
(2009) 04 PAT CK 0143
In the Patna High Court
Case No : LPA No. 689 of 2008

The State of Bihar and Others

APPELLANT

Vs

Madan Bihari Singh

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Citation : (2009) 4 PLJR 776

Hon'ble Judges : J.B. Koshy, C.J;Ravi Ranjan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The writ petitioner was appointed as a Family Welfare Worker in the Health Department of the State Government on 23.3.1968. In spite of filing various representations before the authority concerned, when the case of the writ petitioner for his promotion to the post of Block Extension Educator was not considered and promotion was illegally denied to him, he approached this Court in 2000 by filing CWJC No. 8995/2000. This Court on 12.9.2000 observed that the pendency of the writ petition will not prevent the respondents from considering the claim of the petitioner for promotion in accordance with law. The writ petitioner reached the age of superannuation on 31.1.2001 and, accordingly, he retired from the service.

2. Before final orders could be passed on the writ petition, by the order dated 25.11.2004, the writ petitioner was granted promotion to the post of Block Extension Educator with effect from 1.5.1997, but the Government took the stand that since he had not worked on the post, he was only entitled to notional promotional benefits and, thereafter, pension was refixed. Petitioner wants payment of full salary and other allowances of the period from 1.5.1997 till his retirement, i.e. 31.1.2001, and pensionary benefits on refixation of pension, which he has been illegally denied.

3. It is not disputed that from the year 1968 onwards, he worked with the

Department and during the period from 1.5.1997 till his retirement, he also discharged the duties assigned to him. Had he been not illegally denied promotion from due date, and in normal course he could have been promoted as Block Extension Educator, and could have been entitled to the wages attached to that post, but in the case of the petitioner it is not his fault which prevented him from discharging the duties of Block Extension Educator. The promotion was granted much after retirement of the writ" petitioner. The petitioner cannot be deprived of the financial benefits of such promotion on the principle of "No work no pay" as he never refused to work. It is also not the fact that the petitioner did not raise any objection and draw the attention of the authority concerned for non-consideration of his case for promotion. It is quiet clear that when his case was not considered in spite of filing various representations by him, he was illegally denied promotion. He approached this Court, and even after the observations made by the learned Single Judge vide order dated 12.9.2000 that the pendency of the writ petition will not prevent the respondents from considering the claim of the petitioner, promotion was not given to him. It is only three years after his retirement that the Government woke up from supine slumber and decided to grant promotion to him. It is, thus, overwhelmingly clear that the writ petitioner had been illegally denied promotion during his service tenure for no fault on his part.

4. It cannot (sic) be said that Officers in the Department were sleeping tight over the matter even after filing of the writ petition. Even after receiving notice of the writ petition they could have considered the matter of promotion of the petitioner and he could have been promoted, but that was not done and for their non-action/ inaction, the writ petitioner had to suffer mentally and financially on account of litigation cost and after four years of filing of the writ petition when it was realized that the petitioner had been wrongly denied promotion, the Government vide the aforesaid order dated 25.11.2004 granted promotion to the writ petitioner to the post of Block Extension Educator with effect from 1.5.1997. He cannot be denied his salary at the promoted post which was denied to him illegally by the State Government, it can recover the amount from the Officers, who were responsible to not consider the case of the petitioner to promote him in time.

5. The learned Single Judge while disposing of the writ petition vide order dated 25.11.2004 has held that the delay/ lapses in consideration of the case of the writ petitioner for his promotion to the post of Block Extension Educator is attributable to the respondents alone and, therefore, the writ petitioner should not suffer.

6. Learned counsel for the State-Appellant argues that on the basis of "No work no wage", the writ petitioner-respondent cannot be given the financial benefits of promotion for the period during which he did not actually work as Block Extension Educator. He relied on a decision of the Hon"ble Supreme Court in Union of India & Anr. vs. Tarsem Lal & Ors., reported in AIR 2007 SC 259.

7. The above decision of the Hon"ble Supreme Court is not a case comparable with the case of the writ petitioner-respondent inasmuch as the writ petitioner-respondent did not refuse to work and, therefore, the principle of "No work no pay" cannot be applied and he cannot be deprived of the actual financial benefits of such promotion. Apart from this, it is not a mere error of overlooking of granting promotion to the petitioner. He was vigilant, claimed for promotion, approached this Court, and even before disposal of the aforesaid writ petition vide order dated 10.1.2008, in spite of the observations made by this Court vide order 12.9.2000 that the pendency of the writ petition will not prevent the respondents from considering the case of the petitioner for promotion in accordance with law, the case of the writ petitioner-respondent was not considered for promotion for quite a long period after his retirement. He is low income group employee and all his efforts made in time became in vain.

8. The Hon"ble Supreme Court in Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another, , held that when a person is illegally denied promotion, he is entitled to salary from the due date of promotion, specially when there was no fault/laches on his part and such promotion has been denied on erroneous ground. Petitioner's promotion was denied not because of any bona fide mistakes in accordance with service rules and no reasons and....

9. In the decision of the Hon"ble Supreme Court in Union of India & Anr. vs. Tarsem Lal & Ors. (supra), it was held that when on account of administrative errors, a person has not been promoted and, in other case, where a person has been promoted but not on the date from which he would have been promoted due to administrative error, in such circumstances, it all depends upon appreciation of the facts of each case.

10. In the facts and circumstances of the case in hands where the writ petitioner-respondent has been wrongly denied the financial benefits of promotion as also considering the status of the writ petitioner that he was not highly placed and a low paid employee, and the fact that despite various representations, case of the writ petitioner for his promotion was not considered at the opportune time, we are of the opinion that the writ petitioner is entitled to payment of full salary and other allowances from the date he has been promoted to the post of Block Extension Educator, i.e. 1.5.1997 till his retirement as well as pensionary benefits on that basis. We are, therefore, in agreement with the judgment and order of the learned Single Judge and uphold the same.

11. The appellants are directed to calculate and pay the differential salary and other allowances payable to the writ petitioner-respondent for the period from 1.5.1997 till 31.1.2001, the date when he retired from service, within a period of three months from the date of service/ receipt of a copy of this order treating the writ petitioner-respondent to have discharged the duties of Block Extension Educator during the aforesaid period as held by the learned Single Judge. We see no reason to interfere with the judgment of the learned Single Judge in an Intra Court Appeal. The letters patent appeal is thus dismissed.