
(2019) 11 JH CK 0013

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 57 Of 2019, I.A. No. 920, 2520 Of 2019

State Of Jharkhand And Ors

APPELLANT

Vs

Nawal Kishore And Ors

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Bihar Financial Rules, 1950 — Rule 58, 74

Citation : (2019) 11 JH CK 0013

Hon'ble Judges : H.C. Mishra, CJ;Deepak Roshan, J

Bench : Division Bench

Advocate : C.A. Bardhan, Shubham Mishra

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the appellant State.
2. The appellant State is aggrieved by the impugned Judgment dated 30.1.2018, passed by the Hon'ble Single Judge, in WP(S) No.5410 of 2010, whereby the writ application filed by the respondents was allowed by the Hon'ble Single Judge, giving them the pay protection on the post, on which they were promoted with retrospective effect.
3. This appeal has been filed after a delay of 326 days, and for condoning the delay, I.A. No.2520 of 2019 has been filed. Another I.A. No.920 of 2019 has been filed for staying of the operation of the impugned Judgment.
4. The impugned Judgment shows that in spite of the availability of the posts, the writ petitioners were denied the due promotion and only after the order passed by this Court in WP(S) No.6250 of 2006, and the contempt application filed for implementation of the order passed in WP(S) 6250 of 2006, the writ petitioners were given promotion to the higher posts in Jharkhand Education Service, Class-II (Inspecting Branch), with retrospective effect.
5. The writ petitioners were denied the benefit of salary from retrospective

effect, for which, the writ petitioners had to approach this Court again in WP(S) No.5410 of 2010. Admittedly the promotion with retrospective effect with all financial benefits had also been given by the State to the similarly situated persons, which were brought on record before the Writ Court by way of Annexures 4 & 5.

6. The sole contention of the State before the Writ Court was that the petitioners were not entitled to the back salary in view of Rules 58 and 74 of Bihar Financial Rules. The Hon'ble Single Judge has quoted these Rules in the impugned Judgement, and has relied upon the decision of the Patna High Court in *Ranjit Sahay Jamuar & Another Vs. State of Bihar & Ors.*, reported in 1999 (1) PLJR 272, wherein those Rules have been discussed by the Court, holding that those Rules envisage promotions given in the normal course of administration and at due time when the right to promotion accrued to the concerned employee. These Rules do not, by any stretch of imagination, deal with cases where promotions were given not at the due time, but with retrospective effect, not for any fault on the part of the concerned employee, but due to the laches and mistakes committed by the department. The Writ Court also relied upon the decision in *Md. Hafiz Vs. State of Bihar and Ors.*, reported in 2003 (2) PLJR 44, laying down the same principle of law, and allowed the writ application, asking the respondent State to pass appropriate order for grant of financial benefits to the writ petitioners. Aggrieved thereby, the present appeal has been filed by the respondent State.

7. Learned counsel for the appellant State has argued that the impugned Judgment passed by the writ Court cannot be sustained in the eyes of law, in view of Rules 58 and 74 of Bihar Financial Rules. Learned counsel has also placed reliance upon a decision of the Apex Court passed in Civil Appeal No(S) 4594-4595 of 2017, in *Sunaina Sharma & Ors. Vs. State of Jammu and Kashmir & Ors.*, decided on 26th October 2017.

8. The facts of Sunaina Sharma's case, are however, different from the present case, inasmuch as, according to the facts in Sunaina Sharma's case, the retrospective promotion to the officer was dependent also upon the fact that the person should have worked against that post, and in that view of the matter, the financial benefit was not given with the retrospective effect, in that case. In the aforesaid case there appeared to be laches on the part of the State in giving the promotion to the employee, whereas, in the present case, the promotion was denied to the writ petitioners solely due to the laches of the State Government, and the promotion had been given to the petitioners with retrospective effect, only after the order passed by this Court in WP(S) No.6250 of 2006, and after filing the contempt application for implementation of the order. In that view of the matter, we are of the considered view that the Hon'ble Single Judge has rightly relied upon the decisions in *Ranjit Sahay Jamuar's* case and *Md. Hafiz's* case (*supra*), for holding that in the facts of this case, the respondent writ petitioners were also entitled to get the financial benefits with retrospective

effect from which they were promoted to the post.

9. We do not find any illegality in the impugned Judgement passed by the Writ Court in WP(S) No.5410 of 2010, worth any interference in the LPA jurisdiction.

10. Since there is no illegality in the impugned Judgement, no useful purpose is going to be served by condoning the delay in filing the appeal, and no question arises for staying the operation of the impugned order.

11. Consequently, this appeal stands dismissed, being bereft of any merit and barred by limitation. Both the interlocutory applications also stand disposed of.