

(2006) 10 PAT CK 0017
In the Patna High Court
Case No : LPA No. 558 of 2006

The State of Bihar and Others

APPELLANT

Vs

Ram Lakshan Sharma

RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Citation : (2007) 1 PLJR 10

Hon'ble Judges : J.N. Bhatt, C.J.; Shailesh Kr. Sinha, J

Bench : Division Bench

Advocate : S.S. Mishra, for the Appellant; Vishwanath Ram, for the Respondent

Final Decision : Dismissed

Judgement

1. By this Letters Patent Appeal under clause 10 of the Letters patent of the Patna High Court Rules, the original respondent in the writ petition, has assailed the judgment recorded by the learned Single Judge on 9.5.2006 in CWJC No. 16285 of 2004 whereby the reversion and recovery order recorded by the State Government, copy whereof is produced as Annexure 1 to the Writ petition, came to be quashed, directing the State to re-refund recovered amount to the respondent original writ petitioner within three months. In default, interest at the rate of 10% per annum was ordered to be paid. Let there be a narration of few relevant and material factual profile so as to examine and appreciate the merits of the rival contentions advanced before us.

2. The respondent-original writ petitioner came to be appointed as Chowkidar on 29.5.1972. He was promoted, temporarily, on the post of Work Sarkar. His service was regularized and the first time bound promotion was granted to him.

3. Later on, it was noticed by the respondent authority that the time bound promotion was, wrongly given. Before cancelling the order, a show cause notice came to be served to the petitioner. Pursuant to the show cause notice, a reply was filed. The authority considering the reply, rejected the contention raised in the reply that the time bound promotion granted to the original writ petitioner

was wrong. In other words, the order came to be passed for cancellation of the first time bound promotion. In strict sense, it was not a case of promotion but the time bound promotion means, if a person does not get promotion within the stipulated period of time, he is given the scale of the higher post. Obviously, there is a purpose and policy behind it to avoid a sense of despondency and dissatisfaction and resultant frustration on account of not getting the promotional post after certain period of time.

Following chronological events would be relevant for the purpose :-

S No.

Date

Event

(i)

29.5.1972 :

The writ petitioner came to be appointed as Chowkidar (Guard) in the work charge establishment.

(ii)

10.10.1981 :

The writ petitioner was given assignment of work sarkar while working in work charge establishment as well as salary commensurate to the assignment.

It is not correct to say that the writ petitioner was granted first time bound promotion on the post of work-sarkar while working in the work charge establishment.

(iii)

1.1.1988 :

Service of the petitioner on the post of work sarkar came to be regularized.

It appears from the record that on the post of work sarkar the petitioner was given new assignment, other than the work of Chaukidar.

(iv)

10.10.1991 :

The first time bound promotion came to be granted by passing an order which was later on noticed by the appellant-original respondent State as irregular as per the order contained in Annexure 5 to the writ petition.

(v)

2.8.2004 :

At the time of confirmation of time bound promotion it was detected that illegal and irregular promotion came to be granted to the respondent-original writ petitioner and he was issued a show cause notice which is placed as Annexure 6 to the writ petition.

(vi)

17.8.2004 :

The writ petitioner did reply the show cause notice which is produced as Annexure 7 to the writ proceedings.

(vii)

16.10.2004 :

Thereafter the respondent State passed the impugned order which was challenged in the writ petition whereby the second time bound promotion in the work charge establishment on the post of work sarkar was cancelled and the petitioner was held entitled for time bound promotion on the post of Chaukidar from the date of regularisation i.e. 1.1.1988.

In the impugned order, there was further direction to recover the excess amount paid in easy instalments.

4. It may be stated at this stage that in view of the scheme under consideration under which the cancellation order (Annexure-1 to the original writ petition) came to be passed, it could not be characterized as cancellation of the time bound promotion giving higher scale on the post of work Sarkar. This aspect requires consideration which we propose to deal with hereinafter in subsequent paragraphs of this judgment.

5. The writ petitioner's challenge was successful, as a result of which the impugned order Annexure 1 was quashed directing recovery to be refunded to the original writ petitioner-respondent by the appellant State.

6. The main contention which is advanced on behalf of the appellant State has been that the promotion granted on the post of work Sarkar while the petitioner was working in the work charge establishment was contrary to the provisions and, therefore, it was cancelled on 16.10.2004. This action is rightly not found to be legal by the learned Single Judge in view of the peculiar facts of the case. The cancellation of the order dated 10.10.1981 on 16.10.2004 almost after 23 years is found to be not correct and legal. In between the same period the service of the petitioner, who was given assignment on the post of work sarkar commensurate with salary, was regularized on 1.1.1988 and on the post of work Sarkar the first time bound promotion was granted. In the promotion order it was categorically mentioned that in case of any irregularity detected, it may be cancelled. Nothing has been, successfully, pointed out that there was any irregularity because after confirmation and regularization on the post of work sarkar there was no question of cancelling the earlier order recorded on

10.10.1981 whereby the petitioner was granted promotion and higher assignment on the post of work sarkar commensurate with the salary. There was no fault or any allurements or any fraud in such action nor there, is remotely, any insinuation or whisper on behalf of the appellant State.

7. Therefore, we are of the opinion that the impugned order of the learned Single Judge, quashing the order, as contained in Annexure 1 to the writ petition cancelling the first time bound promotion and the resultant recovery to be made against the writ petitioner, cannot be said to have been wrongly passed.

8. Let it be also recorded that the impugned order as Annexure 1 to the writ petition is based on circular No. 3683 dated 17.5.2003 which is placed at Annexure B alongwith the counter affidavit filed in the writ petition, which does not stipulate any thing except giving of time bound promotion. How it is treated and considered by the Government as sufficient one, under which the higher assignment of work sarkar in class III post was given, could be said to be vulnerable. We are, therefore, of the opinion that there is no infirmity or any flaw in the impugned judgment of the learned Single Judge. In the net result, the impugned order requires to be confirmed and affirmed while dismissing the appeal after hearing both the parties on merits. Therefore, the appeal shall stand dismissed with costs.