

(2011) 12 PAT CK 0142
In the Patna High Court
Case No : C.W.J.C. No. 3706 of 1998

Shiva Mangal Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Citation : (2013) 1 PLJR 77

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ahsanuddin Amanullah, J.—Heard Dr. M.P. Shukla, learned counsel for the petitioners and Mr. Arvind Ujjwal, learned counsel for the State. This writ application has been filed for direction upon the respondents to pay the salary to the petitioners, who have been promoted from the post of Junior Engineer to the post of Assistant Engineer with effect from the date of vacancy instead of from the date of joining/taking over charge in the light of Government Circular NOK-104 dated 9th January, 1992.

2. Learned counsel for the petitioners submits that as per the decision of the State Government dated 9.1.1992, it was clearly stipulated that the payments have to be granted from the date from which vacancies arose and not later for the reason that it was felt by the Government that such procedural delay in promotion was against the legitimate expectation of the persons concerned as well as it lowered their morale.

3. Learned counsel has specifically referred to the opening lines of the first paragraph of the State Government decision. In support of his contention learned counsel relied upon the decisions rendered in the following cases:--

(1) Union of India Vs. K.V. Jankiraman, etc. etc., .

(2) Dr. Paras Nath Prasad Vs. State of Bihar and Others, and

(3) Rana Raghunath Pd. Singh and another Vs. The State of Bihar and others, .

4. In view of the aforesaid he submits that though the petitioners were actually promoted in the year 1994 and 1995 but since the posts were vacant from before, they are entitled to be considered for promotion with effect from sometime in the year 1990 and in any case from 9.12.1993, which is the date shown of such vacancies, from the document dated 9.12.1993 as contained in the Annexure-1 of the writ petition.

5. Learned counsel for the State on the other hand from the counter affidavit submits that as per the provisions of Rule 58(a) of the Bihar Service Code pay and allowances are payable from the date the person assumes the duty on the post.

6. Learned counsel has also drawn the attention of this Court to Annexure-2, which is promotion order with regard to petitioners no. 1, 2, 3, 4 and 6, which is dated 18.7.1995 and Annexure-3 with regard to the petitioner no. 5, which is dated 26.3.1994. He submits that in the said order of promotion it was clearly stipulated that the same was being granted with effect from the date of issuance of the said notification. He accordingly submits that in that view of the matter, claim of the petitioner getting any benefit or salary for period prior to that is unsustainable, more so for the reason that the said orders of promotion have not been challenged. Only prayer in the writ petition is that they should be paid their salary from the date of vacancies.

7. Considering the rival submissions, this Court would like to deal with the Government circular dated 9.1.1992. From a plain reading of the same it is obvious that the Government rightly took a decision to ensure that promotions were granted from the date/time when such promotional post became vacant and it was stipulated that the concerned departmental heads or the authority should undertake an exercise in advance so that promotions are not delayed resulting in pecuniary loss to the persons so ultimately promoted. Thus, from the whole tenor of the said Government resolution it is obvious that it was a direction issued as a prospective guideline more by way of caution to take steps in advance so as to prevent any undue delay due to the procedural requirements and the import was that the concerned competent authority should be vigilant from before regarding upcoming vacancies and the eligible should be promoted in time on the post with all the benefits. Thus, the same, at best, are directory and not mandatory in nature.

8. With regard to the decisions relied upon by the learned counsel for the petitioners, this Court would only indicate that though the decisions rendered were to the effect that the persons concerned would be entitled to receive pecuniary benefits to the posts on which they were promoted but the fact in those cases was that the persons were given notional promotion with retrospective dates but from that period they were denied its pecuniary benefits. In the present case the order of the promotion itself makes it very clear that the

said promotion was given from the date of issue of notification. Thus, the decisions relied upon by the learned counsel for the petitioners are not of any help in the facts and circumstances of the present case regarding the relief sought for by the petitioners.

9. It is common ground that pursuant to the notifications promoting the petitioners, they have joined their posts and they are being paid the emoluments of the promotional posts. Further, the contention of the learned counsel for the State is sustainable to the extent that the petitioners not having challenged the promotional order by which no retrospectively has been given to such promotion and they have even accepted the same and the State was also paying accordingly, the present writ application is not entertainable. In view of the aforesaid discussions and considering the facts and circumstances of the case, this Court does not find any merit in the writ petition and the same is accordingly dismissed.