

**Raj Kumar Singh Vs. the State of Bihar and Others**

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**Court :** Patna

**Decided On :** May-09-2014

**Judge :** Jayanandan Singh

**Appeal No. :** Civil Writ Jurisdiction Case No. 6142 of 2006

**Appellant :** Raj Kumar Singh

**Respondent :** The State of Bihar and Others

**Judgement :**

Petitioner has filed this writ application for a direction to the respondents to grant him promotion to the post of Superintending Engineer with effect from 4th January, 1993 the date from which his juniors were promoted and for release of consequential benefits of the same.

The facts of the case are that, after his promotion and, in due course of posting, petitioner was holding the post of Executive Engineer in Water Resources Department at the relevant time. On 20.3.1985 final gradation list of Assistant Engineers was prepared in which petitioner was placed at serial no.379. Subsequently he was promoted as Executive Engineer from which post he superannuated with effect from 30.6.1995. After his superannuation D.P.C. was held on 30.12.1995 in which the cases of Executive Engineers of the Department were considered for promotion. On that date, two departmental proceedings were pending against petitioner from before. Hence the D.P.C. did not consider his case

for promotion and kept it pending and recommended for promotion of his juniors, namely respondent nos.6 to 23, with effect from 4.1.1993 the date on which the Executive Engineers had become eligible for promotion. Subsequently some other junior Executive Engineers were also promoted. In the proceeding petitioner had submitted his explanation, but till his superannuation no final decision had been taken. Hence, he moved this Court through CWJC No.2387 of 1998 challenging the first proceeding and this Court, by order dated 2.7.2002, vide Annexure-4, quashed the order of the Department contained in memo no.1058 dated 19.9.1997. After sometime petitioner moved this Court again through CWJC No.11341 of 1999 challenging the second proceeding. The said writ application was also allowed by order dated 28.1.2005, vide Annexure-7, in which the other order of the Department dated 10.9.1999 in respect of 2nd proceeding was also quashed. Thus, both the proceedings against the petitioner stood quashed by the Court and hence the stigma attached to him stood wiped out. After the 2nd order of this Court, petitioner represented in the Department for his promotion from the date his juniors had been granted promotion kept pending by the D.P.C. on account of said pending proceedings. Accordingly case of petitioner was considered for promotion and, vide Annexure-F dated 30.7.2005, his case was recommended to the Bihar Public Service Commission for placing his matter in the D.P.C. The meeting of the Committee was thereafter held on 11.12.2006 and, vide Resolution contained in Annexure-G dated 15.12.2006, it recommended that he, and others, be granted promotion with effect from 4.1.1993. It was noticed in the meeting that the informations had been received that till August, 2005 investigation was in progress in the criminal case and no charge sheet had been submitted. Hence, it was resolved that petitioner was eligible for promotion with effect from 4.1.1993 the date of promotion of his next junior, if the charges had not been framed against him. In the light of the said Resolution of the D.P.C. it appears that a report was called for from the S.P., Deoghar, who, through his letter dated 12.02.2008, vide Annexure-H, informed that in the criminal case charge sheet had been submitted against petitioner and other persons and, as he was absconding, steps for his arrest had been taken. Hence, in view of this report the recommendation of the D.P.C. was not acted upon in the case of petitioner.

Learned senior counsel for the petitioner submits that this report by the S.P. was wrong. He submits that, till the date of D.P.C. and even till the report by the S.P., charge sheet had not been submitted in the criminal case. He submits that finally the charge sheet was submitted in the case in 2011. Hence he submits that there being no legal bar in promotion of the petitioner in terms of the said Resolution of the D.P.C., the respondents should be directed to pass appropriate follow up orders pursuant to it.

A counter affidavit has been filed in this case and learned counsel for the respondents submits that since FIR had been lodged on 16.2.1999 itself in which petitioner was named accused when he was still in service, his case for promotion, if at all, has to be considered only in the light of the Resolution of the Personnel and Administrative Reforms Department dated 11.9.2002. He submits that since his juniors have been promoted with effect from 4.1.1993 the D.P.C. has recommended for his promotion from that date. On that date petitioner was in service and he was an accused in a criminal case registered with the Deoghar Police and two departmental proceedings were pending against him. He submits that in the circumstances as on that date he was not eligible for promotion. However, he accepts that, since the two departmental proceedings were later on quashed by this Court the effect of the same has to be taken as wiped out from the very beginning. However, he submits that even if it may be accepted that as on 4.1.1993 there was no departmental proceeding, the same having been quashed by this Court, a criminal case was pending against him. Therefore, due to pendency of the criminal case his case for promotion has to be governed by the said Resolution of the Personnel and Administrative Reforms Department dated 11.09.2002. He submits that the Resolution lays down that in case of some delay in a departmental proceeding or criminal proceeding, adhoc promotion can be granted to a government servant. But there are some preconditions laid down in paragraph 5 of the Resolution, one of which is that the concerned government servant should not be found responsible for delay in the departmental proceeding or in the criminal case. He submits that the report of the S.P., as contained in Annexure-H, shows that the petitioner was absconding. This shows that petitioner was responsible for delay in the progress of the criminal case. Hence, he cannot be get the benefit of the Resolution and cannot be granted promotion in terms of

the recommendations of the D.P.C.

Learned senior counsel for the petitioner submits that this report of the S.P. is wrong. He refers to an order of the learned District and Sessions Judge, as contained in Annexure-10 with the rejoinder, by which petitioners application for anticipatory bail was allowed. He submits that it was noticed by the learned District and Sessions Judge that the I.G., Dumka had stayed the arrest of the petitioner with a direction to the S.P., Deoghar and the I.O. to get the signatures of the petitioner over the treasury bills examined by Forensic Science Laboratory and by a handwriting expert. He submits that, hence, petitioner was under the umbrella of stay order of the I.G. and, therefore, there can be no question of his absconding. He refers to the note and earlier report of the S.P., Deoghar dated 25.7.2005, annexed as Annexure-D with the counter affidavit, and submits that, in terms of the order of the I.G., Dumka, I.O. of the case had indeed sent a requisition to the Accountant General Office at Ranchi for the vouchers for the purposes of getting the signatures compared by handwriting expert and Forensic Science Laboratory. However he was informed that due to passage of time vouchers had been destroyed and it was not possible to make them available. He submits that, in the circumstances, the order of the I.G., staying the arrest of the petitioner continued. Hence, he submits that this State of affairs continued and petitioner continued till he applied for anticipatory bail and his application was allowed by the District and Sessions Judge.

Though learned counsel for the respondents has pointed out that in the letter of the S.P. dated 25.7.2005 itself it has been mentioned at the last that a direction has been issued to the investigating authority for his arrest, but it does not appear from that this order was allegedly passed by the S.P. after withdrawal of the order by the I.G. of the stay of the arrest or in the teeth of it.

Having heard learned counsel for the parties and having perused the records, this Court is of the view that consideration of the case of petitioner for grant of promotion, in terms of the said Resolution of the D.P.C., has to be taken to its logical end. Learned counsel for the respondents has rightly submitted that since the petitioners claim for promotion is with effect from 4.1.1993, when he was still in

service, the same has to be considered in the light of the provisions of the Resolution dated 11.09.2002. But the objection of learned counsel for the respondents that petitioner was deprived of consideration on account of his having delayed progress in the criminal case, in terms of the clause (Gha) of the paragraph 5 of the said letter, is not sustainable. The different clauses in paragraph 5, disentitling a government servant from consideration of his case under the said Resolution, are exceptions to the rule laid down in the Resolution itself. Hence these exceptions have to be construed strictly. Therefore, if any exception is to be applied for denying the benefits of the Resolution to any government servant, onus lies on the respondents to produce evidences to the satisfaction of the Court to justify their action.

In the present case except for relying on the said two letters of the S.P., the respondents have not produced any material to show that, at any point of time, the petitioner was not under the cover of the I.G., Dumka and was in fact absconding and, in spite of efforts by the investigating officer, he could not be arrested till his application for anticipatory bail was allowed by the learned District and Sessions Judge. As against this, petitioner has asserted in the rejoinder and has produced the order of the learned District and Sessions Judge, noticing the fact that the I.G., Dumka had directed the stay of arrest of the petitioner till a report was received from the Forensic Science Laboratory or of a handwriting expert in respect of signatures of the petitioner on the treasury vouchers.

Learned senior counsel for the petitioner has shown that it was admitted by the S.P. that since the treasury vouchers could not be available to the I.O. this was never done. He submits that in spite of this absence of conclusive proof, a charge sheet has been submitted by the police in the criminal case as late as in 2011. He submits that the criminal case was instituted in 1995 and it has taken more than 15 years to the police to submit charge sheet.

the circumstances, the fate of the resultant trial is unknown and to what length of time the same may continue nobody can assess. In the circumstances, this Court does not find any justification in the Department denying the benefits of promotion to the petitioner as recommended by the D.P.C. through Resolution, as contained

in Annexure-4 with the counter affidavit awaiting result of the trial.

This writ application is accordingly allowed. The respondents are directed to act upon the said recommendation of the D.P.C. dated 11.12.2006 and take all follow up action in accordance with law within four months from the date of receipt/production of a copy of this order.

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