

(2010) 04 JH CK 0066
In the Jharkhand High Court

Suryadeo Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Bihar Financial Rules — Rule 58, 74
Jharkhand Service Code, 2001 — Rule 58

Citation : (2010) 04 JH CK 0066

Hon'ble Judges : Sushil Harkauli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sushil Harkauli, J.—The petitioner was approved for promotion to the post of Chief Engineer by the Departmental Promotion Committee (hereinafter referred as the DPC for short) of which proceedings were drawn up on 22.4.2006.

2. The DPC found that the petitioner was not entitled to the said promotion upto 31.03.2005, but found that he was entitled to that promotion w.e.f. 01.04.2005.

3. On 15.05.2006 that is after this recommendation by the DPC, certain departmental proceedings were initiated against the petitioner and on that basis the petitioner was not promoted.

4. The petitioner filed a writ petition No. 530 of 2007 which was allowed by Judgment dated 27.08.2008 by a learned Single Judge of this Court. It was directed that the promotion of the petitioner to the post of Chief Engineer should be considered. At the time when the said writ petition was heard, the departmental proceedings initiated on 15.05.2006 had already come to an end. Accordingly at that stage there was apparently no impediment in the grant of promotion. Yet the promotion was not granted and the petitioner was compelled to file a Civil Contempt Case No. 599 of 2008. In that Contempt Case a counter-affidavit was filed saying that promotion could not be given because election code of conduct had intervened and the matter required clearance from the

Election Commission.

5. Subsequently, another Departmental Promotion Committee appears to have been held on 14.11.2009. A copy of the recommendation of this second DPC has been obtained under Right to Information Act by the petitioner and has been filed on record of this writ petition. This second DPC again approved the name of the petitioner for promotion to the post of Chief Engineer w.e.f. 01.04.2005. This was exactly the same recommendation which was made by the first DPC. However, the actual promotion was not granted and the petitioner superannuated on 30.09.2008.

6. By the order impugned in this writ petition which is dated 16.11.2009 (Annexure-9 to this writ petition), the respondents have refused to give actual promotion to the petitioner in accordance with the recommendations of the 1st as well as the 2nd Departmental Promotion Committee, on the sole ground that the petitioner having superannuated is no longer in a position to join the promotional post of Chief Engineer and therefore, in view of Rule/Clause No. 58 of the Jharkhand Service Code the petitioner would not be entitled to any financial benefits as a result of any notional promotion even if given to him.

7. For ready reference the provision of Rule 58(a) which is relevant is reproduced below, along with Rule 58(b) which is not relevant for the present case.

58. (a) Subject to any exceptions specifically made in these rules and to the provisions of Clause (b) of this rule, a Government servant shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date on which he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties.

(b) Unless in any individual case State Government otherwise direct a person recruited overseas shall commence to draw pay on first appointment as follows:

(i) in the case of a person who receives a first class passage to India, from the date of his arrival in India, [subject to his proceeding to take up his duties without avoidable delay].

(ii) in the case of a person who receives a second class passage to India from the date of his embarkation for India.

8. Rule 74 of the Bihar Financial Rules, which although not cited in the impugned order or in the counter-affidavit has been pointed out by the petitioner's side. That Rule is reproduced below for ready reference.

74. All authorities which are competent to sanction revision of pay or the grant of concessions to Government servants should bear in mind that retrospective effect should not be given to financial sanctions, except in exceptional circumstances, without the special approval of Government.

9. Both the aforesaid Rules were considered by the Division Bench of the Patna High Court in the case of Dr. Paras Nath Prasad v. State of Bihar reported in 1990

(2) PLJR 248. The Division Bench in that case held that: where an employee deserved promotion but was not granted the same for no fault of the employee, but because of wrong decision on the part of the State the employee would be entitled to not only to be granted promotion with retrospective effect but also financial benefits as a consequence of such promotion as also the interest on delayed payment of the financial benefits. The Division Bench expressly overruled the applicability of the Rule 58 to such situations.

10. Following the aforesaid Division Bench decision a learned Single Judge of this Court in the case of Shri Mahavir Pandey v. State of Bihar and Ors. Reported in 2000 (1) PLJR 768 held that not only Rule 58 but also Rule 74 would have no application in such situations.

11. It may be mentioned here that subsequent to the conclusion of the departmental enquiry initiated on 15.05.2006 and referred above, two other departmental enquiries were initiated against the petitioner. The second DPC held on 14.11.2009 has taken into account all these departmental proceedings while finding the petitioner fit for promotion to the post of Chief Engineer w.e.f. 01.04.2005.

12. The learned Counsel for the petitioner has also placed reliance upon the decision of the Supreme Court in the case of Delhi Jal Board Vs. Mahinder Singh, that subsequent to the approval by Departmental Promotion Committee, if any departmental proceedings are initiated it would not entitle the department to adopt the sealed cover procedure.

13. Thus in a nut shell the facts suggest that the petitioner's name was approved not by one but by both the DPCs for promotion to the post of Chief Engineer w.e.f. 01.04.2005. It is also clear that there was a vacancy existing on that post and but for the subsequently initiated departmental enquiries and the incorrect decisions of the respondents not to give effect to the recommendations of the two DPCs, the petitioner would have been promoted and would have joined on the promotional post, and would have got all the financial benefits.

14. However, the petitioner although found fit for promotion w.e.f. 01.04.2005 could not have joined the promotional post before 22.04.2006 i.e. the date that the 1st Departmental Promotion Committee drew up its proceedings and therefore from the date 01.04.2005 i.e. the date with effect from which the petitioner was found fit for promotion by the DPC and the actual date of DPC i.e. 22.04.2006, the petitioner cannot be given the financial benefits in accordance with the Rule 58 of the Jharkhand Service Code as prior to the 1st Departmental Promotion Committee it was not possible for the petitioner to join the post. However, after 22.04.2005 the petitioner should have been granted promotion and his failure to join the promotional post is not due to any fault on the part of the petitioner but exclusively on account of wrong decision by the respondents and therefore in view of the law laid in the precedents cited above, the petitioner is entitled not only to promotion w.e.f. 22.04.2006 but to all consequential

financial and other benefits which the petitioner would have got if the petitioner had actually joined the post w.e.f. 22.04.2006. The petitioner will also be entitled to recomputation and payment of all post retirement benefits which he would have got if he had actually joined the post of Chief Engineer w.e.f. 22.04.2006.

15. The writ petition is therefore, allowed. The respondents are directed to grant the retrospective promotion and to compute all financial benefits pre and post retirement within four months from the date on which certified copy of this order is presented before the respondent No. 2. The payment will be made within the next six weeks along with interest @ 8% p.a. on the amount of all arrears which are found to be due to the petitioner for the period after 22.04.2006, from the date on which the amounts became due till the date of actual payment.