

(2016) 03 PAT CK 0035

PATNA HIGH COURT

Case No: Letters Patent Appeal No. 1653 of 2012 in Civil Writ Jurisdiction Case No. 411 of 2006

Prem Kumar Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: March 16, 2016

Citation: (2016) 2 BBCJ 88 : (2016) 2 PLJR 747

Hon'ble Judges: Navaniti Prasad Singh and Nilu Agrawal, JJ.

Bench: Division Bench

Advocate: Lalan Kumar Singh, Advocate, for the Appellant; Upendra Pratap Singh, AC to SC-25 and Sushil Kumar Mallick, AC to SC-25, for the Respondent

Final Decision: Disposed Off

Judgement

Navaniti Prasad Singh, J.

1. This is an Intra-Court Appeal by the writ petitioner/appellant being aggrieved by the judgment and order dated 29.02.2012 passed in C.W.J.C. No. 411/2006, as also against order dated 02.08.2012, by which the same learned Judge refused to review his earlier order in Civil Review No. 169/2012.

2. Counter affidavit and rejoinder have been filed at this appellate stage as well. We have accepted it on record.

3. We have also heard learned counsel for the writ petitioner/appellant and learned counsel for the State at length for its final disposal at this stage itself.

4. The grievance of the writ petitioner/appellant was that, he was duly recruited as Junior Accounts Clerk in the Minor Irrigation Department, being part of Water Resources Department. In due course, he was promoted to the post of Senior Accounts Clerk. At that time, a provisional gradation list was prepared. There were a lot of discrepancies in the provisional gradation list. Some persons claimed to be much senior, who did not even find place in the provisional gradation list, some were much junior. This lead to a writ petition being filed before this Court being

C.W.J.C. No. 39/1990. While the writ petition was pending, some of the persons, who are shown in the provisional gradation list, were promoted to the post of Accountant in the Minor Irrigation Department. Upon objection being raised, the persons, who were wrongly left out, were notionally promoted from the date juniors were granted promotion to the post of Accountant. While all this was happening, there was a departmental proceeding pending against the writ petitioner/appellant and he was not being considered for promotion. He did not join. Ultimately, by judgment and order dated 15.10.1998, C.W.J.C. No. 39/1990 was allowed. It was clearly found that the gradation list was wrongly prepared, it directed for its correction in view of the observations made therein. It held that the persons who had been wrongly deprived of their promotion as Accountant had to be given promotion as an Accountant with full consequences from the date their juniors were promoted, which in that case was dated 28.01.1980. Even, at this time, it appears that the writ petitioner/appellant had also separately filed a writ petition being C.W.J.C. No. 12/1990 along with another i.e. the Sachchidanand Singh, their writ petition was also disposed of on 15.10.1998, in terms of C.W.J.C. No. 39/1990. Now the matters were considered, and even though the writ petitioner was at serial No. 34 in the gradation list, while his juniors including the said Sachchidanand Singh and his seniors were promoted as Accountant, his case was not considered because of the departmental proceeding pending. Upon conclusion of the departmental proceeding, he once again trying to persuade the authorities to grant him promotion, failing which, he then filed a writ petition being C.W.J.C. No. 13521/2000, which was disposed of by order dated 21.12.2000 without adjudicating and simply directing the writ petitioner to represent before the departmental authority. It may be noted that instead of remanding the matter to enable the petitioner to file representation, the facts being there, if the Court had taken the trouble to decide the matter which it could, it would have saved not only this Court's time but also the miseries of the writ petitioner. The representation having been filed, the department went into deep slumber as it usually does. The writ petitioner/appellant superannuated in the year 2005, five years after his superannuation and virtually 10 years after his representation was filed, the Secretary of the Water Resources Department rejects his representation, which was Annexure-11 to the writ petition and is dated 09.06.2005. The ground for rejection is that the writ petitioner/appellant has sought promotion to the post of Accountant, but as per opinion of the Finance Department, the post of Divisional Accountant is an independent cadre in the Public Works Department (Accounts) Code, and is appointed by the Accountant General of India. It is not a promotional post of petitioner who was Senior Accounts Clerk. Not only this, but the Secretary has taken precaution to mention that all other persons who have been promoted as Accountants have been issued notices as against their wrong promotion. We will not comment what happened to those proceedings or with what motive this was added in the order. We regret that senior officers deal so casually in such matters.

5. The plea of the writ petitioner/appellant was that he was seeking promotion to the post of Accountant as his senior and juniors were granted. It is not that such a promotion was granted as a one time measure, but they were regularly and repeatedly granted, but when it came to the petitioner, for some reason, all excuses were being made to deny him the promotion.

6. The contention of learned counsel is that the authorities have deliberately misled themselves to make confusion in between the post of Accountant and post of Divisional Accountant. The latter is a post conferred under the Public Works Department Accounts Code as a separate cadre where recruitments are made by the Accountant General and not by the State.

7. Though by the supplementary and counter affidavit filed today, it is now the stand of the State that those appointments of Divisional Accountants are made by the Staff Selection Commission directly and it is not a promotional post for the like of the writ petitioner/appellant. State may be correct in that regard or rather is correct in that regard for the fallacy in the mind of the senior officers of the State is that, there is no distinction between the post of Accountant and Divisional Accountant. Someone has deliberately played mischief in this regard to hurt and deprive the writ petitioner/appellant. Writ petitioner/appellant never claimed promotion to the post of Divisional Accountant at any stage of writ proceeding. Claims were made for promotion to the post of Accountant, as others had been promoted. Neither there was a whisper nor a claim to be promoted as a Divisional Accountant. State had never in any proceeding taken a stand that Accountant was not a promotional post from Senior Accounts Clerk. We may notice as noticed earlier, the writ petitioner/appellant and one Sachchidanand Singh had joined to file a writ petition being C.W.J.C. No. 12/1990, while petitioner was not granted promotion to Accountant because of pending departmental proceeding, Sachchidanand Singh, who was his junior, was granted promotion as Accountant and not only that he was further granted A.C.P. on the post of Accountant as well. These facts are too glaring and clearly establishes malice as against the writ petitioner/appellant. When he filed the present writ petition, the learned Single Judge, by a short cryptic order, dismissed the writ petition holding that Divisional Accountant is a cadre by itself and not a promotional cadre for the writ petitioner/appellant, without even caring to look at dichotomy. Petitioner never claimed promotion to the post of Divisional Accountant.

8. Now, to make the things clear and to expose the departmental authorities, we have writ petitioner/appellant's reply to the counter affidavit filed by the respondents. To say the least, it thoroughly exposes the senior officials. Annexure-2 to the said rejoinder is the budget proposal. A budgetary allocation as prepared by the Secretary to the Water Resources Department (Minor Irrigation Department) has been sent to the Accountant General, Bihar, dated 08.06.1999. When we refer to the schedule thereof, it clearly shows that there is a separate post of Accountant,

numbering 23 i.e. duly sanctioned. Those 23 persons are working on the said 23 sanctioned post with pay scale, being initially Rs. 1500-2750 to 1800-3330. In the same very next entry is Divisional Accountant, wherein 7 sanctioned posts are there and 7 persons are working in the pay scale of Rs. 5000-8000. Thus, the officials, even the Finance Department, were aware of this distinction that there existed a different post of Accountant and a different post for Divisional Accountant. Yet, they deliberately misled the Court and deliberately deprived the writ petitioner/appellant of his due promotion and other benefits. State is completely at a loss to accept this, once this fact has been brought and these documents have been brought on record.

9. Having considered the matter aforesaid, we have no option but to allow this appeal, setting aside the orders under appeal, allow the writ petition, we, accordingly do so.

10. We, therefore, direct the Secretary of the Water Resources Department (Minor Irrigation Department) to immediately consider the case of the writ petitioner/appellant for grant of promotion to the post of Accountant at least from the date when his junior Sachchidanand Singh was granted promotion as Accountant w.e.f. 28.01.1980 with all consequential monetary benefits including A.C.P., if available, and consequential revision of pensionary benefits, considering the facts and circumstances of the manner in which State conducted itself.

11. It would be proper to allow this appeal with cost of Rs. 50,000/- (Fifty Thousand only) to be paid by the State. It would be open to the State to realize the cost from officials/officers who were responsible for trying to mislead the Court and deny benefits to the writ petitioner/appellant for such long years.