
(2004) 09 PAT CK 0103

Patna High Court

Case No: None

Sheoji Ram

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: Sept. 2, 2004

Final Decision: Allowed

Judgement

Navin Sinha, J.

Heard learned Counsel for the petitioner and learned Counsel for the State. A counter-affidavit has also been filed on behalf of the State.

The very short controversy in the present case is with regard to grant of second time bound promotion. The petitioner a grade-IV employee is battling with the State for a second time bound promotion in a third round of litigation, which is yet being opposed by the State.

2. The case of the petitioner is, that he was appointed as a Chowkidar on 27.6.1956 in the pay scale of Rs. 22.50 paise to Rs. 27.50 paise. This fact is not in dispute either on the documents of the respondents annexed to the writ petition or in the counter-affidavit. Learned Counsel for the petitioner submits that on the basis of this date of appointment, he was entitled to grant of second time bound promotion accordingly.

3. The submission on behalf of the petitioner is that acknowledging the date of appointment of the petitioner the respondents by an order issued on 30.8.1986 at Annexure-2 to the present application, granted him second time bound promotion in the pay scale of Rs. 400-7-470-10-510-E.B.-10-540. Notwithstanding the issuance of this order the respondents still refused to grant the enhanced pay scale to the petitioner. Despite being a grade-IV employee with limited resources, the petitioner was compelled to approach this Court in C.W.J.C. No. 7478 of 1991 for implementation of the order at Annexure-2 by grant of the enhanced pay scale. The

writ application was disposed of by an order dated 15.2.1996, Annexure-3, whereby the respondents were directed to pass appropriate orders on the representations by the petitioner for grant of enhanced pay scale. The respondent State still failed to react. This led to the institution of a contempt application bearing M.J.C. No. 648 of 1997. Thereafter, the respondents in haste proceeded to pass the impugned order at Annexure-5. In the circumstances, the contempt application came to be disposed off leaving the petitioner the opportunity to assail the order in a fresh writ application leading to the institution of the present case.

4. Learned Counsel for the petitioner submits that Annexure-5 on the face of it is arbitrary. It even while acknowledging the date of appointment of the petitioner in grade-IV on 27.2.1956, seeks to create an artificial distinction by holding that the petitioner opted -for a change in cadre by being appointed as a "Ply Boy". This was also a grade-IV post. This was so don effective from 26.8.1966. Learned Counsel, therefore, submits that in either case whether the date of appointment be 1956 or 1966 in either event he is entitled to the grant of second time bound promotion before his superannuation on 31.12.1993.

5. Learned Counsel for the State is not in a position to counter this submission of the petitioner that in either case he was entitled to the grant of second time bound promotion before his superannuation.

6. Having considered the facts and circumstances of the case, the document on record and the submissions of the parties, this Court prima facie comes to the conclusion that Annexure-5, by which the second time bound promotion is sought to be denied, virtually challenges the order to the respondents themselves, at Annexure-2. This is clearly not permissible. No Government authority or personnel can challenge the order of the Government itself. Reliance may be placed upon [Assistant Commissioner of Commercial Taxes \(Asst.\) Dharwar and Others Vs. Dharmendra Trading Company and Others](#), for this purpose. Without taking any note to further delay on this aspect of the matter, this writ application is fit to be allowed on the short submission made by the Counsel for the petitioner that in either case he is entitled to grant of second time bound promotion, taking the line of least resistance.

7. This Court, therefore, directs that Annexure-5 be set aside being contrary to law. The respondents shall be obliged to give effect to the second time bound to the petitioner as per their own case within a period of two months from today.

8. In normal circumstances in a case of this nature, this Court would not have considered the imposition of costs. The present is a case where a grade-IV employee for a simple relief of grant of second time bound promotion has been made to run repeatedly to this Court. The shifting circumstances of the respondents have simply resulted in unnecessary litigation before this Court. The Court, therefore, considered it fit to impose a cost of Rs. 500/- upon the respondent to be paid to the petitioner,

within a period of one month from today and proof thereof be filed when the office .shall bring the same to the attention of the Court.

The writ application stands allowed.