
(2004) 09 PAT CK 0075
In the Patna High Court
Case No : CWJC No. 4361 of 2000

Shri Gupteshwar Nath Upadhyay	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 15-09-2004

Acts Referred:

Citation : (2004) 3 BLJR 1866

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : A.B. Ojha and Vinay Kumar Tiwari, for the Appellant; J.P. Karn, SCGSC and Subhash Pd. Singh SCGSC, for the Respondent

Judgement

Mridula Mishra, J.—Heard learned counsel for the petitioner and the counsel appearing for the respondents.

2. The petitioner has filed this application for a direction to the respondents to make payment of his pre-retiral as well as post-retiral dues and also for quashing the office order contained in Memo No. 756, dated 15.9.1999 issued by the Additional Secretary to the Government of Bihar, Department of Personnel and Administrative Reforms by which the claim of the petitioner for first and second time bound promotion and all consequential benefits relating to the promotion has been rejected.

3. The petitioner was appointed as temporary assistant in the Directorate of Land Acquisition, Bihar, Patna on 2.5.1960 and he was placed on probation on 8.2.1973 for two years. On completion of two years of probation on 8.2.1975 he should have been confirmed as provided under Rule 10 of the Rules Regulating Recruitment of Assistants to the Lower Division of the Bihar Secretariat and some other offices. The petitioner was not confirmed, though other persons junior to him were confirmed on the post. The petitioner was also denied promotion to the higher pay scale and finally he approached this Hon"ble Court by filing CWJC No. 1775 of 1994 which was allowed by judgment and order dated 22.1.1997. In the

writ application it was held that the petitioner is entitled for confirmation on the post of Assistant from the date of his completion of two years probation period with consequential benefits with effect from 8.2.1975. This order was communicated to the department and before any order could have been passed in compliance of the direction issued in the writ application the petitioner retired on 31.1.1997. In compliance of the judgment and order dated 22.1.1997, passed in CWJC No. 1775 of 1994 an office order was issued vide Memo No. 18 Ka-105/94 Ka-3301 dated 30.5.1997 under the signature of the Joint Secretary of the Personnel Department confirming the petitioner to the post of Assistant with effect from 8.2.1975 and first time bound promotion to the post of Junior Selection Grade Assistant in the pay scale of Rs. 1640-60-2600-75-2900/- for the period from 19.2.1986 to 26.3.1996. The petitioner was arbitrarily given first time bound promotion with effect from 19.2.1986 in violation of the Bihar Government Resolution dated 30.12.1981 which provided that an employee is entitled to get two time bound promotions, the first by the end of 10 years of service and second by the end of 25 years of service. The scheme of time bound promotion became effective from 1.4.1981 as per recommendations of the 4th Pay Revision Committee of the Government of Bihar. Since the petitioner joined on 2.5.1960 as an Assistant and he completed ten years of service on 2.5.1970 as well as 25 years of service on 2.5.1985, the first time bound promotion in case of the petitioner became effective from 1.4.1981 in the pay scale of Rs. 850-3-1270-EB-30-1360/- as Junior Selection Grade Assistant and second time bound promotion with effect from 2.5.1985 in the pay scale of 880-35-1270-EB-35-1510/- as Senior election Grade Assistant. The petitioner was also entitled to get revised pay scale of Rs. 2000-3500/- with effect from 1.1.1986 in terms of 5th Pay Revision Committee whereas the petitioner was granted the pay scale of Rs. 1640- 2900/- with effect from 19.2.1986. The petitioner after his superannuation should have been given all post retiral benefits in terms of the order passed by the High Court, but it was not given to him. Then the petitioner again filed CWJC No. 5299 of 1998 for a direction to the respondents to pay the entire retiral dues and also to grant time bound promotion. This writ application was disposed of with a direction to the respondents to consider the representation which had already been filed by the petitioner before the authority. Thereafter the petitioner's representation which was pending before the authority was rejected by order dated 15.9.1999 (Annexure-1) on the ground that since the petitioner had not passed the departmental examination as such he was not entitled for any cadre promotion. The petitioner was reverted to the original post of Assistant from 27.3.1996, and it was also decided by this order that the petitioner was not entitled for second time-bound promotion as he was not possessing qualification for first time bound promotion.

4. It has been submitted by the counsel for the petitioner that the order contained in Annexure-1, is illegal and arbitrary. The petitioner's claim has been rejected on unfounded and imaginary ground. Admittedly the petitioner was confirmed on his post after retirement in compliance of the judgment and order

dated 22.1.1997, passed in CWJC No. 1775 of 1994. In the light of the direction the petitioner was confirmed in his post with effect from 8.2.1975 and by the same order first time bound promotion was given to the petitioner. The benefit of confirmation on the post of Assistant as well as first time bound promotion was given by the authorities to the petitioner vide Memo No. 18Ka- 105/95 Ka 3301 dated 30.5.1997 i.e. subsequent to the superannuation of the petitioner on 31.1.1997. Reference of the Resolution No. 192 dated 19.2.1986 has been given by the respondents in Annexure-1 as a ground for cancelling the first time bound promotion given to the petitioner as well as for non consideration of second time bound promotion which has no application in the case of the petitioner. In the Resolution No. 192 dated 19.2.1986 of Personnel and Administrative Reforms under Clause-IV it has been stated that the persons who has been granted first time bound promotion on completion of ten years without passing the departmental examination, it will be conditional and the employee will have to pass the departmental examination before the publication of the result of departmental examination conducted within two years of the promotion.

5. Since the petitioner has already retired when the order was issued in his favour granting time bound promotion, there was no occasion for him to appear in any departmental examination. The resolution No. 192 issued by the department of Personnel and Administrative Reforms has no application in the case of the petitioner. The ground on which the claim of the petitioner has been rejected is unfounded, arbitrary and fit to be quashed.

6. A counter affidavit and a supplementary counter affidavit has been filed by respondents. It has been stated in the supplementary counter affidavit that the eligibility for the time bound promotion is exactly the same to that of the regular promotion and passing of the departmental examination is quite essential in both cases. So far as the promotion granted and reversion of the petitioner is concerned, the promotion and reversion were in accordance with resolution No. 192 dated 19.2.1986. Even after the publication of result of 2nd time departmental examination when eventually the petitioner could not pass the departmental examination, the promotion which was granted to the petitioner was recalled by resolution No. 756 dated 15.9.1999. It has further been submitted that only completion of ten years of service or more does not confer right to an employee to be promoted in higher scale i.e. first time bound promotion. The promotion was given to the petitioner with effect from 19.2.1986 under the special provision of the government provided in the circular No. 192 dated 19.2.1986 wherein it has been clearly stated that incumbent will have to pass departmental examination in forthcoming examination and if he even then do not succeeds, the promotion given to him will be recalled with effect from the date of publication of the result of the second departmental examination. Since the petitioner has failed to succeed even in the second departmental examination eventually the department was duty bound to recall the promotion previously given to the petitioner.

7. On consideration of the rival contention raised by the petitioner's counsel and the counsel appearing for the State and after going through the records, I am of the view that the order contained in Annexure-1 is illegal and arbitrary, by which the representation of the petitioner has been rejected.

8. Regarding the first time bound promotion and second time bound promotion and other consequential benefits the rejection of petitioner's claim by respondent State is arbitrary. Admittedly the petitioner was not confirmed in the post till the date on which in compliance of the judgment and order passed in CWJC No. 1775 of 1994 dated 22.1.1997, the department issued order of confirmation and first time bound promotion in favour of the petitioner on 30th May, 1997. In this circumstances though the petitioner was confirmed in his post with effect from 8.2.1985 and first time bound promotion was given to him with effect from 19.2.1986 and 26.3.1996, there was no occasion for the petitioner to appear in any departmental examination in compliance of the resolution No. 192 dated 19.2.1986. The petitioner's case stand on a different footing as he was given confirmation and promotion in the light of the judgment and order passed by the High Court in the writ application and cancellation of the promotion and confirmation will amount to disobedience of the order passed in the writ application. There is no occasion for the petitioner to appear and pass the departmental examination as provided under Resolution No. 192 issued by the Finance Department. Since the 1st time bound promotion was given to the petitioner, he is also entitled for second time bound promotion which was also denied to the petitioner. Petitioner is also entitled for all other consequential benefits, occurring to such promotion.

9. On consideration of entire facts and circumstances of the case, the order dated 15.9.1999 contained in Memo No. 756, issued by the department of Personnel and Administrative Reforms is hereby quashed. The respondents are directed to consider and pass the order granting first time bound promotion and second time promotion to the petitioner and all other consequential benefits including all the retiral benefits on account of these promotion. The order should be passed within one month from the date of receipt/production of a copy of this order.

10. With the aforesaid observation/direction this application is disposed of.