

(2016) 01 PAT CK 0115

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1343 of 2014

Sudhir Kumar Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 PLJR 825

Hon'ble Judges : Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Sudhir Kumar Singh, Advocate, for the Appellant; Mr. Satyendra Rai, AC to SC 30, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.(Oral) - Petitioner retired from the post of Senior Dy.S.P. under the State of Bihar. He had earlier moved the High Court by filing CWJC No.17569 of 2011 when he missed out from the benefit of grant of promotion to the post of Additional Superintendent of Police. A copy of the order passed in the writ application is Annexure-18. The date of the order is 6.2.2012. The learned Single Judge after considering the various facets of dispute as well as the vacancy position directed the authorities to consider his claim and pass a speaking order. The speaking order was passed on 20.3.2012, by virtue of which his claim has been rejected on the ground that since the petitioner superannuated on the date the DPC had met, there was no occasion to grant him benefit of promotion. It is this order contained in Annexure-19, which is under challenge in IA No.2072 of 2014. The said IA stands allowed.

2. A reading of the order contained in Annexure-19 does indicate the position with regard to consideration of the claim of the petitioner and the reason for non-recommendation from time to time. The initial non-recommendation of the petitioner in the meeting dated 28.9.2010 cannot be said to be faulty looking at the vacancy position. But subsequently when the DPC met and since the

petitioner completed five years of "dokyof/k" the DPC met on 22.11.2010 and found the petitioner fit for promotion as would be evident from Annexure-9. However, the DPC also directed to seek a fresh response with regard to three roster points meant for general category candidates. By the time the clarification came, the petitioner had superannuated on 30.11.2010 and that became the reason for non-grant of promotion as well as reason for rejection by the speaking order contained in Annexure-19.

3. Submission of the counsel for the petitioner is that there was a deliberate mischief played to deny the opportunity of promotion or the benefit of promotion to the petitioner. It was only after the clarification on the roster point and vacancy position was clearly made known to the DPC that the DPC met on 22.11.2010. The DPC did find the petitioner fit for promotion because the remarks against the name of the petitioner is "izksUufr ds ;ksX;". What is of significance is the recommendation of the DPC in favour of petitioner. Any clarification with regard to roster point even if it was sought by the committee is of no avail so far as the right of the petitioner is concerned. Petitioner was found fit. The roster point did not get altered in any manner after the clarification. Therefore, the whole object of seeking the clarification was to ensure that the petitioner retired in the meantime so that his juniors could avail benefit of such promotion and the petitioner was made to lose out since his superannuation was imminent on 30th of November, 2010.

4. No amount of explanation being offered by the State comes in the way or right of the petitioner being promoted after the recommendation of the DPC. Recommendation of the DPC was in place on 22.11.2010. If there was no change in the roster position or vacancy position the clarification sought was clear case of mischief. The recommendation of the DPC in favour of the petitioner on 22.11.2010 shall form the basis for grant of promotion even if he had retired. However, it is made clear that this promotion will be only a notional promotion since the petitioner has already superannuated. The impugned order contained in Annexure-19 stands quashed. The respondents are directed to issue necessary order in favour of the petitioner within a period of three months from the date of production of a copy of this order. After issuance of the notification, pension etc. of the petitioner may be reworked.

5. Writ is allowed.