

(2014) 08 PAT CK 0033

In the Patna High Court

Case No : Letters Patent Appeal No. 479 of 2014

State of Bihar

APPELLANT

Vs

Sahodara Devi

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) LabIC 4052

Hon'ble Judges : I.A. Ansari, J;Anjana Mishra, J

Bench : Division Bench

Advocate : Mayank Rukhaiyar, Advocate for the Appellant; K.B. Verma and Manoj Kamal, Advocate for the Respondent

Judgement

I.A. Ansari, J.—Hanuman Singh (since deceased), husband of Sahodara Devi, who is the sole respondent herein, was appointed as a Junior Engineer, Public Health Engineering Department, Government of Bihar, on 31.08.1959. He was promoted as an Assistant Engineer with effect from 05.03.1979. Thereafter, he was provisionally made in-charge, Executive Engineer, Public Health Division, Aurangabad, on 16.06.1993. By a notification, dated 31.12.1993, the State Govt., however, directed him to continue to work as In-charge Executive Engineer until further order. Hanuman Singh superannuated, on 30.11.1996, while functioning as officiating Executive Engineer, his substantive appointment being Assistant Engineer. Hanuman Singh, while alive, filed a writ petition, under Article 226 of the Constitution of India, in the year 2000, that is, after four years of his superannuation. By the writ petition, Hanuman Singh sought for issuance of a writ commanding the respondents to grant him notional promotion to the post of Executive Engineer with effect from 16.06.1993, when he had been provisionally made in-charge of the office of the Executive Engineer, Public Health Division, Aurangabad and consequential financial benefits accruing therefrom. This writ petition gave rise to C.W.J.C. No. 2532 of 2000, which came to be disposed of, on 04.03.2005, with the following directions:

"Considering the facts and circumstances of the case and for reasons aforementioned, respondent authorities are directed to consider the case of petitioner (Hanuman Singh) for grant of notional promotion to the post of Executive Engineer with effect from 16.6.1993 and to take a decision in the matter within a period of three months from the date of receipt/production of a copy of this order.

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

2. Having considered the petitioner's case for notional promotion as had been directed by the Court in C.W.J.C. No. 2532 of 2000, Public Health Engineering Department, Govt. of Bihar, vide memo No. 95, dated 28.02.2006, an order rejecting Hanuman Singh's case for granting him notional promotion. This was followed by publication of an order, in this regard, by the State Government on 15.05.2006. Without raising any grievance against the State Government's decision not to grant him notional promotion, Hanuman Singh died on 15.07.2006.

3. In the backdrop of the above facts, Hanuman Singh's widow, who is the sole respondent herein, filed a writ petition, under Article 226 of the Constitution of India, which came to be registered as C.W.J.C. No. 11297 of 2006, whereby she sought for the following reliefs:

(a) to quash the order contained in letter No. 1/Nyay-1-1014/2000-09 dated 28.2.2006 of Secretary, P.H.E.D., Government of Bihar (Respondent No. 2) rejecting the claim of the husband of the petitioner for promotion as Executive Engineer from due date of existing vacancy and at least with effect from 16.6.1993 till his date of superannuation i.e., 30.11.1996;

(b) to direct the respondents to pay to the petitioner, who is legal representative and heir of Hanuman Singh (since deceased) all legally admissible consequential financial benefits, such as due pay and allowances on account of promotion and resultant admissible retrial benefits including enhanced family pension payable to the petitioner;

(c) to direct payment of interest at the rate of 12% per annum over arrears due with exemplary costs.

4. By order, dated 07.09.2012, a learned single Judge of this Court has disposed of the writ petition by directing the Secretary, Public Health Engineering Department (P.H.E.D.), Government of Bihar, to ensure, immediately, that the respondent's husband's remuneration for the period, in question, including his retrial dues are calculated in the grade of Executive Engineer and the same be paid within six months from the date of filing of the representation, along with a copy of this order, with the respondent concerned.

5. Aggrieved by the order, dated 07.09.2012, aforementioned, the State has preferred this appeal.

6. We have heard Mr. Mayank Rukhaiyar, learned Assistant Counsel to Government Advocate No. 1, appearing for the appellant, and Mr. K.B. Verma, learned counsel for the respondents.

7. While considering the present writ petition, it needs to be born in mind that during his life-time, Hanuman Singh did not raise any objection to the order, dated 28.02.2006, and/or the order, dated 15.05.2006, whereby his claim for notional promotion and consequential payment of salary and other retiral benefits were rejected by the State Govt. nor did he make any representation against the said order or file any case. There is nothing on record to show that he was aggrieved by the Government's ultimate decision, which was published on 15.05.2006.

8. Hanuman Singh, thus, acquiesced to the State Government's decision rejecting his claim for notional promotion and financial benefits as has been indicated above.

9. What surfaces from the above discussions is that the sole respondent's husband, Hanuman Singh, while alive, was not an aggrieved person and when he was not aggrieved, no right can be said to have accrued to his widow to raise claim for her husband's notional promotion to the post of Executive Engineer with effect from 16.06.1993.

10. Had Hanuman Singh filed any case, then, the present respondent could have pursued the case as the legal representative of her deceased husband. However, when no such case was filed by the respondent's husband, Hanuman Singh, against the State Government's decision declining to grant him notional promotion to the post of Executive Engineer and/or to give him any financial benefit as had been claimed by him, no right to sue can be said to have accrued to the present respondent as widow of deceased Hanuman Singh.

11. While considering the above aspect of the case, it is also worth noting that the writ petition, which the present respondent has filed, does not give even slightest indication that her husband, while alive, was aggrieved by the Govt's decision rejecting his claim for notional promotion to the post of Executive Engineer. There is neither anything in the pleading explaining as to why her husband did not raise any objection to the State Government's decision as indicated above nor is there any explanation offered by the respondent or discernible from the materials on record in this regard. When the respondent's husband never acted as an aggrieved person by the ultimate decision of the State Government, his widow could not have been heard to say that her husband ought to have been granted notional promotion to the post of Executive Engineer and consequential financial benefits accruing there from. Respondent's husband not being an aggrieved person, no right can be said to have accrued to the respondent to file any writ petition seeking the reliefs, which she claimed. This aspect of the matter has escaped the attention of the learned single Judge.

12. In the facts and attending circumstances of the present case as indicated

above, we have no hesitation in holding that the respondent's writ petition ought not to have been allowed.

13. In the result and for the reasons discussed above, this appeal succeeds and the impugned order, dated 7.9.2012, aforementioned, passed in C.W.J.C. No. 11297 of 2006, is hereby set aside.

14. The appeal shall accordingly stand disposed of.

15. No order as to costs.

Anjana Mishra, J.

I agree.