
(2010) 03 PAT CK 0148
In the Patna High Court
Case No : CWJC No. 8214 of 2005

Shithil Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0148

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Judgement

Jyoti Saran, J.—This interlocutory application has been filed by the petitioner seeking, inter alia, permission of the Court to assail the validity of the order bearing memo No. 2036 dated 26.7.2005 passed by the Chief Engineer, Water Resources Department, Purnia disposing of the claim of the petitioner in the light of the directions of this Court passed in C.W.J.C. No. 7219 of 1999.

2. The prayer made in the interlocutory application is allowed and the petitioner is permitted to assail the validity of the order in the present proceedings.

3. Heard Mr. Ashutosh Ranjan Pandey, learned Counsel appearing on behalf of the petitioner, Mr. Rajesh Kumar, learned Assisting Counsel to IAG-6 for the State and Mr. Binod Kumar Labh, learned Counsel representing the Accountant General.

4. With the consent of the parties the matter has been taken up for disposal at the stage of admission itself.

5. The petitioner questions the date of grant of his first time bound promotion as also the non-grant of the second time bound promotion by the respondents who according to the petitioner have misread the relevant provisions while taking decision.

6. Facts of the case in brief is that the petitioner was initially appointed as Steno-typist on 17.3.1964. Under a policy decision dated 21.12.1973, the Steno-typists working in the Mufassil offices were brought in the cadre of Lower Division Clerk,

copy of the said policy decision taken by the Finance Department of the Government of Bihar has been placed at Annexure-1 to the interlocutory application. Consequent upon the said policy decision, the petitioner, vide order dated 14.2.1974, was posted as a Lower Division Clerk (Junior Assistant) with effect from 9.1.1973 (Annexure-2A). Under the 4th Pay television, which came into effect from 1.4.1981, a scheme for time bound promotion was introduced prescribing for promotion on completion of ten years service and 25 years service, in case the incumbent did not get regular promotion in the cadre. Following the scheme of the time bound promotion, the petitioner was granted first time bound promotion vide order dated 6.11.2004. As the case of the petitioner was not being considered for second time bound promotion, he came before this Court through C.W.J.C. No. 7219 of 1999 and which was disposed of by order dated 9.12.2004 (Annexure-E) with a liberty to the petitioner to raise his claim before the authority concerned and who would consider and dispose of the same within a period of three months from the date of receipt of such representation. In the light of the liberty granted by this Court, the petitioner filed a representation and which was disposed of by order bearing memo No. 2036 dated 26.7.2005 (Annexure-F to the counter affidavit and Annexure-4 to the interlocutory application).

7. In so far as the first time bound promotion is concerned, the Chief Engineer treating the posting of the petitioner as Lower Division Clerk as an entry in service, has held that the petitioner would be entitled to the first time bound promotion with effect from 9.1.1983, i.e. 10 years subsequent to his posting as Lower Division Clerk on 9.1.1973 vide Annexure-2 to the Interlocutory application. It is stated that the next time bound promotion is to be given only after completion of 25 years of service and which would fall on 9.1.1998, but since the time bound promotion scheme was closed with effect from 31.12.1995, hence the petitioner was not entitled to 2nd Time Bound promotion. It is stated that under the pay revision which came into effect from 1.1.1996 a separate scheme of promotion was provided known as Assured Career progression (A.C.P. for short).

8. The issue is whether the findings of the chief Engineer regarding the claim of the petitioner for time bound promotion(s) is correct and has lawful support.

9. Mr. Pandey, learned Counsel appearing on behalf of the petitioner, submits that there is no dispute with regard to the appointment of the petitioner on 17.3.1964. He submits that it is also undisputed that the post of Steno-typists working in Mufassil offices merged with the post of Lower Division Clerk with effect from 9.1.1973 under the policy decision of the State Government on 21.12.1973 and consequent thereupon, the petitioner was posted as Lower Division Clerk under order dated 14.2.1974. He thus became entitled for consideration of his case for time bound promotion on completion of 10 years of service counting from 17.3.1964 in the light of the stipulations of the Scheme of time bound promotion which has been brought on record in the counter affidavit

and placed at Annexure-D thereof. With reference to the opening paragraph of the Scheme, he submits that the only stipulation is of continued service of 10 years in the government. He submits that there is no dispute that until 31.12.1995 the petitioner had completed 25 years of service counting from 17.3.1964 when he entered the Government service and thus he was entitled to both the time bound promotion(s).

10. Learned Counsel for the State opposes the claim of the petitioner and with reference to the stipulations made in Clause 1 of the Scheme (Annexure-D), he submits that the stipulation of 10 years and 25 years is with reference to the period of service undergone in a particular cadre. He submits that as the cadre of the petitioner was changed from that of Steno-typist to Lower Division Clerk, hence he was not entitled to count the services rendered prior to his posting as Lower Division Clerk, i.e. prior to 9.1.1973 and treating his entry to the cadre as 9.1.1973, he has been correctly granted first time bound promotion with effect from 9.1.1983 and as the period of 25 years went beyond 31.12.1995, hence he was not entitled for second time promotion. He thus submits that the order passed by the Chief Engineer placed at Annexure-F to the counter affidavit and Annexure-4 to the interlocutory application, is fully in accordance with the scheme and requires no interference.

11. Mr. Pandey, responding to the objections of the learned Counsel for the State, submits that the stipulations and criteria set out in para-1 of the Scheme (Annexure-D) in relation to non counting of past service, is with reference to change of cadre by way of direct recruitment, meaning thereby if a person holding a post in a cadre is directly appointed to a post in another cadre, then he would be debarred from counting past services rendered prior to his fresh appointment. He next submits that the case of the petitioner is not of appointment on any post in another cadre rather it is a consequence of merger of the cadre, hence the rider is not applicable to the petitioner and he comes within the purview of the opening paragraph of the Scheme which merely requires him to undergo 10 and 25 years of service to derive the benefits.

12. For appreciation of the issue, it would be relevant to reproduce the first two paragraphs of the Finance Department's circular dated 6.3.1990 (Annexure-D) relating to the time bound promotion.

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13. The facts are not in dispute and are not being repeated. The only issue which requires determination is whether the entry of the petitioner as a Lower Division Clerk was by way of fresh appointment or was by way of merger of cadre pursuant to a policy decision. The issue would not detain this Court by reason of policy decision placed at Annexure-1 of the interlocutory application dated 21.12.1973 and the consequential order passed on 14.2.1974 placed at Annexure-2 to the interlocutory 1 application. Under the said orders, the Steno-typists were brought within the cadre of Lower Division clerk carrying the same pay scale and it is in this light that the cadre of the petitioner transformed from that of a Steno-typist to that of Lower Division Clerk carrying the same pay scale. It is definitely not a case of fresh entry nor is it a case of direct recruitment rather it is a case of merger of the post(s).

14. There is absolutely no confusion in regard to the non-applicability of paragraph-1 of the Scheme placed at Annexure-D in so far as the petitioner is concerned as it is not a case of recruitment. The case of the petitioner indisputedly comes within the stipulation of opening paragraph of the Scheme and he is fully entitled for grant of promotion on completion of 10 years and 25 years of his service counted from the date of his initial appointment on 17.3.1964.

15. In that view of the matter, the order dated 26.7.2005 passed by the Chief Engineer as contained in Annexure-4 is set aside. The writ petition is disposed of with the direction to the Chief Engineer to reconsider the case of the petitioner and pass appropriate orders for grant of first and second time bound promotion(s) and for the consequential benefits flowing therefrom counting the period of 10 years and 25 years from the date of his initial appointment on 17.3.1964. The exercise aforesaid be completed within a period of three months from the date of receipt/production of a copy of this order.