

(2014) 03 PAT CK 0021

In the Patna High Court

Case No : Letters Patent Appeal No. 365 of 2001 in Civil Writ Jurisdiction Case No. 989 of 2000 and Interlocutory Application No. 3679 of 2001 in Letters Patent Appeal No. 365 of 2001

The Bihar State Agricultural Marketing Board and The
Managing Director, Bihar State Agricultural Marketing Board

APPELLANT

Vs

Panchu Ram

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 4

Citation : (2014) 03 PAT CK 0021

Hon'ble Judges : Rekha Manharlal Doshit, C.J.; Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Umesh Kumar, A.C. to S.C. 23, for the Appellant; Sanjeev Kumar, for the Respondent

Judgement

Rekha Manharlal Doshit, C.J.—This Appeal under Clause 10 of the Letters Patent has been preferred by the respondent-Bihar State Agricultural Marketing Board through its Managing Director against the judgment and order dated 27th March 2001 passed by the learned single Judge in CWJC No. 989 of 2000. The respondent-writ petitioner Panchu Ram was appointed by the appellant- Bihar State Agricultural Marketing Board (hereinafter referred to as "the Board") as a Marketing Secretary as early as in 1974. While he was functioning as the Marketing Secretary, in 1985 he was transferred as an Assistant Director. Since his posting as an Assistant Director, the petitioner approached this Court in CWJC No. 524 of 1987 for recovery of salary as an Assistant Director and also for promotion to the post of Assistant Director. The said petition came to be disposed of on 25th April 1997 with a direction to the Board to consider the case of the petitioner for promotion and for grant of benefits of the post of Assistant Director. Pursuant to the said order, under order dated 28th February 1998 made by the Managing Director, the petitioner's claim to the higher scale and the promotion to the post of Assistant Director came to be rejected.

2. The said order was challenged by the petitioner in above CWJC No. 989 of 2000. Pending the said petition, under the Bihar Agriculture Produce Market Act (Repealing) Act, 2005, the Bihar Agriculture Produce Market Act, 1960 and the Rules framed thereunder stood repealed with effect from the date of the 2005 Act. u/s 4 of the Repealing Act of 2005, the assets and liabilities of the Board were vested in the State Government. In our opinion, necessarily the liability arising from operation of the order of this Court shall be the liability of the State Government.

3. The petition was contested by the Board. The Board denied and contested the claim of the petitioner for promotion to the post of Assistant Director. According to the Board, the petitioner had been given the benefit of higher pay scale under the time bound promotion scheme. On the basis of the said scheme he cannot be promoted as an Assistant Director.

3. The learned single Judge has allowed the writ petition and has directed the Board to make necessary order for promotion to the post of Assistant Director and for payment of salary of the Assistant Director. Therefore, this Appeal.

4. We have heard the learned advocates extensively. In our opinion, the transfer of the petitioner as an Assistant Director was fortuitous. No right to promotion was thereby created in favour of the petitioner. The order dated 28th February 1998 made by the Managing Director of the Board is self explanatory. At the relevant time, the cadres of Marketing Secretary and the Assistant Director were Class II posts and carried the same pay scale. On revision of pay under order dated 13th February 1990, the higher scale of pay Rs. 1350-2000 granted to the petitioner under time bound promotion scheme was revised to Rs. 3000-4500, whereas the post of Assistant Director carried the pay scale of Rs. 2400-4150 and was treated as a Class I post. Thus the petitioner, a Marketing Secretary, could not have been placed in the scale of pay higher than that of Assistant Director. Besides, in the cadre of Marketing Secretary, the petitioner was not senior as made out in the writ petition. He was at serial No. 35. The other Marketing Secretaries above the petitioner still continued to be the Marketing Secretaries. There was no reason to supersede the senior Marketing Secretaries to extend the benefit of promotion to the petitioner out of turn.

5. The above referred facts do disclose that the appointment and promotion of the petitioner as an Assistant Director virtually was a transfer and posting order as both the cadres carried the same pay scale. Neither the petitioner, being at serial No. 35 in the gradation list, had a right to promotion; nor can the petitioner have a claim for promotion in supersession of other Marketing Secretaries senior to him.

6. For the aforesaid reasons, we find that the petitioner's claim for promotion or higher pay scale is not sustainable. Appeal is allowed. The impugned judgment and order dated 27th March 2001 passed by the learned single Judge in CWJC No. 989 of 2000 is set aside. CWJC No. 989 of 2000 is dismissed. Interlocutory

Application stands disposed of.