 and the petitioner was found fit for promotion w.e.f. 01.04.2005 and the Court held that after 22.04.2006, the petitioner should have been granted promotion and his failure to join the promotional post was not due to any fault on the part of the petitioner, but exclusively on account of wrong decision by the respondents, and, therefore, the petitioner was entitled not only to promotion w.e.f. 22.04.2006 but to all consequential financial and other benefits which the petitioner would have got if the petitioner had actually joined the post w.e.f. 22.04.2006. In the judgment passed in W.P.(S) No. 6055/2010 (Srichand Prasad vs. State of Jharkhand & Ors.) decided on 27.08.2021, wherein the petitioner had prayed for a direction upon the respondent authority to consider his case for promotion notionally with retrospective date with all consequential benefits. The Court was of the view that if wrong has been committed by the State Authority, then the petitioner would be entitled to all monetary benefits arising out of retrospective promotion. In the present case, on the date the D.P.C. was held, the petitioner was not found fit for promotion on account of pending departmental proceeding and he was exonerated from the departmental proceeding only after his retirement and not granting promotion to the petitioner was not on account of delay or laches on the part of the respondents and accordingly, the aforesaid judgments also does not apply to the facts and circumstances.

16. As a cumulative effect of the aforesaid findings, this court does not find any merits in this writ petition, which is accordingly dismissed.

17. Pending Interlocutory Applications, if any, are dismissed as not pressed.