

(2003) 09 PAT CK 0071
In the Patna High Court
Case No : L.P.A. No. 859 of 2003

The State of Bihar and Others

APPELLANT

Vs

Ram Lochan Tiwary and Another

RESPONDENT

Date of Decision : 17-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 PLJR 189

Hon'ble Judges : Ravi S. Dhavan, C.J.;Shashank Kr. Singh, J

Bench : Division Bench

Advocate : R.P. Singh and J.C. to A.A.G. I and S.K. Ghose, AAG-2, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Appellant Mr. R.P. Singh, J.C. to A.A.G. I. On the request being made by the court Mr. S.K. Ghose (AAG-2) is also present to assist the court.

2. The delay in filing the appeal is condoned.

3. The court fails to understand why the letters patent appeal has been filed by the State of Bihar to challenge the order of the learned judge dated 18 February, 2003 in CWJC. No. 11132 of 1998: Sri Lochan Tiwary v. The State of Bihar and Ors. The issue in the writ petition was very simple and has been recorded by the learned judge in 3rd paragraph of the order, which is reproduced:

The question in this case arises as to whether the Petitioner will be entitled to get the consequential monetary benefits accruing from the date of joining or from the date of its notification.

4. The question in this case arises as to whether the Petitioner-Appellant will be entitled to get the consequential monetary benefits accruing from the date of joining or from the date of its notification.

5. Unfortunately, in the counter affidavit of the State, the issue has been avoided though raised in the petition. The two dates are, thus, very important to understand the issue itself. One date that is the date of notification has been noticed by the learned judge. This 21 April, 1998. The other date is the date of joining. This is referred to in paragraphs 4 and 8 of the writ petition. This date is 1.1.1977. In the counter affidavit, the Respondents have evaded the issue, not controverted the dates and, in fact, have said that the matter will be referred to the Board for consideration implying thereby that the issue had not been decided as to when the Petitioner will get his benefits either from the date of joining or from the date of notification. By reading the counter affidavit one thing is clear that the issue has been left as vague. In the circumstances, sketchy as the counter affidavit is it is also irresponsible pleadings. These are reproduced:

That with regard to the statement made in paragraph Nos. 4 and 5 of the writ petition, it is stated that these are matter of record.

That with regard to the statement made in paragraph Nos. 6 to 14 of the writ petition, it is stated that earlier Petitioners seniority was not mentioned in the state seniority list of Sub Inspector of 1989. As such he was not given promotion in the rank of Inspector of Police.

It is further stated that seniority list of Sub-Inspector of 1989 has been set aside by the Hon"ble High Court and a new state seniority list of Sub-Inspector of Police under Police order No. 260/97 has been provisionally prepared, in which Petitioner"s seniority has also been fixed at serial No. 207 in the aforesaid list.

It is further stated that nomination of the Petitioner along with other have also been called for from the concerned Range D.I.G. and after getting nomination and recommendation from the concerned Range D.I.G., the case of the Petitioner will be placed before the Board of consideration.

Under the facts and circumstances mentioned above, this writ petition may kindly be dismissed.

6. This in itself should have been the end of the matter because if the counter affidavit stated that the matter will be placed before the Board only two things were possible either the Respondents must take the decision themselves or if a decision is taken for them by the court; this matter should have rested. Undaunted, the State of Bihar now files an appeal.

7. Again, unfortunately there is no reference to the issues in the letters patent appeal. There is no whisper in the draft of the letters patent appeal that if the notification referred to in the order is dated 21.4.1998 what exactly was the date of joining. The letters patent appeal avoids this issue. Then what is this appeal about?

8. On inquiries from the court answers were not coming from the Junior Counsel to the Additional Advocate General-I. The court is constrained to observe that if these briefs are filed by the State of Bihar then the court feels that the issue

should be seriously debated and the senior counsel must come to the court and argue the matter out. The matter has been treated as lightly as it has been submitted upon.

9. A ground has been taken in the letters patent appeal, in fact, suggesting that the High Court does not have the power of judicial review. The entire concept of judicial review which the prerogative jurisdiction is, has been thrown to the garbage, as if Article 226 of the Constitution of India, will be put in a bank locker, if the submissions on behalf of the State are to be accepted. Superior courts of record, which the High Court and the Supreme Court are, in their jurisdiction do judicially review and even declare Acts of the Legislature as ultra vires. This argument per haps, could have been raised, if any foundation has been laid in the counter affidavit to seriously contest the Petitioner on the issue as to when will he get his emoluments from the date of joining or a date of notification. The counter affidavit avoids the issue.

10. With a callous counter affidavit and equally irresponsible appeal on which the Senior Counsel would not come, perhaps, the filing was only an exercise to avoid responsibility within the department, a sort of Babu like action.

11. Since no defence has been taken either way the counter affidavit does not reply to the petition and no fact in the petition has been controverted. The Petitioner reiterates the stands in the rejoinder affidavit. The letters patent appeal avoids the issue on the order of the learned judge.

12. If the rules were to be looked into then the rules seem to suggest that the government servant will be entitled to his emoluments from the date on which he assumes duties of that post. If an issue was to be taken to argue before the court of law then the counter affidavit should have laid the foundation on submissions to be made, that the Petitioner never joined his duties or was never given the posting. All these facts are missing in the counter affidavit.

13. The manner in which this issue has been chased in courts by the State of Bihar is an attitude of harassing petty government servants. The Petitioner after all was only a constable, who was looking for promotion. He is a petty employee of the State. Promotion once declared as in the present case, it's fruits must be received.

14. There is no error on the order of the learned judge. The filing of this appeal and denying the emoluments to the Petitioner is harassment, for which the State of Bihar will deposit a sum of Rs. 10,000/- (ten thousand) with the Bihar State Legal Services Authorities Act as a special cost, which the Petitioner will be entitled to draw upon an application to receive it on an account payee cheque from the authority aforesaid.

15. The appeal is dismissed with cost.

16. Let a copy of this order be sent to the Chief Secretary, Government of Bihar, Patna.