
(2020) 02 PAT CK 0335

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19885 Of 2011

Siya Saran Malakar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Citation : (2020) 02 PAT CK 0335

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Shivendra Kishore, Subhash Pd. Singh, Ram Kinkar Chaubey

Final Decision : Allowed

Judgement

Heard learned counsel for petitioner, learned counsel for the State as well as learned counsel for the Accountant General.

The petitioner was initially appointed as Daily Wage Casual basis to perform duty of Class-III post on 17.08.1973. He was subsequently regularized by order dated 05.08.1978 bearing Memo no.3810. The regularization, however, was retrospective w.e.f. 20.4.1974. Since the Bihar State dairy Corporation decided to wind up in December, 1984, the petitioner was, therefore, absorbed in the Class-III post in the office of District Magistrate, Rohtas, on a Class-III post of Junior Accounts Clerk. The absorption of the petitioner was under order dated 29.07.1986. Subsequent thereto, the petitioner joined in the office of the District Magistrate -cum-Collector, Rohtas, on 06.09.1986.

The petitioner's grievance is that the entire period of Government service rendered in the Corporation prior to his absorption in 1986 has been ignored for the purposes of ascertaining his entitlement to benefits under the then existing Time Bound promotion and subsequently the ACP Scheme. During the pendency of the writ proceedings, the State has filed counter affidavit and supplementary counter affidavit. The position that emerges from the pleadings is that benefits under 1st ACP as well as 2nd ACP has been sanctioned in favour of the petitioner.

The benefits under the 1st A.C.P. was directed under order dated 22.10.2008. The petitioner, thereafter, as per averments made in paragraph No.6 of the supplementary counter affidavit filed on behalf of Respondent Nos. 2 and 3, has been sanctioned benefit under the 2nd MACP, pursuant to the decision of the Screening Committee, in its meeting dated 21.09.2016.

The sanctioning of the benefits in favour of the petitioner, however, does not bring to an end to the petitioner's sufferings. In spite of such sanction in favour of the petitioner, long back, the submissions advanced today, in Court, on instructions, is that till date the financial benefits under the said two decisions have not been paid to the petitioner. The callousness and administrative apathy requires the least to be said. The other aspect of the claim raised by the petitioner is that the others, who were serving in the Dairy Corporation and had subsequently been absorbed in the State service along with the petitioner in 1996, have been allowed the counting of services in between their regularization and absorption in the State service notionally for the purposes of grants of benefits under the Time Bound/ACP Scheme.

In this connection, the petitioner's counsel places reliance on the decision in the case of Vijay Shankar Choudhary and others Vs. The State of Bihar & Others titled as CWJC No. 4616 of 1996 (Annexure-3 of the writ petition). This Court, in the writ proceedings, arising out of CWJC No. 4616 of 1995, has clearly recorded as follows:

"Admittedly, most of the petitioners were appointed on regular basis under the Corporation in between 1974-76. By the time, petitioners were taken in service of the State, vide order dated 7th March 1986 (Annexure-9), most of the petitioners had completed 10 years of service under the Corporation. In terms with the State Government Circular dated 15th February 1988 (Annexure 19), read with Circular dated 6th October 1988 (Annexure-19/1), petitioners became entitled for time bound promotion under the Corporation prior to 7th March, 1986 i.e. prior to their absorption under the respondent State. In this background, petitioners who had completed 10 years of service prior to 7th March 1986 (the date of absorption under the respondent State), they are entitled for notional time bound promotion under the Corporation and on absorption, they are entitled for such pay protection. In this view of the matter, respondents are duty bound to count the services rendered by the petitioners under the respondent Corporation for the purpose of providing them the benefit of time bound promotion. If such benefit is not given in favour of petitioners, it will be discriminatory and will not only be violative of the guide lines of the State Government issued by Circular dated 15th February 1988 (Annexure-19) read with circular dated 6th October 1988."

The Court, however, after recording the entitlement of the petitioner, had remitted the matter back to the respondent - Director, Animal Husbandry to pass fresh orders in light of the observations made by this Court, which has been taken note of hereinabove. It is the petitioner's case that the benefits counting

the period, prior to their absorption in State services, notionally, for the purposes of grant of benefits under the ACP, has been extended to the petitioners of the said writ petition, however, in respect of the instant writ petitioner the same benefit has not been granted. Specific query was made by this Court to learned counsel representing the State as to what is the point of distinction between Vijay Shankar Choudhary petitioner of CWJC No. 4616 of 1995 and the instant petitioner, learned counsel, however, is not in a position to point out any distinction for no such distinction has even been specified in the pleadings filed on behalf of the State.

In view of the foregoing discussions, this Court would hold that after sanction for grant of benefits under the ACP Scheme, contained in the two orders dated 22.10.2008 and 21.09.2016, there can be no justification for withholding the monetary benefits, as a consequence thereof, for such a long period. The respondent no.2, therefore, is directed to ensure payment of the due and admissible amounts to the petitioner along with chart showing the details of calculation of the benefits,, pursuant to the decisions dated 22.10.2008 and 21.09.2016 granting first and second Time Bound promotion respectively. The other claim of the petitioner, based on parity with the petitioners of CWJC No. 4616 of 1995, is also upheld. Moreso, in view of the fact that no distinction has been made between the petitioner and the petitioners of said writ proceedings, this Court would only reiterates that during pendency of the instant writ proceedings the Bihar State litigation Policy, 2011 has also come into play. Clause 4.C(1) of the Bihar State Litigation polity 2011, contemplates grants of benefits to cases which are considered as "Covered matters". Since no point of distinction has been raised with the petitioners of CWJC No. 4616 of 1995 and the instant writ petitioner, the irresistible conclusion is that the petitioner's case would be a "Covered matters" by the decision of CWJC No.4616 of 1995, and the petitioner would be entitled to counting of his period of service in between 1974 and 1986 as has been done in the case of CWJC No. 4616 of 1995. The writ petition is, therefore, allowed. The Authorities are directed to make payment of the dues under the Sanction order dated 22.10.2008 and 21.09.2016 expeditiously, without any undue delay, along with the calculation chart as directed within a period of eight (08) weeks from the date of receipt/production of a copy of this order. The specific order granting benefits to the petitioner at par with petitioners of CWJC No. 4616 of 1995 should also be issued in favour of the petitioner positively within the same specified time.