

(2011) 10 PAT CK 0042

Patna High Court

Case No: CWJC No. 9100 of 2010

Mahendra Nath Choudhury

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Oct. 19, 2011

Citation: (2012) 1 PLJR 129

Hon'ble Judges: Navin Sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Navin Sinha

1. Heard learned counsel for the petitioner and the State.
2. The petitioner assails the order dated 9.3.2009 to the extent that it cancels the first time bound promotion granted to him with effect from 1.1.1982 by order dated 27.9.2006. The former order simultaneously grants him second time bound promotion with effect from 23.3.1993. The petitioner has superannuated from service on 31.3.2007.
3. He was originally appointed as a skilled helper in the work charged establishment on 23.3.1968 and promoted to the post of Welder, Grade-2, in the work charged establishment on 1.1.1972. On 23.9.1981 he was brought in the regular establishment with effect from 1.4.1977 and granted first time bound promotion on 26.4.1995 with effect from 27.3.1987. These orders came to be cancelled on 19.3.2004 relegating him to the original status of skilled helper with orders for recovery.
4. Aggrieved, he filed C.W.J.C. No. 9254/06. During the pendency of the writ application the respondents suo motu reconsidered and passed fresh orders on 27.9.2006 deeming that he was appointed afresh on the post of Welder, Grade-2 on

1.1.1972 holding that he was not entitled for any promotion in the work charged establishment. First time bound promotion was granted from 1.1.1982 and eligibility for second time bound promotion reckoned from 1.1.1997 but which stood abolished with effect from 1.1.1996. He was also granted first and second A.C.P.

5. The Court observed that there appeared no justification for varying his pay-scale of Welder, Grade-2 after 35 years of service. The order had been passed barely months before his superannuation. The order dated 27.9.2006 was accordingly set aside to the extent that it denied him second time bound promotion. The respondents were directed to consider his claim for second time bound promotion with consequential benefits. The Court did not interfere with the order for first time bound promotion.

6. Learned counsel for the petitioner submits that the entire period spent in the work charged establishment from the initial appointment on 23.3.1968 has to be taken into consideration. He relies upon an order of this Court dated 22.6.2005 in C.W.J.C. No. 9714/02 Ed.--Reported in 2012 [Bishwa Nath Singh Vs. The State of Bihar and Others](#), as follows:--

Bare perusal of Annexure-6 shows that the petitioner initially joined Work Charge Establishment on 28.2.1967 and became regular on 5.9.1982. It has not been shown on behalf of learned counsel for the State that any promotion/upgradation in the Work Charge Establishment are to be taken into account for the purpose of consideration of the cases for grant of first time bound or second time bound promotions. According to the Government decision, contained in Annexure-5 as already noticed above, the period of service in the Work Charge Establishment is to be counted for the purpose of grant of selection grade and time bound promotions, provided it does not affect the seniority of the regular employee except that a person getting the said benefit will not be entitled for arrear prior to the date of the said notification i.e. 27.3.1987.

Mr. Tripathi learned counsel for the Accountant General has also not been able to point out any provision under which promotion/upgradation in the Work Charge Establishment is to be taken into account for the purpose of denial of time bound promotions as per the Government decision.

7. The contention therefore is that any benefit of upgradation granted in the work charged establishment cannot defeat the claim for time bound promotion and computation of that period for the purpose.

8. The respondents contend that promotion in the work charged establishment from the post of skilled helper to Welder, Grade-2 was contrary to law as there existed no avenue for such promotion. The petitioner was therefore deemed to be an appointee on the post of Welder, Grade-2 from 1.1.1972. Since he had progressed to a higher post from the original appointment as a skilled helper on 23.3.1968 he was not entitled to first time bound promotion from the latter date as

he did not classify as a person suffering from stagnation.

9. This Court on consideration of the submissions made by the parties holds that the petitioner is entitled to both first and second time bound promotion. The impugned order dated 9.3.2009 insofar as it cancels the first time bound promotion is unsustainable.

10. The fact of the matter is that the petitioner was appointed on 23.3.1968. His eligibility for time bound promotion has to be accordingly considered. The aspect of his superannuation also has to be kept in mind.

11. The Court indeed finds it queer that despite the superannuation of the petitioner on 31.3.2007 the respondents still continue to pursue the matter of time bound promotion issuing different orders from time to time with regard to what may or may not have happened on 23.3.1968, 26.9.1995, 19.3.2004 and 27.9.2006.

12. The petitioner is entitled to be left in peace and solitude to enjoy his superannuation. Litigation is a wholly avoidable burden on his pensionary resources. The issue is not with regard to a substantive promotion but only time bound promotion. It is time that the respondents left him in peace.

13. The impugned order dated 9.3.2009 is set aside to the extent that it denies first time bound promotion to the petitioner.

14. The petitioner is held entitled to the monetary benefits in accordance with the pay-scale as originally fixed.

15. The application stands allowed.