

(2007) 09 PAT CK 0110
In the Patna High Court
Case No : CWJC. No. 10575 of 2005

Sheo Dutt Sharma and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Bihar School Examination Board Act, 1952 — Section 8

Citation : (2009) 2 PLJR 335

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : M.N. Parbat, Gupteshwar Prasad, V.P. Srivastava, S.K. Jha and Praveen Prabhakar, for the Appellant; J.P. Shukla, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—There are two petitioners in the present writ application. Both have superannuated from service of Bihar School Examination Board. They want quashing of order dated 27.4.2000 contained in Annexure-2 by virtue of which their earlier promotion granted to the post of Section Officer have been withdrawn. According to petitioners vide order contained in Annexure-1 dated 15.1.1999 large number of persons including these petitioners were granted promotion from the post of Senior Assistant to the post of Sectional Officer. This order, however, was a conditional order because the order passed states that this will be subject to approval by the Bihar Public Service Commission as well as the State of Bihar. This is so because the Regulation, 1964 of the Board Chapter-X Rule 42(2)(iii)(a) mandates so. The order contained in Annexure-1 also talks about a legal opinion in this regard. 1999 promotion order contained in Annexure-1 was subsequently withdrawn vide Annexure-2. Petitioners state that order for withdrawal of promotion which was earlier given to them was taken in the light of letter No. 201 dated 7.3.2000 issued by the Department of Education, Government of Bihar.

2. Petitioners categorically state at the outset that though the order withdrawing

the promotion order was passed on 27.4.2000 but they could file the present writ application in the year, 2005, i.e. after superannuation because they had no knowledge of the contents of the Government letter No. 201 dated 7.3.2000. It is much later that they managed to lay their hands on the said letter which is Annexure-5 to the writ application.

3. After going through Annexure-5 they realised that the respondent-Board had illegally withdrawn the concerned promotion order for totally extraneous reasons and by making misleading statement in Annexure-2. A bare perusal of Annexure-5 would show that the State Government only indicated in the letter that there is no occasion for amendment in the said regulation and the Board was competent enough to take a decision at its own level. There is no whisper, indication or direction in the said order based on which the earlier promotion order could be withdrawn.

4. Learned counsel for petitioners states that even though through Annexure-1 the respondents-Bihar School Examination Board granted them promotion on a conditional basis, subject to approval by Bihar Public Service Commission but the same said action of the Examination Board was in conflict and violation of the various Rules and Regulations of the Board itself. Initially they did not question the bona fide of the Bihar School Examination Board when the letter contained in Annexure-1 was issued more so due to legal opinion which was tendered to them. Now they surely question the wisdom of Board and the legal opinion given to the respondents in the given factual and legal question which are involved in the present case.

5. Petitioners state that in terms of Section 8 of the Bihar School Examination Board Act, 1952 the officers of the Board are described. They are Chairman, Secretary and such other officers as may be prescribed by rules made under this Act, Petitioners thereafter draw the attention of this Court to Rules 8 and 9 of Bihar School Examination Board Rules, 1963. Rule 8 describes various posts of officer and Rule 9 gives power of the Board in the matter of creation of posts, appointments to the posts and the disciplinary action which can be taken against the employees. In terms of Rule 9-1 the Board is competent to create post of such employees whose maximum remunerations do not exceed Rs. 745/- per month. This could be done without prior approval of the State Government. The attention of this Court, thereafter is drawn to Board's regulation formulated under the statute. Regulations 81A and B are quoted below for ready reference.

81A: POSTS UNDER THE BOARD:

OFFICERS OF THE BOARD

1. Chairman.
2. Secretary.
3. Deputy Secretary.

4. Budget and Accounts Officer.
5. Assistant Secretary.
6. Assistant Budget and Accounts Officer.
7. Audit Officer.

81B: MINISTERIAL STAFF AND OTHERS

1. Office Superintendent.
2. Accountant.
3. Sectional Head...

6. Regulation 81A describes the posts of officers of the Board. There are seven posts which have been indicated under this head. Regulation 81B contains the list of posts of Ministerial staff and others. The post on which the petitioners were promoted was the post of Sectional Head and comes under Ministerial staff. The post of Sectional Head was redesignated as Sectional Officer vide Board's Resolution No. 11 dated 25.8.1976. By this and through various provisions of the Act, Rules and Regulations of the Board petitioners only wanted to demonstrate to this Court that Section Officers continued to be under the category of Ministerial staff and they are not officer under the statute of the Board. They further state that by virtue of the decision taken as far back as 10.8.1985 they amended Regulation 42(2)(iii)(a) in its meeting dated 10th August, 1985. The above resolution has been brought on record as Annexure-7. By virtue of this amendment as well as the provisions, the petitioners contend that the respondent-Examination Board is competent enough to grant promotion at their own level and there is no statutory requirement for the Board to refer their case to Bihar Public Service Commission for approval or concurrence. Concurrence of BPSC is required only in the case of "officers".

7. In sum the contentions of petitioners are that there was no occasion for the Examination Board to withdraw the promotion order in terms of Annexure-2 because the Examination Board was competent enough to promote the petitioners in their own right. Further since Annexure-2 has been passed on extraneous consideration and mistaken interpretation of Annexure-5 the acts of respondents are arbitrary decision de hors the law and is fit to be set aside.

8. Petitioners have also stated in the writ application and brought evidence on record that the respondents-Examination Board has granted promotion in similar circumstances to other employees not only prior to passing of Annexure-1 but even subsequently in recent time. At no point of time cases of such promotion was ever referred to Bihar Public Service Commission for approval. Instances galore has been brought on record as Annexure-8 series. The last of promotion order is dated 26.7.2007. Petitioners therefore impute motive against the respondents because there is no explanation as to why this peculiar modality was adopted in the case of petitioners.

9. On behalf of the respondents a counter affidavit has been filed. In the counter affidavit they have taken a technical objection of maintainability of the writ application on the ground of delay and laches because the same has been filed much after the order in question came in existence. They justify the impugned order on the ground that they went by legal advice which was given to them and were under bona fide that unless Regulation 42 is amended with due concurrence of the State Government, the case of petitioners required approval by the Bihar Public Service Commission. They also submit that the post of section officer by very description brings them under the category of officer of the Board and in matters of grant of promotion to officer's Bihar Public Service Commission's concurrence is required.

10. The stand taken by the Board is not based on any sound legal principle and the rules as is evident from the statute ably explained by learned counsel for the petitioners. As for the delay and laches they state that the Government communication was not marked to them. In fact, the same was withheld and was never brought to their knowledge. The moment they discovered that the respondents-Examination Board has passed totally illegal order based on extraneous consideration and in conflict with the law specially the Acts, Rules and Regulations of the Board, they have challenged the action of the authority even though it relates to the year, 2000. Furthermore since this illegal withdrawal of their promotion order has direct bearing on their pension which they are drawing after retirement, they have right to get the illegal order set aside. To that extent petitioners seems to be correct. The case which the petitioners has made out cannot be ignored or brushed aside on a technical plea of delay and laches. Even otherwise the acts of the respondents is a continuing wrong because the petitioners are drawing their pension from a lower post even though they are entitled to remain on the promoted post.

11. This Court does not accept the submission of learned counsel for the respondents that petitioners by mere description or nomenclature would be treated in the cadre of officer. They have failed to demonstrate that after the change of nomenclature of "sectional head" to "section officer" any corresponding change in the Act, Rules or Regulation of the Board was effected. Section Officer even after change of nomenclature still continued to be listed under the head of Ministerial staff and their initial salary was less than Rs. 745/-. Board had all the authority to create the post as well as grant promotion. There is no requirement of law to send their cases for approval to Bihar Public Service Commission. The power totally falls within the domain of the Board.

12. This Court also finds it very strange that even though the Examination Board had resolved in its meeting as far back as 10.8.1985 as is evident from Annexure-7 to amend Regulation 42(2)(iii)(a) they have intentionally tried to suppress this fact while dealing with the case of petitioners. Taking a charitable view probably they do not know themselves as to what decision they have taken in this regard earlier. In either case the benefit or the advantage of the same will

accrue in favour of petitioners and not to the Examination Board.

13. This Court gets an impression that petitioners were not fairly treated by the Board in exercise of power and they have been unnecessarily harassed and denied their benefit of promotion on totally extraneous consideration and misapplication of law and rules. In this background the action of respondents in cancelling the promotion granted to petitioners in terms of Annexure-1 was an arbitrary decision and requires interference by this Court.

14. Annexure-2 is accordingly quashed with a direction upon the respondents to pay the consequential benefit which the petitioners are entitled to in terms of promotion order which was issued in their favour earlier. The respondents would also be bound to rework their retirement benefit to which the petitioners are entitled to in view of quashing of Annexure-2. This writ application is accordingly allowed.