Santosh Kumar Jamuar and anr. Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-07-2003

Judge : Narayan Roy, J.

Acts : Service Law; Bihar Re-organization Act, 2000; Bihar Service Code, 1979 - Rule 103

Appeal No. : C.W.J.C. No. 838 of 2003

Appellant : Santosh Kumar Jamuar and anr.

Respondent : State of Bihar and ors.

Advocate for Def. : JC to SC 4

Advocate for Pet/Ap. : Ranjan Kumar, D.K. Prasad and Subodh Kumar, Advs.

Disposition : Application dismissed

Prior history : Narayan Roy, J. 1. Heard Counsel for the parties. 2. By this application, the petitioners pray for issuance of direction upon the respondents to promote them to the posts of Deputy Commissioner of Excise, as they are officiating in the posts of Deputy Commissioner of Excise since 1994 and 1995, respectively, and also for a direction to the respondents to pay salary and other allowance to them treating them as in regular cadre of Deputy Commissioner of Excise from the date of notification, w

Judgement :

Narayan Roy, J.

1. Heard Counsel for the parties.

2. By this application, the petitioners pray for issuance of direction upon the respondents to promote them to the posts of Deputy Commissioner of Excise, as they are officiating in the posts of Deputy Commissioner of Excise since 1994 and 1995, respectively, and also for a direction to the respondents to pay salary and other allowance to them treating them as in regular cadre of Deputy Commissioner of Excise from the date of notification, whereby and whereunder they were made incharge Deputy Commissioners of Excise.

3. Learned Counsel appearing on behalf of the petitioners submitted that the petitioners were promoted on substantive basis on the posts of Assistant Commissioner of Excise vide Notification Nos. 2806 dated 5-6-1999 and 255 dated. 3-7-1995, respectively, and thereafter they were made incharge Deputy Commissioners of Excise and they are functioning on the posts on officiating basis till date. It is further submitted that though the petitioners became eligible for consideration of their promotion to the posts of Deputy Commissioner of Excise, their cases are not being considered for the same. Alternatively, it is also argued by learned Counsel appearing on behalf of the petitioners that since the petitioners are officiating on the posts of Deputy Commissioner of Excise, they would be entitled to get the salary and other allowance, which are payable to Deputy Commissioner of Excise from the date of their officiation by virtue of the provision, as laid down in Rule 103 of the Bihar Service Code (hereinafter to the referred to as 'Code'). In support of this proposition learned Counsel placed reliance in case of Dr. Sachita Kumar Sinha v. State of Bihar and Ors., (1995 (1) Patna Law Journal Reports, 362).

4. A detailed counter affidavit has been filed on behalf of the State. It is stated that the petitioners case for promotion to the posts of Deputy Commissioner of Excise was considered in the meeting of the Departmental Promotion Committee (hereinafter to the referred to as 'DPC') held on 24-3-2000, but their cases could

not be finalised for promotion to the posts of Deputy Commissioner of Excise in view of certain unclarified informations and hereafter steps were taken to obtain clarification from the concerned Department and in the meantime, the Bihar Reorganisation Act, 2000 came into force in 2000, and, thereafter, the cases of the petitioners were not put up for consideration due to non-finalisation of the cadre of the petitioners Department. It is further stated in the counter affidavit that the question of promotion cannot be finalised till the cadre of the officials of this Department is finalised. It is also stated in the counter affidavit that no officer junior to the petitioners has been promoted to the post of Deputy Commissioner of Excise and all sincere efforts are being made to promote the eligible officers including the petitioners and the question of denial of promotion from the date of officiation is not violative of Article 14 of the Constitution unless the petitioners are promoted tot he higher posts, and, therefore, Rule 103 of the Code is not attracted in this case.

5. From the pleadings of the parties, it is admitted fact that the petitioners were promoted on substantive basis on the posts of Assistant Commissioner of Excise and now they are officiating as Deputy Commissioners of Excise. However, it appears from the materials on record that the case of the petitioners was placed before the DPC's meeting dated 24-3-2000, but they could not be considered for promotion to the higher post, as certain clearances were required to be obtained from the concerned Department, since the petitioners were facing certain charges.

6. It is not in dispute that after the meeting of the DPC dated 24-3-2000 the Bihar Reorganisation Act, 2000 came into force and the case of the petitioners, therefore, could not be considered until finalisation of the cadre of the Department.

7. The petitioners cannot claim for their promotion as a matter of right, but, at the same time, they are required to be considered within a reasonable period if ultimately they are found eligible for promotion,

8. So far the submission of learned Counsel appearing on behalf of the petitioners that the petitioners would be entitled to the pay and allowances for the officiating post is concerned, the provision of Rule 103 of the Code is required to be examined. Rule 103 of the Code reads as under:

'103. The pay of a Government Servant appointed by the State Government to hold substantively, as a temporary measure, or to officiate in, tow or more independent posts at one time shall be regulated as follows:

(a) the highest pay to which he would be entitled if his appointment to one of post stood alone, may be drawn on account of his tenure of that post,

(b) for each other post he may drawn such reasonable pay, in no case exceeding half the presumptive pay (excluding over seas pay) of the post, as the State Government may fix; and

(c) if a compensation allowance is attached to one of more of the posts, he may draw such compensatory allowance as the State Government may fix provided that such allowance shall not exceed the total of the compensatory allowance attached to all the posts.'

9. Rule 103 of the Code manifestly makes it clear that the pay of a Government servant appointed by the State Government to hold substantively as a temporary measure or to officiate in two or more independent posts at one time, shall be regulated in the manners prescribed in Sub-rules (a), (b) and (c) of Rule 103 of the Code.

10. In the instant case, it appears that the petitioners have not been appointed by the State Government to hold substantiveiy to the posts of Deputy Commissioner of Excise even as a temporary measure nor they are officiating in two or more independent posts at one time, and, therefore, the provision of Rule 103 of the Code does not apply in their case. In the case of Dr. Sachita Kumar Sinha (supra) the facts were not identical, as the writ petitioner in the aforesaid case was a Class I officer of Bihar Education Service and he was officiating on the post of Additional Deputy Director of Secondary Education for about two years. Since he was promoted as Class I officer on substantive basis in that Department, necessary direction was issued by this Court in terms of Rule 103 of the Code. But, at the same time, this Court observed as follows:

'I make it clear that I have passed this order taking into consideration the peculiar facts and circumstances of the case and this order is, as obviously it must be, confined to the facts of this case.'

11. For the reasons aforementioned, the ratio laid down by this Court in Dr. Sachita Kumar Sinha (supra) is not applicable in me facts and circumstances of this case.

12. Considering the facts and circumstances of the case, I do not find any merit in this application.

13. It is, accordingly, dismissed.

14. No order as to costs.