

(2007) 04 JH CK 0025
In the Jharkhand High Court

State of Jharkhand and Others

APPELLANT

Vs

Umesh Mehta and Others

RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Citation : (2007) 4 JCR 332

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal under Clause 10 of the letters patent has been filed by the respondent-State against the judgment dated 7.8.2006 passed by learned single Judge in WPS No. 2988 of 2004 whereby the petition was allowed with a direction to the appellant (respondent in the writ petition) to release the monetary benefits to the petitioners with effect from the date, the petitioners/respondents were made in-charge Executive Engineer in the light of the judgment passed by this Court in CWJC No. 6167 of 1992 and CWJC No. 596 of 1999{R) decided on 22.1.2001.

2. Respondents/petitioners filed WPS No. 2988 of 2004 seeking direction upon the appellant-State to grant benefit of promotion from the date they were made in-charge Executive Engineer. Petitioners case was that while working as Assistant Engineer, they were made In-charge with effect from 30.6.1998, where as petitioner Nos. 2 and 3 were made in-charge with effect from December 1999, Subsequently, petitioners were granted promotion to the post of Executive Engineer on substantive basis vide order dated 13.6.2002. Petitioner No. 1 was granted promotion with effect from 1.2.2000, petitioner No. 2 with effect from 1.8.2000, petitioner No. 3 with effect from 1.4.2000 and petitioner No. 4 with effect from 1.4.1998 with monetary benefits with effect from date of Notification i.e., 13.6.2002. The grievance of the petitioners before the learned single Judge was that similarly situated persons were granted promotion from the date they were made In-charge Executive Engineer. Petitioners, put reliance upon the

decision of a Division Bench of Patna High Court in CWJC No. 6167 of 1992 and also on the decision rendered in CWJC No. 596 of 1999 (R). Petitioners further case is that these judgments have been implemented by the State. Learned single Judge, therefore, allowed the writ petition in terms of the order passed in the aforementioned writ petitions and directed the respondent-State to release the monetary benefits. The judgment and order dated 7.8.2006 which is impugned in this appeal is quoted herein below:

Petitioners while working as Assistant Engineers were made Incharge Executive Engineer. Petitioner No. 1 was made Incharge on 30.6.1998 whereas petitioner Nos. 2 and 3 in December, 1999. Now petitioners have been granted promotion as Executive Engineer on substantive basis vide order dated 13.6.2002, petitioner No. 1 w.e.f 1.2.2000, petitioner No. 2 w.e.f 1.8.2000, petitioner No. 3 w.e.f. 1.4.2000 and petitioner No. 4 w.e.f. 1.4.1998 with monetary benefit w.e.f. from the date of the notification dated 13.6.2002.

The grievance of the petitioners is that similarly situated persons were granted benefit of promotion from the date they were made Incharge.

Reliance has been placed upon a Division Bench judgment of the Patna High Court in CWJC No. 6167/1992 decided on 2.8.1993. It is further stated that another writ petition CWJC No. 596/99 (R), Sajjad Hassan and Ors. v. The State of Bihar and Ors. Was decided in terms of the aforesaid judgment. A copy of the order dated 22.1.2001 passed by High Court in CWJC No. 596/1999(R) is also placed on record. These judgments have been implemented by the State as is evident from order dated 9.05.2003 passed by the Commissioner-cum-Secretary, Drinking Water and Sanitation Department, Government of Jharkhand. Petitioners are similarly situated except petitioner No. 4 on whose behalf statement is made at the bar that petition is not pressed, therefore, petition in respect of petitioner No. 4 is dismissed.

In the above circumstance, this petition is allowed with a direction to the respondents to release monetary benefits in favour of petitioners w.e.f. the dates they were made Incharge in the light of the judgment of this Court in CWJC No. 6167/1992 and later judgment in CWJC No. 596/1999(R) decided in 22.1.2001,

Let final order be passed within a period of three months.

3. Mr. Shamim Akhtar, learned standing counsel No. II has assailed the impugned judgment passed by learned single Judge as being contrary to law and facts on the record. Learned Counsel firstly submitted that the decision relied upon by the petitioners does not apply in the instant case for the reason that petitioners of those writ petitions were promoted to the post of regular Executive Engineer with effect from the date they have been made incharge Executive Engineer. Learned Counsel further submitted that the order dated 13.6.2002 by which petitioners were given promotion since 2000 and 1998 was not challenged at any point of time rather they were satisfied with the promotion order. Hence, the petitioners cannot be allowed to claim monetary benefits with effect from the date they were

made In-charge Executive Engineer.

4. Before appreciating the submission made by the learned Counsel for the State, it would be appropriate first to consider the decision rendered in the writ petitions upon which learned single Judge, relied upon.

5. In CWJC No. 6167 of 1992, the petitioner Bhim Sen Singh filed writ petition seeking direction upon the respondent/State for grant of selection grade scale of Assistant Engineer with effect from 16.9.1987 and for granting promotion to him as Executive Engineer in Public Health Engineering Department with effect from 27.4.1989. Petitioner's further case was that persons junior to him were granted selection grade scale as Assistant Engineer with effect from 16.9.1987 by the Government Order dated 9.12.1991. It was also contended by the petitioner that he was made In-charge Executive Engineer from 27.4.1989 and he continuously functioning as Executive Engineer since that date. But he has not been granted regular promotion as Executive Engineer inspite of the fact that Bihar Public Service Commission found him fit for promotion as Executive Engineer and recommended as such. According to the petitioner he was entitled to the aforesaid promotion but the same has not been granted to him as the State Government was of the view that petitioner has made payment of sum of Rs. 8,20,563.60 to one Agro Art Industries contrary to the Government instruction. Respondents-State in the counter-affidavit has not disputed the fact that petitioner was found fit for grant of aforesaid two promotions but he was not granted the same, as according to the State, petitioner had violated the aforesaid order of the State Government. A Division Bench of the Patna High Court has held that since petitioner has not violated any order of the State Government, the Court is of the view that the State Government is bound to grant two promotions to the petitioner as the petitioner has been otherwise found fit for promotion. The Court further held that since, other persons have been granted promotion with effect from the date they are discharging duties of the Executive Engineer. The relevant portion of the judgment rendered in CWJC No. 6167 of 1992 is quoted herein below:

From the counter-affidavit filed on behalf of State, it becomes plain that the petitioner was found fit for grant of the aforesaid two promotions, but he was not granted the same, as according to State, the petitioner had violated the aforesaid order of the State Government. Since we have already held that the petitioner has not violated any order of State Government, therefore, we are of the view that State Government is bound to grant the aforesaid two promotions to the petitioner as the petitioner has been otherwise found fit for promotion.

A copy of the order dated 17.2.1990 contained in Annexure-13 has been brought to our notice which shows that three persons, namely, Baleshwar Prasad Singh, Subodh Kumar and Brij Bihari Ojha, who are undisputedly junior to the petitioner in the cadre of Assistant Engineer, have been granted selection grade scale as Assistant Engineer with effect from 16.9.1987. Since, the petitioner is senior to them and his promotion was erroneously withheld by State. We do not find any

reason why the petitioner be not granted selection grade scale as Assistant Engineer with effect from 16.9.1987.

Learned Counsel for the petitioner has further brought to our notice the Government order contained in Annexure-17 on the basis of the recommendation (Annexure-16) which shows that several other persons have been granted promotion as Executive Engineer from the date they were either promoted as Executive Engineer on ad hoc basis or were allowed to work as In-charge Executive Engineer. The petitioner has been working as In-charge Executive Engineer with effect from 27.4.1989 which will be apparent from the order contained in Annexure-2, which order was issued on 27.4.1989. According to the petitioner, he is continuously discharging the functions as Executive Engineer from 27.4.1989 till this date. Since other persons in similar circumstances, have been granted regular promotion under Government order contained in Annexure-17 from the date they are discharging functions of Executive Engineer as In-charge, we do not find any reason why the petitioner should not be granted similar relief.

In view of the aforesaid facts, this writ application is allowed and the respondents are hereby directed to give selection grade scale as Assistant Engineer to the petitioner with effect from 16.9.1987. They are further directed to promote the petitioner as Executive Engineer with effect from 27.4.1989 on regular basis. The aforesaid two orders must be passed within a period of two months from the date of receipt/production of a copy of this order. The petitioner shall be paid arrear salary pursuant to the grant of the aforesaid promotions within a period of one months from the date the orders of promotion are passed.

This writ application is accordingly allowed.

6. Learned single Judge also relied upon the order passed in CWJC No. 596/99(R). From perusal of the order, it transpires that the said writ application was disposed of in terms of the direction issued by the Division Bench in CWJC No. 6167/92. A copy of the order dated 22.1.2001 passed in CWJC No. 596/99(R) has been annexed as Annexure-4 to the writ application, which reads as under:

Heard the parties. Mr. Merathia, G.P. II fairly concedes that this case is fully covered by decision of a Division Bench of this Court dated 28.3.1993, in CWJC No. 6167 of 1992, a copy of whereof has been annexed as Annexure-4. Accordingly, this writ application is disposed of in terms of the aforesaid decision.

7. In the instant case, as noticed above, petitioners/respondents were appointed as Assistant Engineer in Public Health Engineering Department on the recommendation of Bihar Public Service Commission In the year 1986-87 and were working as such and In course of their working as Assistant Engineer, they were allowed to hold higher post of Executive Engineer in between June 1998 to December 1999 and subsequently thereof, petitioner No., 1 started discharging his duties as In-charge Executive Engineer with effect from 30.6.1998, petitioner

Nos. 2 and 3 with effect from December, 1999 and petitioner No. 4 since 1998. In the original writ petition relief sought for by the petitioners was for grant of monetary benefits with effect from their actual joining to the promoted post from the date of their actual promotion in 2002 in case of first three petitioners and from 1998 in case of fourth petitioner. There was no prayer made by them in writ petition that they should be given promotion from the date they had been made In-charge Executive Engineer. The writ petitioners also did not claim promotion with effect from the date they were posted as In-charge Executive Engineer or from, the date they joined as In-charge Executive Engineer. On the contrary, petitioners prayer was that they should be given promotion to the post of Executive Engineer from the date of their actual joining on the post of In-charge Executive Engineer. Further it appears from the writ petition that petitioner did not made out a case in the writ petition that they were eligible for promotion to the post of Executive Engineer with effect from the date they had been made in-charge Executive Engineer. In our view, therefore, ratio decided in CWJC No. 6167/1992 will not be applicable in the case of the petitioners. From the judgment and order passed in CWJC No. 6167/92, it transpires that in that case, petitioner was made In-charge Executive Engineer on 27.4.1989 and subsequently, he was found fit to be promoted to the post of regular Executive Engineer with effect from 27.4.1989 but promotion was withheld by the State Government on the ground that some financial allegations have been leveled against the petitioner. The Division Bench of Patna High Court considered, the entire facts and held that allegation leveled against the petitioner regarding financial irregularities was not correct and in view of the fact that petitioner was found fit and eligible for promotion to the post of Executive Engineer, withholding of such promotion was not justified and petitioner was entitled to promotion to the post of regular Executive Engineer with effect from 27.4.1989, since the date he was found fit for promotion to the regular post.

8. Having regard to the entire facts and circumstances of the case, in my considered opinion, learned single Judge is not correct in issuing direction for payment of monetary benefits with effect from the date they were made in-charge Executive Engineer. The impugned judgment of learned single Judge is, therefore, cannot be sustained in law.

9. For the aforesaid reasons, this appeal is allowed and the impugned judgment passed by learned single Judge is set aside.