
(2010) 07 PAT CK 0088
In the Patna High Court
Case No : CWJC No. 1782 of 2004

Yogendra Baitha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Constitution of India, 1950 — Article 16(4A)

Citation : (2011) 1 PLJR 396

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Petitioner is a retired employee who superannuated from service with effect from 31.1.2001. Post retirement he came to a considered opinion that he still had a right and claim over the department for grant of promotion and benefit flowing therefrom after more than four years of retirement.

2. Petitioner was serving the Department of Agriculture and had earned certain promotions over the period of time, some of them related to time bound promotion which included grant of scale of junior selection grade or senior selection grade. He is aggrieved because even though by virtue of notification dated 31.12.1993 he came to be posted on the post of Joint Director, he never got substantive promotion on the said post. In fact, he carried his present scale on that post as would be evident from the said notification contained in Annexure-6.

3. Posting of the Petitioner on the post of Joint Director with the same pay scale was not unique to him. Due to a large number of vacancies existing at that point of time the State Government decided to post many persons including the Petitioner in similar situation due to exigency of service as would be evident from Annexure-6.

4. The question of promotion on the substantive post came to be taken up

subsequently. There were 35 candidates whose cases were taken up by the Departmental Promotion Committee on 9.1.1997. At that point of time there were 28 vacancies existing. As per the roster clearance of the Personnel & Administrative Reforms Department, 21 posts were available for unreserved category, 5 posts for scheduled caste category and 2 posts for scheduled tribe category. The stand of the State is that the 5 posts available for the scheduled caste category got filled up by persons senior to the Petitioner. Since the Petitioner did not make it to the zone of consideration he could not be promoted at the relevant time in absence of posts.

5. Learned Senior Counsel for the Petitioner thereafter submits that the vacancy did arise after 1997 due to retirement of one person, namely, Baban Ram. But even this post was not made available to him for promotion.

6. From the narration in the counter affidavit filed by the State, Petitioner had suffered an order of punishment vide order dated 10.12.1999. The punishment order debarred the Petitioner from consideration of promotion for a period of three years. Since that period of three years expired after the Petitioner's retirement there was no occasion for the Petitioner to claim grant of promotion against the vacant post.

7. All kind of submissions have been made at the bar to beget promotion to Petitioner including reliance on the so-called constitutional amendment brought about in Article 16(4A) of the Constitution of India as well as the submission that by virtue of the circular of the State Government the punishment order should relate back to the year of charge and not to the date of punishment which has come in the way of Petitioner for promotion.

8. The Court with utmost restraint must record that the submission of the Petitioner has absolutely no correlation to the issue raised in the present writ application. The Constitutional Amendment brought about in Article 16(4A) has no applicability to the claim of the Petitioner for promotion. The case of promotion of the Petitioner will be considered in light of the vacancy available or the class to which the Petitioner belongs. The circular which the Petitioner relies with regard to counting of three years of punishment from the date of charge is belied from a reading of the said circular itself. This circular is Annexure-15 to the writ application. The Court is constrained to record that wrong reading or interpretation is sought to be given to the Court as the said circular itself states that in case of punishment of "Nindan" the same will have effect for next three years. Admitted position is that the Petitioner was awarded punishment on 10.12.99 therefore the period of three years would expire only in December 2001. The Petitioner retired on 31st January, 2001 itself. It is a totally misplaced writ application. It falls in the category of a litigation post retirement without any substantive basis or right.

9. After the argument had been completed learned Counsel for the Petitioner drew the attention of the Court to the supplementary affidavit wherein certain

persons were promoted on superior post from the date noted against their names in column 3. It is urged that there was vacancy and the stand of the State is not correct in the counter. The notification in question is not related to promotion of Joint Director. It is with regard to grant of pay scale to some employees which is not the prayer of the Petitioner in the writ.

10. This writ application has not merit and it is dismissed.