
(2018) 07 JH CK 0095

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5747 of 2017

Telesphore Bage

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Police Manual — Rule 649, 681

Citation : (2018) 07 JH CK 0095

Hon'ble Judges : DR. S. N. PATHAK, J

Bench : Single Bench

Advocate : P.A.S. Pati

Final Decision : Allowed

Judgement

The petitioner has approached this Court with a prayer for quashing the order being Chatra, District Order No.866/2017, dated 02.05.2017 issued by

the respondent No.5, whereby the seniority of the petitioner on the post of Inspector of Police has been re-fixed from 27.02.2003 to 28.01.2014 and

consequently the respondents are seeking to recover the amount paid to the petitioner on account of his promotion and cancellation of benefits of 1st

ACP and 2nd MACP. Further prayer has been made to direct the respondent No.2 to grant the benefit of promotion to the petitioner on the post of

Inspector of Police w.e.f. 27.02.2003 as well as pecuniary benefits of 1st ACP and 2nd MACP

The short facts of the case lies in a narrow compass. The petitioner was appointed as Sub-Inspector of Police through direct recruitment in the year

1984. After cadre bifurcation, the services of the petitioner was allocated to State of Jharkhand. In February, 2003, the Departmental Promotion

Committee in its meeting had found the petitioner eligible for promotion to the

post of Inspector of Police from Sub Inspector and was promoted w.e.f.

27.02.2003. Thereafter, the respondents had prepared a common gradation list of the cadre of Inspector of Police in the year, 2013 and the name of

the petitioner appeared at Sr. No. 57 of the said gradation list. Subsequently, on 30.09.2014, a meeting of Departmental Promotion Committee was

held to consider the case of the Inspector of Police for promotion to the post of Deputy Superintendent of Police and the case of the petitioner was

considered by the said Departmental Promotion Committee, however, it was decided by the Departmental Promotion Committee that the petitioner

was promoted to the post of Inspector of Police on 27.02.2003 whereas, he passed the PTC Exam in January, 2014 on this ground alone his date of

promotion to the post of Inspector of Police ought to be amended. Being aggrieved, the petitioner approached this Court by filing a writ petition being

W.P.(S) No. 2384 of 2015 primarily seeking promotion to the post of Deputy Superintendent of Police, which is still pending before this Court.

Â In the instant writ petition, the respondents sought to restore the promotion date granted to the petitioner on the post of Inspector of Police. The

Respondent No.5 issued an Office order dated 02.05.2017 being Chatra District Order No. 866 of 2017 wherein the date of promotion of the

petitioner on the post of Inspector of Police was shifted from 27.02.2003 to 28.01.2014 and further the benefits of 1st ACP and 2nd MACP granted to

the petitioner was also cancelled and pay of the petitioner was revised. Being aggrieved thereto, the petitioner represented before the respondents on

20.05.2017 but the respondents are sitting tight over the matter. Hence, present writ petition has been preferred by the petitioner for redressal of his

grievances.

Â Mr. P.A.S. Pati, learned Counsel appearing for the petitioner strenuously urges that petitioner is entitled for promotion from the date he was

considered earlier i.e. on 27.02.2003. Learned Counsel further argued that respondents have cancelled/shifted the date of promotion from 27.02.2003

to 28.1.2014 without giving any notice or show-cause and without hearing the petitioner which is in complete violation of cardinal principal of natural

justice. Learned counsel further submits that it is correct that the petitioner did not passed the PTC exam at the time of grant of promotion, however,

till 29.11.2013, the petitioner was not informed or directed to appear in PTC

exam and it was only on 29.11.2013 that the petitioner was required/ordered to appear in the PTC Exam, which was scheduled to be held on 08.12.2013 at Police Training College, Hazaribagh and the petitioner has passed the PTC Exam in January, 2014. Learned counsel further argues that the respondents after duly examining the case of the petitioner granted promotion to the post of Inspector of Police from Sub Inspector of Police. There is no fault, suppression or fraud on the part of the petitioner, the respondents have illegally and arbitrary re-fixed the date of promotion of the petitioner on the post of Inspector of Police and consequently canceled the benefit of ACP/ MACP also. Learned counsel for the petitioner draws the attention of the Court towards Rule 649 and 681 of the Police Manual. Learned counsel also submits that if no formal order was passed by the authorities, the services of the employee were deemed to be confirmed and for promotion only confirmation of service is required and there is no other requirement and justifies the earlier promotion order w.e.f. 27.02.2003.Â In order to buttress his argument, learned Counsel places heavy reliance in para 15, 16 and 17 of a reported Judgment of Honâ??ble Apex Court in case of â??Wasim Beg Vs. State of U.P. & Ors.â?, reported in (1998) 2 SCC 321 and para 11 & 12 in case of â??Rajinder Singh Chauhan & Ors. Vs. State of Haryana & Ors., reported in (2005) 13 SCC 179. Learned counsel further argues that recovery is also illegal as without issuance of any notice or without giving opportunity of hearing, the same has been ordered to be recovered.

Per contra counter-affidavit has been filed. Learned counsel for the respondent-State vehemently opposes the contention of the learned Counsel for the petitioner and argues that once the wrong has been detected and it is found that the petitioner has obtained promotion wrongly, respondents are free to rectify the same. Learned counsel further argues that the case on which the petitioner relied upon is not at all attracted in the instant case. As in the present case, the petitioner was fully aware of the fact that he had not cleared PTC Exam and without clearing the said exam, he cannot be considered for promotion and based on the wrong facts his case was considered and wrongly he was granted promotion and as such there is no illegality or any infirmity in the impugned order. The respondent-State has rightly exercised its power and shifted the date of promotion and petitioner

has been granted promotion w.e.f. 28.01.2014 on the day he cleared the examination i.e. PTC exam which was the mandatory requirement for promotion to the post of Inspector of Police. Learned counsel for the respondents further submits that as the petitioner has been granted promotion w.e.f. 28.01.2014, the petitioner is not entitled for the benefit of ACP/ MACP as per Clause 3 (vii) of Resolution No. 5207 dated 18.08.2002 passed by the Finance Department.

Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that any order visiting with civil or evil consequence cannot be passed without opportunity of hearing. In the instant case, it is admitted that no notice or any show-cause was ever served upon the petitioner. It was only after 11 long years, an order was issued by the respondents shifting the date of promotion on the ground that petitioner had not cleared the Police Training College Examination. However, since it has been found that petitioner did not clear the said examination which was the mandatory requirement for promotion to the post of Inspector of Police and he had cleared the same in the year 2014 only, there is no illegality in considering the date of promotion from 2014 itself. A wrong committed by the State can well be rectified if it is found that on wrong consideration promotion has been granted. Since the petitioner had been continuously getting same emoluments/salary by way of promotion for 11 long years and it has been withdrawn without notice and showcause and further an order was passed for recovery, the order of recovery is not at all tenable in the eyes of law. The Hon'ble Apex Court in the case of *State of Punjab & Ors. vrs. Rafique Masih*, reported in 2015 4 SCC 334 has held:

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law: (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service). (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery. (iii) Recovery

from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. (iv) Recovery in cases where an employee has wrongfully been required to

discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to

such an extent, as would far outweigh the equitable balance of the employer's right to recover.

Â As the petitioner is going to be superannuated in a few year, an order of recovery is not tenable. The Hon'ble Apex Court in case of

â??Kusheswar Nath Pandey vrs. State of Bihar & Ors.â?, reported in (2013) 12 SCC 580 has held:Â â?? In our view, the facts of the present case

are clearly covered under the two judgments referred to and relied upon by Mr. Rai. The appellant was not at all in any way at fault. It was a time-

bound promotion which was given to him and some eleven years thereafter, the authorities of the Bihar Government woke up and according to them

the time-bound promotion was wrongly given and that the relevant rules are being relied upon and that too after the appellant had passed the required

examination.â??Â

Â Now admittedly, the petitioner has passed the required examination in 2014 itself before passing the order of recovery and as such, in my

considered view the said order regarding recovery is not at all tenable in the eyes of law. The order dated 02.05.2017 to the extent of recovery part is

hereby quashed and set aside. The benefits of Assured Career Progression/ MACP which the petitioner availed all along shall also continue with the

same effect. However, the reliance of the petitioner upon Rules 649 and 681 of the Police Manual is of no help. It is not in dispute that confirmation of

the petitioner does not come in way of promotion after two years even if an express order regarding confirmation is not passed, the services of the

petitioner shall be deemed to be confirmed. It is to be taken note of that confirmation is not only guideline or condition, precedent for promotion,

passing the PTC was mandatory requirement for promotion to higher post. A person who has not cleared the PTC exam for Sub Inspector cannot be

considered for the post of Inspector of Police i.e. further promotion. Promotion

wrongly considered is always subject to rectification, if it has been considered on wrong premises. Admittedly, the petitioner cleared the PTC Exam in the year, 2014 and as such, rightly he was considered for promotion for the post of Inspector of Police from 28.01.2014. There is no illegality or any infirmity in the impugned order, shifting the date of promotion, the respondents are fully justified in rectifying their mistake. Since the petitioner is still in service, he is entitled for promotion from the date of passing of the exams i.e. 28.01.2014.

With the aforesaid observations and guidelines, the writ petition stands partly allowed. No order as to cost.