

(2011) 02 JH CK 0043

Jharkhand High Court

Case No: Writ Petition (S) No. 6389 of 2006

Sudarshan Ojha

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Feb. 17, 2011

Citation: (2011) 2 JCR 374 : (2011) 2 JLR 23

Hon'ble Judges: J.C.S. Rawat, J

Bench: Single Bench

Final Decision: Allowed

Judgement

J.C.S. Rawat, J.

This writ petition has been filed by the Petitioner for the following relief(s);

(i) To quash/ set aside the Force Order No. 785/2003 communicated by Memo No. 3930 dated 27.12.2003 issued under the pen and signature of the Respondent No. 5; whereby and where under the 2nd Time Bound Promotion granted to the Petitioner by Force Order No. 764/2000 dated 16.10.2000 has been canceled so far it relates to the Petitioner inasmuch as the same has been passed/issued by the successor State of Bihar after bifurcation of the existing State of Bihar on 15.11.2000 with respect to the Petitioner who has been posted in the State of Jharkhand that too without affording an opportunity of hearing of any kind whatsoever to the Petitioner.

(ii) To quash / set aside the Force Order No. 163/2004 as communicated by the Memo No. 830 dated 7.6.2004 issued under the pen and signature of Respondent No. 3 which has adopted /reproduced the aforesaid Force Order No. 785 /2003 issued by the Respondent No. 5(State of Bihar).

(iii) For any other appropriate relief or reliefs to which the Petitioner is found to be entitled to in the facts and circumstances of the case, as also to do conscionable justice to the Petitioner.

2. In a nutshell, the Petitioner was appointed as Hawaldar Clerk in the year 1965 and he was promoted to the Company Commander in the year 1980. In the year 1981, a scheme of time bound promotion came into effect and the Petitioner was found suitable for time bound promotion. Thereafter, the State has been bifurcated on 15.11.2000 and the Petitioner was allocated to the State of Jharkhand and he was again promoted to the post of Inspector in the year 2002. The State of Bihar cancelled the 2nd time bound promotion granted to the Petitioner in the year 2000 and the said order was also adopted by the State of Jharkhand vide order dated 7.6.2004.

3. Feeling aggrieved by the order of the State of Bihar as well as the State of Jharkhand, the Petitioner preferred this writ petition.

4. Learned Counsel appearing for the Respondents contended that the Petitioner has got first promotion prior to the Scheme of Time Bound Promotion which came into force in the year 1981 and the Petitioner is not entitled for the 2nd time bound promotion as stated in the said order itself. He further contended that the Petitioner has been promoted to the post of Inspector in the year 2002 and as such, he is not entitled to get the 2nd Time Bound Promotion. The learned Counsel appearing on behalf of the Petitioner contended that the entire scheme as envisaged under Clause-11 of the Circular, Annexure-3 to the writ application, clearly provided that a government servant should be granted at least two promotions in his/her service, the first by the end of ten years of service and the second by the end of 25 years of service, which is evident from Sub-clause (i) of Clause-11 and Sub-Clause(iii) of Clause 11 of the Scheme. The Petitioner has got the first regular promotion in the year 1980 and the scheme came into force in the year 1981 so the first Time Bound Promotion has not been granted to the Petitioner and therefore, it does not mean that the Petitioner would not be entitled to get the second Time Bound Promotion, as he has completed 25 years of his service. Learned Counsel for the Petitioner further contended that the Petitioner has got the second promotion in the year 2002 and he was entitled to get the second Time Bound Promotion after completion of the service of 25 years i.e. before the year 1999. Thus Time Bound Promotion granted by the State of Bihar was not in violation of any existing Rules and the order cancelling his promotion is bad in the eyes of law.

5. After going through the entire provisions of Scheme, the provisions of the Scheme as provided in Sub-clauses (I), (ii) (iii) and (iv) are applicable in this case, which read as under;

(i) Personnel management should envisage providing atleast two promotions to each and every employee in Government service, the first by the end of ten years of service and the second by the end of 25 years of service.

(ii) If an employee who is otherwise fit for promotion and has not been able to get a single promotion by 10 years of service notwithstanding the fact that a specified

percentage of the cadre is already provided in the different levels of promotion inclusive of the selection grade, he should be promoted to the junior selection grade at the end of the tenth year.

(iii) If an employee, although otherwise found fit for a second promotion, has not been able to secure a second promotion by the 25th year of his service notwithstanding the fact that a specified percentage of the cadre is already provided in the different levels of promotion inclusive of the selection grade, he should be promoted to the senior selection grade at the end of the 25th year.

(iv) The aforesaid facilities should be extended to all employees whether they belong to any formally constituted service or cadre, or not and including employees holding isolated posts. In their case, the pay scale immediately higher than the pay scale prescribed for the basic post should be considered as the pay scale for the junior selection grade, and the pay scale immediately higher to that of the aforesaid junior selection grade should be deemed to be the pay scale for the senior selection grade.

6. This scheme clearly provides that a Government Servant is entitled to at least two promotions in his/her service if, he/she has not been promoted after completion of a period of 25 years. The Petitioner was promoted prior to the enforcement of the Scheme i.e. 1980 so the Petitioner was not given the first time bound promotion, and now he was entitled to get the 2nd Time Bound Promotion after completion of 25 years of service when the state of Bihar granted him the 2nd time bound promotion. Thus the Petitioner was entitled to get the second Time Bound Promotion according to the above Circular/Scheme. The fact that the Petitioner has been granted a regular promotion in the year 2002 would not change the position. The Petitioner was entitled to the 2nd time bound promotion after 25 years of services. He was entitled to the said time bound promotion much before 2000. He should have been granted the promotion immediately after completing the 25 years of service, admittedly which falls much prior to 2002.

7. The State of Jharkhand has not considered the case of the Petitioner while following the decision of the State of Bihar, though four years had elapsed after granting the said 2nd Time Bound Promotion to the Petitioner. The Respondent State of Jharkhand has acted without applying its mind in the facts and circumstances of the instant case. Thus the order passed by the State of Jharkhand is also bad in the eyes of law. The learned Counsel appearing for the State of Jharkhand could not demonstrate as to why the Petitioner is not entitled to get the 2nd Time Bound Promotion.

8. The Respondent authorities had passed the order of cancellation of the promotion of the Petitioner as well as another employee i.e. Lalit Prasad Singh who was also granted the 2nd time bound promotion along with the Petitioner by the said order. The said Order was also challenged before the Patna High Court in CWJC No. 16443 of 2004 and the Court by allowing the claim of the Petitioner held that the

Petitioner is entitled for the 2nd time bound promotion and a copy of the said order is annexed as Annexure 8 to the writ application. Thereafter, the said Order was also challenged in LPA No. 48/2006 by the State of Bihar and Ors. in which the Court has held that "it is really not only surprising but painful that the Government has added one more frivolous litigation by filing this letters patent appeal challenging the order which directs that the claim of request of the original Petitioner, Respondent herein, shall be re-examined and reconsidered so far as the grant of second Time Bound Promotion aspect is conceder.. We, therefore dismiss the letters patent appeal with a cost of Rs. 2500/-". This dictum is also applicable in the instant case as the Patna High Court has already decided the lis in favour of the person, who is similarly situated with the Petitioner and thus I am completely in agreement with the findings recorded by the Patna High Court.

9. Under the said premises, the instant writ petition is liable to be allowed and accordingly the Orders dated 27.12.2003 and 7.6.2004 (Annexure-1 and 2 to the writ application) are quashed.

10. Accordingly, this writ petition is allowed. No order as to costs.