

(2003) 07 PAT CK 0124

In the Patna High Court

Case No : Letters Patent Appeal No. 4 of 1997

Suresh Prasad Verma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Citation : (2003) 4 PLJR 371

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : S.N. Jha, Suryadeo Narain Verma and Dilip Kumar Sinha, for the Appellant; R.P Bhagat and S.K. Ranjan, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J. and R.N. Prasad, J.—This Letters Patent Appeal has been filed against the order dated 5 November, 1996 on C.W.J.C. No. 672 of 1986 Suresh Prasad Verma v. The State of Bihar and Ors.

2. The facts are not in issue. The relief sought in the petition was to the effect that regard being had to the circumstances that the Petitioner-Appellant had been promoted to the post of Divisional Commandant (equivalent to the post of Additional Superintendent of Police) and had, in fact, been given the scale, the status and position should have been regularised in a substantive manner. There is no issue that the promotion had not been granted to the Petitioner-Appellant.

3. The Petitioner had risen from the ranks. He had been appointed as Zamadar-cum-Head Clerk (Home Guard) in the Home (Special) Department, Government of Bihar. The post to which he had been appointed was equivalent to the post of Sub Inspector of Police. His appointment in 1948 was before the nation became a republic. Ultimately, the record rests that the Petitioner saw a promotion by a formal notification issued from the State of Bihar, Home (Special) Department dated 17 August, 1981. Amongst many other persons mentioned in this notification, is a reference to the Petitioner-Appellant, to the effect, that pending

issue of formal orders he is being promoted to the post of Divisional Commandant (Home Guard) for a period of six months. Thus, it is on the record that only formal orders were to be issued. Not only this, at a meeting on 21 October, 1981 chaired by the Home Commissioner, a resolution had been passed in the context of the Petitioner acknowledging that he had received a promotion to the post of Divisional Commandant/Additional Superintendent of Police. The same resolution also records that whereas promotion has been granted to the Petitioner-Appellant but his services be retained by the Department of Civil Defence. In the circumstances, there is no issue nor any doubt on the promotion of the Petitioner. It is on the record that the Petitioner received a promotion. He had only 11 months to retire. The Home Secretary in consultation with the department concerned had a resolution passed that the services of the Petitioner be retained. Only the services of a good officer are retained. The court mentions this as a faint plea was raised by the State Counsel that the Petitioner did not join his post. The record declares otherwise. Far from joining elsewhere the Petitioner was under an inhibition virtually by an order of the Home Secretary that his services will be retained by the Department of Civil Defence. But, this does not change the status of the record that the Petitioner-Appellant had received promotion and it was, at an every given stage, intended to issue formal orders for grant of substantive rank of Divisional Commandant/Additional Superintendent of Police. The question of giving a posting to the Petitioner was not in his hands as it was decided to retain the services of the Petitioner at the department where he was already assigned.

4. Thus, the judgment of the learned judge on the writ petition suffers from a manifest error which is apparent on the face of the record and is, accordingly, set aside. Further, the court is of the opinion that it was for the State Government to release the Petitioner from the Department of Civil Defence and give him a specific posting. The record bears out, in the present case, that promotion was granted and consequent upon grant of promotion the services of the Petitioner were retained which does not mean that the Petitioner would lose his promotion.

5. In the circumstances, the appeal succeeds.

6. The Petitioner-Appellant has retired.

7. All that can happen today is that ex post facto substantive rank is to be granted to the Petitioner and a mandamus issues accordingly. His pay shall be adjusted and credited to his account and accordingly variation in pension to his benefit. All this is to be done within six weeks from today.