

(2010) 09 PAT CK 0050
In the Patna High Court
Case No : CWJC No. 12770 of 2005

Sri. Ram Shankar Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0050

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Heard learned Counsel for the parties.

2. Petitioner is a retired employee who superannuated on 31.7.2004. Writ has been filed because the Respondents have refused the claim of the Petitioner for promotion after his superannuation. The order communicated to Petitioner is dated 14.7.2005 which is being challenged in the present writ application. He further wants a direction upon the Respondents to promote him on the post of Town Planner from 1.12.1999 and on the post of Chief Town Planner from 1.12.2001.

3. Petitioner had earlier approached this High Court for a similar direction. The High Court instead of deciding his claim on merit of the matter, allowed the Petitioner to approach the Respondents with a representation which was to be decided within a time frame of three months. As no decision was taken, a contempt application was filed, but nothing substantial emerged from the exercise. However a decision was communicated to Petitioner that since he has superannuated the exercise of granting him promotion to the two posts may not be required to be gone into.

4. Contention of learned Senior Counsel representing the Petitioner is that he is willing to give a go by to the benefits of monetary kind if only notional promotion is given as it will only reflect on his pension and nothing more. He pleads discrimination besides the fact that he is/was eligible in every respect, fulfilling all the criteria. It is also urged that the posts were vacant so he was entitled to

be promoted and beget benefits of promotion to the two posts.

5. It is not in dispute that Petitioner entered the service under the Respondents State and worked for a while under Urban Development Department before he went on deputation to the Marketing Board on 15.3.1982. He served the said Marketing Board till 16.8.1999 and on his return the litigation started seeking benefit of promotion to the two vacant posts which have been available in the department to which the Petitioner became a claimant, as is evident from the pleadings in the writ application.

6. The stand of the State in the counter affidavit is that on return of the Petitioner from the Marketing Board his service condition etc. was required to be put in place. Matter of grant of promotion to the Petitioner cannot be decided in isolation as there are many factors which go into the consideration in matters of grant of promotion to an employee. First the service condition has to be settled, roster clearance has to be taken, clearance of the vigilance and approval of Bihar Public Service Commission is required and then the question of eligibility of the Petitioner and may be others could be considered. When the Petitioner came before this Court earlier, based on his claim in the representation, the said exercise was initiated but since the Petitioner retired on 31.7.2004 the matter came to an end because it would be only academic exercise to decide whether the Petitioner was eligible for promotion at the relevant time and he could be given promotion.

7. No employee has a right to promotion but he has only right to be considered for promotion according to rules. Chances of promotion are not conditions of service and are defeasible. Mere assertion that the two posts were vacant by itself does not confer any right on the Petitioner to occupy the post by promotion as a matter of right, long past the date of superannuation.

8. Nothing has been pleaded or brought on record to show that mere seniority was good enough to claim the benefit. No rules or guidelines or policy has been brought to the notice of this Court to interfere with the order of rejection contained in Annexure-1. Hon"ble Supreme Court in the case of I. Chuba Jamir and Others Vs. The State of Nagaland and Others, had this to say:

It is elementary and well settled that mere eligibility does not confer any right for promotion.

9. The stand of the State is that the claim of notional promotion even at this stage is more academic seems to be correct. Merely because certain posts were vacant it does not mean that Petitioner is entitled for promotion after retirement to beget the benefits without serving the post even for a day. These are litigations which are not based on any bona fide claim or assertion; based on any legal or constitutional right. Judged from the principle laid by the Hon"ble Supreme Court Petitioner has no case.

10. This writ application has no merit and it is dismissed.