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(2008) 02 JH CK 0016

Jharkhand High Court

Case No: None

Sudhanshu Bhushan Ram		APPELLANT
	Vs	
State of Jharkhand and Others		RESPONDENT

Date of Decision: Feb. 6, 2008

Acts Referred:

- Bihar Finance Rules, 1981 - Rule 74

Citation: (2008) 2 JCR 670

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Narendra Nath Tiwari, J.
The petitioner is aggrieved by paragraph-2 of the promotion order dated 24.4.2007, contained in Annexures-5. By the said Annexure-5, the petitioner was given promotion to the post of Additional Collector in the pay scale of Rs. 12,000- 16,500/-, but in paragraph-2 of the said order, the petitioner has been debarred from his monetary benefit and other benefits from the date of promotion. It has been mentioned that the same will be admissible from the date of notification of the said order.

2. The grievance of the petitioner is that once the authorities decided to give promotion to the petitioner w.e.f. 1.11.2004, there was no occasion for depriving him of promotional benefit from the said date. It has been stated that the petitioner was earlier subjected to criminal proceeding, which was quashed. He was also subjected to departmental proceeding, but that was also quashed. In spite of the same, juniors were given promotion w.e.f. 1.11.2004 and the petitioner was discriminated. The petitioner against

had moved this Court in writ petition [WP (S) No. 7312 of 2005], which was disposed of by order dated 7.8.2006 directing the respondents to consider the petitioner''s claim and pass appropriate order. In compliance of the said direction of this Court, the respondents ultimately passed the said order of promotion but debarring him from the promotional benefit from the date he was entitled to get his promotion. It has been submitted that the said order is wholly arbitrary, illegal and malafide and is not sustainable. The petitioner is entitled to get all consequential benefits with effect from the date from which he was given promotion to the post of Additional Collector.

3. A counter-affidavit has been filed on behalf of the respondents contesting the petitioner''s claim. In the counter-affidavit, it has been stated that there was no illegality/arbitrariness in adding the said paragraph-2 in the promotion order of the petitioner. The order is in accordance with Rule 74 of the Bihar Finance Rules. It has been stated that though under the said provision, promotion can be given to the petitioner with retrospective effect, financial sanction cannot be made with retrospective effect, except in exceptional cases.

4. I have heard learned Counsel for the parties and considered the facts and circumstances, appearing on record.

5. Mr. D.K. Dubey, learned Counsel appearing on behalf of the petitioner submitted that the petitioner was found entitled for promotion w.e.f. 1.11.2004 and as the order of promotion has been passed by the competent authority, he is also entitled to get all consequential benefits. There was Inordinate delay in issuing the order of promotion for which the petitioner cannot be blamed and penalised. It was the duty of the respondents to grant promotion to the petitioner at the appropriate time, but that was not done and the matter was kept in sealed cover on the ground of pendency of the departmental proceeding/ criminal proceeding against him. Both the proceedings were found baseless and were quashed. The petitioner was not found guilty or at fault and, as such, the petitioner''s case comes within the exception, as the promotion was not delayed for any fault of the petitioner. The provision of Rule 74 of the Bihar Finance Rules also does not completely debar giving financial sanction with retrospective effect. It provides for financial sanction in exceptional cases. The ground of bar of Section 74 of the Bihar Finance Rules taken by the respondents is not tenable. Learned Counsel referred to and relied on the decision of the then Patna High Court in ''Ranjit Sahay Jamuar and Anr. v. State of Bihar and Ors. reported in 1999(1) PUR 272. It has been submitted that in similar circumstance, it has been held that the provisions of Rule 58 of the Bihar Service Code and the Rule 74 of the Bihar Finance Rules are not applicable in such cases. In the said case, it was held in paragraph-7, as follows:

The stand taken by the respondent authorities and the reliance placed on the aforesaid rules is not acceptable to me. In my view the provision of Rule 58 of the Service Code and Rule 74 of the Bihar Financial Rules have no application to the case of the petitioners for the simple reason that those rules envisage promotions given in the normal course of

administration and at due time when the right of promotion accrued to the concerned employee. The two rules do not, by any stretch of imagination, deal with cases where promotions were given not at the due time but with retrospective effect not for any fault on the part of the concerned employee but due to the laches and mistakes committed by the department.

6. Learned Counsel also relied on the decision of the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., . In paragraph -25 of the said decision, the Supreme Court has held that the normal rule of "no work no pay" is not applicable to cases where the employee, although is willing to work, kept away from work by the authorities for his no fault.

7. Learned JC to G.P. II, appearing on behalf of the respondent- State, on the other hand, submitted that in the instant case, the facts are different. The rulings referred to are not applicable. Promotion was not given to the petitioner due to pendency of the criminal proceeding/departmental proceeding at the relevant time when the promotion of other was considered. Learned Counsel, however, has not denied the fact that the said Criminal proceeding was quashed by this Court and the departmental proceeding in view thereof was withdrawn by the competent authority and that the decision for promotion of the petitioner was already taken and were kept under sealed cover and by the said order, the letter has been issued for giving promotion w.e.f 1.11.2004.

8. The respondents could not bring any document on record to show or could not make out the case that the delay in promotion was due to fault on the part of the petitioner. Rather the respondents found the petitioner entitled for promotion w.e.f. 1.11.2004. In the circumstances of the case, depriving the petitioner of consequential financial benefit of the promotion is wholly arbitrary and unjust. The impugned clause as contained in paragraph-2 of the impugned promotion order cannot sustain and the same is hereby quashed. This writ petition is allowed.

9. It is held that the petitioner is entitled to get all the consequential/financial benefits of promotion from the date he has been given promotion i.e. w.e.f 1.11.2004.