

(2012) 08 JH CK 0068
In the Jharkhand High Court
Case No : LPA No. 481 of 2010

The State of Jharkhand and Others

APPELLANT

Vs

Suryadeo Prasad

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Citation : (2013) 1 AJR 662 : (2012) 4 JLJR 194

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Navin Kr. Singh, for the Appellant; Sumeet Gadodia, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the counsel for the parties. This Letters Patent Appeal is against the judgment dated 20.4.2010, by which the learned Single Judge allowed the writ petition of the writ petitioner being W.P.(S) No. 19 of 2010 directing the respondents to grant promotion to the writ petitioner on the post of Chief Engineer and to compute all financial pre and post-retirement benefits within a stipulated period of four months from the date the certified copy of the judgment of the learned Single Judge is presented before the respondent No. 2 of the writ petition. The learned Single Judge also ordered that if the payment is not made within next six weeks alongwith interest @ 8% per annum on the amount of all arrears which are found to be due to the writ petitioner for the period after 22.4.2006, from the date on which amounts became due till the date of actual payment.

2. The State has preferred this letters patent appeal and the learned counsel for the appellant submitted that in view of the Rule 58(a) of the Jharkhand Service Code, the employee who has not assumed the duties of the post is not entitled to any pay and allowances attached to the post for which he was promoted. It is also submitted that the petitioner-respondent since retired prior to giving effect to the recommendation of the D.P.C., therefore, in view of the Rule 58(a), the

petitioner-respondent was not entitled to the pay and allowances attached to the post of Chief Engineer. In addition to the above, it has been submitted that the D.P.C. only recommended for the promotion of the petitioner from the post of Superintending Engineer to the post of Chief Engineer, but that recommendation is not binding upon the appointing authority and the appointing authority could have taken a different view than the recommendation. In this case, the appointing authority has denied the promotion of the petitioner because of the reason that the petitioner was twice punished; once, he was punished with the punishment of censure and on another occasion, he was punished with stoppage of 10% of the pension.

3. Learned counsel for the State relied upon the judgment of the Supreme Court delivered in the case of Union of India, etc. etc. Vs. N.P. Dhamania, etc. etc., wherein it has been held that the Appointment Committee of the Cabinet can differ with the recommendation of the D.P.C. convened by the B.P.S.C. Learned counsel for the appellant also submitted that in view of the decision of the Hon''ble Supreme Court delivered in the case of Abhijit Ghosh Dastidar Vs. Union of India (UOI) and Others, , since the petitioner did not serve on the promotional post, therefore, he was not entitled to the monetary benefits.

4. Learned counsel for the writ petitioner respondent submitted that the respondent's matter for promotion to the post of Chief Engineer was considered by the D.P.C. and thereafter his name was recommended for promotion in the meeting dated 18-19 April, 2006. This recommendation has been communicated to the State Government vide communication dated 22.4.2006. Later on, the respondent was served with the order of departmental enquiry on 15.5.2006. Therefore, before initiation of any departmental enquiry against the respondent, the respondent-petitioner was already considered for promotion and the D.P.C. recommended for his promotion. It is submitted that, therefore, the learned Single Judge rightly relied upon the judgment of the Hon''ble Supreme Court delivered in the case of Delhi Jal Board Vs. Mahinder Singh, wherein it has been held by the Hon''ble Supreme Court that subsequent to the approval of the D.P.C., if any departmental proceeding is initiated, it would not entitle the department to adopt even a sealed cover procedure much less to deny the promotion. Learned counsel for the respondent also submitted that even the issue of promotion of the respondent on the basis of the recommendation of the D.P.C., which twice recommended the respondent's name vide its communication dated 24.4.2006 and subsequently vide communication 14.11.2009, the respondent has been denied promotion to the post of Chief Engineer on one pretext or another. The petitioner-respondent had to approach this Court by filing writ petition being W.P.(S) No. 530 of 2007 wherein also the plea of the respondent's earlier punishment was raised and learned Single Judge in the respondent's above writ petition being W.P.(S) No. 530 of 2007 vide judgment dated 27.8.2008 held that the D.P.C. has already considered the respondent-petitioner's earlier promotion and denied the promotion in earlier years vacancies. After considering those punishments as well as after considering the

fact of the respondent's entitlement for promotion from a particular date recommended for the promotion to the post of Chief Engineer. Thereafter, the learned Single Judge in the said writ petition specifically held that the respondent has subsequently been exonerated from all the charges in the departmental proceeding which was initiated after the departmental promotion committee has made the recommendation for the promotion of the respondent to the post of Chief Engineer, and therefore, there is no impediment on the part of the appellant to take decision in the matter immediately. After recording those findings, specific direction was given to the appellant, Secretary, Road Construction Department, Jharkhand, to take decision on the matter of promotion of the respondent to the post of Chief Engineer.

5. Learned counsel for the writ petitioner respondent further submitted that when the respondent was not given the promotion, the respondent submitted a contempt petition wherein the appellant-State clearly indicated that the respondent's case was again considered by another D.P.C. and again the recommendation for respondent's promotion was sent to the State Government on 14.11.2009. In view of the above reason, the contempt petition was disposed of.

6. Now, in the impugned order of the department, by which the respondent has been denied the promotion, the only ground taken is that since the respondent has retired, therefore, he was not entitled to the promotion. It is submitted that Rule 58(a) of the Jharkhand Service Code has no application to the facts of the case as has been held by the learned Single Judge. In view of the above fact that the said Rule applies to the persons who voluntarily do not assume the charge and the duties of the post then they are not entitled to pay and allowances attached to the said post which such employee has not assumed the charge.

7. We have considered the submissions of the learned counsel for the parties and perused the facts of the case.

8. It is not in dispute in view of the reasons given again in the meeting of the D.P.C. copy of which has been placed on record by the appellant-State as Annexure-1 alongwith this L.P.A. that the D.P.C. considered the petitioner's character roll and found that for the adverse entry in the character roll of the petitioner for the year 1988-89, the petitioner may not be entitled to promotion for three years i.e. upto 31.3.2002. However, the respondent-petitioner shall be entitled for promotion from 1.4.2002. The D.P.C. also considered that for the year 1996 the charge-sheet was served upon the respondent and he was punished in the departmental proceeding, and therefore, for further three years, the respondent shall not be entitled to promotion and thereby he was not given promotion upto 31st March, 2005. But, so far as his promotion in any subsequent (sic) is concerned, there is no impediment and with these reasons, the D.P.C. recommended the promotion of the petitioner-respondent.

9. Therefore, in the impugned order of the department, the petitioner-

respondent has not been denied promotion because of any misconduct of the petitioner-respondent. However, in the impugned order, the only reason given for denial of promotion is that since the petitioner has retired, and therefore, the petitioner cannot be given promotion.

10. In our opinion, the order was absolutely illegal and was rightly set aside by the learned Single Judge as the respondent, who was having no adverse entry for the relevant assessment years and initiation of the departmental enquiry after recommendation of the D.P.C. cannot affect the recommendation of the D.P.C, therefore, the respondent-petitioner could not have been denied the promotion to the post of Chief Engineer. Be it as it may, subsequently, those departmental proceedings were also dropped. Therefore, the respondent-petitioner was entitled to the promotion.

11. It is submitted by the learned Counsel for the State that the recommendation of the D.P.C. was not binding upon the State Government. Such submission has no legal basis in view of the fact that the State cannot take the plea that the State has rejected the respondent-petitioner's candidature on the basis of the punishment which in fact could have denied the promotion of the petitioner from prior years and was not relevant for the purpose of granting promotion to the respondent-petitioner for which recommendation has been made by the D.P.C. The D.P.C. itself has denied the promotion to the respondent-petitioner on account of his past punishment. The State also has no right to arbitrarily reject the recommendation of the D.P.C. and even if it is assumed that the approval Committee of the Cabinet could have differed with the recommendation of the D.P.C., then also as per the judgment of the Supreme Court delivered in the case of Union of India & Ors. vs. N.P. Dhamanla & Ors. (supra) relied by the learned counsel for the appellant it could have been done only on the basis of the reasons and those reasons must be recorded for differing though those reasons may not have been communicated to the officer concerned and the State could have shown those reasons to the Court, but no other reason has been shown by the State for denial of the promotion except the plea that the respondent-petitioner was not entitled to the pay and allowances as per Rule 58(a) of the Jharkhand Service Code and the respondent-petitioner was punished prior in earlier years, which was not relevant for the purpose of grant of promotion to the year for which recommendation was made by the D.P.C. Therefore, both the grounds were not available to the State for denial of the promotion to the writ petitioner-respondent and therefore, even when the reason of past punishment is not in the impugned order of denial of promotion to the respondent-petitioner even then we considered that reason then also there is no merit in the objection.

12. So far as Rule 58(a) is concerned, it is clear that this has application to the cases where the employee failed to assume the charge because of his own act or omission, then he shall not be entitled to the pay and allowances attached to the post. It has no application to the cases where the employee was not even promoted because of no fault of the employee. The respondent-petitioner could

not have been denied any benefit for which he was lawfully entitled while he was in service merely on the ground that he has retired. Therefore, in the facts and circumstances of the case, the judgments relied upon by the learned counsel appellant has no application. In view of the reasons mentioned above, there is no merit in this Letters Patent Appeal. Hence, this L.P.A. is dismissed.