(2011) 08 PAT CK 0137

In the Patna High Court

Case No : CWJC No. 7349 of 2011

Sukdeo Giri		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Miscellaneous Rules of the Board of Revenue, Bihar, 1958 — Rule 157(3)(J)

Citation : (2011) 4 PLJR 182

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—The speaking order dated 16.3.2011 (Annexure-4) passed by the Superintending Engineer, Road Construction Department, Road Circle, Saharsa is the bone of contention in the present case. The petitioner had approached the High Court earlier in C.W.J.C. No. 1882 of 2002 in which the High Court allowed the petitioner to file representation before the authorities to consider the claim raised therein, pay the lawful claim or pass a reasoned order. A reasoned order, therefore, has now been passed rejecting the claim of the petitioner on two counts which this Court is required to take note of.

2. The first issue is the grant of increment to the petitioner on account of passing of Hindi Noting and Drafting Examination. This claim of the petitioner has been rejected after taking note of the history of the service of the petitioner. Said order indicates that the petitioner may have passed Hindi Noting and Drafting Examination in December, 1963 but that passing of examination cannot be taken into consideration because the petitioner had worked under Sone Bridge Division between 1.3.1963 and 31.5.1966 and he was retrenched on completion of the project. Appointment of the petitioner under the Public Works Department/Road Construction Department was made a fresh on 18.7.1966 in Ganga Bridge Project and the petitioner joined the service on 19.7.1966. Since past service of the petitioner got wiped out due to new appointment, his passing of Hindi Noting

and Drafting Examination earlier cannot be taken into consideration.

3. Learned counsel for the petitioner submits that passing of Hindi Nothing and Drafting Examination by an employee is only to test his skill for putting up notes or preparing drafts in a file under the State. The employees had been encouraged to pass the examination as a certificate of proficiency in this regard. His contention is that in the case of the petitioner, even though the earlier service came to an end on his retrenchment but his appointment afresh was under the State and the employer remained the same which is the State of Bihar. Just because the petitioner was appointed in a project floated by the World Bank which ended in 1966 and he was retrenched, it does not mean that the proficiency which the petitione had received during that period would be wished away.

4. Learned counsel for the petitioner makes a categorical submission that he is looking for the benefit of increment on the basis of his passing Hindi Noting and Drafting Examination at that time and on that basis he will not, in any way, claim other benefits for the earlier period of service between 1.3.1963 and 31.5.1966.

5. Though, taking a strict view, the benefit of service between 1963 and 1966 cannot accrue to the petitioner but even if it is a case of fresh appointment under the respondent State, the fact that the petitioner had appeared in Hindi Noting and Drafting Examination conducted by the State in which the petitioner was successful cannot be wished away or denied to the petitioner. Petitioner had established his proficiency by passing the said examination and passing of the examination is the foundational fact based on which the increments are to accrue.

6. There seems to be some force in the submission made at the Bar that merely because the past service has not been taken into consideration, passing of the departmental examination by the petitioner, does not in any manner become redundant or the result of the said passing in any manner is superfluous to the issue, more so when the examination had been conducted by the State authorities and the petitioner was an employee, may be a fresh, under the State.

7. In this regard respondent Superintending Engineer has taken a very narrow view of the matter and has wrongly denied benefit of increment to the petitioner on the ground of non-passing of Hindi Noting and Drafting Examination.

8. Annexure-1 series at page 18 is a certification in favour of the petitioner that he had passed Hindi Noting and Drafting Examination on 15.12.1963 and that is good enough, in the opinion of this Court, to give a direction upon the respondents to give him benefit of increment on this count.

9. The next issue which arises for consideration is whether the petitioner can be given the benefit of time bound promotion despite the fact that he had not passed the Accounts examination because even the benefit of time bound promotion has been denied to the petitioner by way speaking order.

10. Submission of the learned counsel is that based on the recommendation of

the 4th Pay Revision Committee Report, a scheme of time bound promotion was introduced. It came into effect from 1.4.1981. His contention is that even if appointment of the petitioner under the respondents is accounted from 19.7.1966, then under the notification of time bound promotion he became eligible to beget the said benefit sometime in the year 1976. Though, there was certain circulars including the provision to pass departmental examination in terms of Rule 157(3)(J) of the Bihar Boards Misc. Rules but in view of interpretation given by the Full Bench in the case of Maheshwar Prasad Singh and Others Vs. The State of Bihar and Others, , case of this petitioner is covered by the ratio of the said Full Bench decision. Attention of the Court has been drawn to paragraphs.13, 14 and 16 of the said decision.

11. A reading of the said Full Bench decision does support the claim of the petitioner and to that extent non-passing of his departmental examination of Accounts, therefore, will not come in the way of grant of at least first time bound promotion to him. This benefit, therefore, will also accrue in favour of the petitioner.

12. With regard to the claim of the petitioner for the second time bound promotion taking note of the circular of the State Government contained in Annexure-5 to the writ application, in yet another matter which traveled to the High Court which was the case of Ram Yash Rai Vs. State of Bihar and Others, the Court while taking note of the circular dated 21.11.2000 (Annexure-5) interpreted the said circular to mean that non-passing of the departmental examination is not going to come in the way of grant of time bound promotion because such a situation was envisaged for and provision was made by the State Government as would be evident from a reading of Annexure-5 as well as the judgment or the ratio of Ram Yash Rai''s case (supra).

13. In the totality of the discussions made above, the speaking order dated 16.3.2011 is quashed. This writ application is allowed. The respondents are directed to grant benefits to the petitioner on all the three counts which are--(i) benefit of increment due to passing of Hindi Noting and Drafting Examination, (ii) benefit of first time bound promotion, and (iii) benefit of second time bound promotion to the petitioner. All these benefits must accrue to the petitioner at the shortest possible time after re-working his entitlement for which this Court grants maximum time of four months from the date of receipt/ production of a copy of this order and the consequences of such grant will flow in favour of the petitioner.