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Court : Patna

Decided On : Aug-26-2002

Judge : Chandramauli Kumar Prasad, J.

Appeal No. : C.W.J.C. No. 9141 of 2001

Appellant : Jamuna Singh

Respondent : The State of Bihar and ors.

Disposition : Application Dismissed

Judgement :

Chandramauli Kumar Prasad, J.

1. This application has been filed for quashing the order dated 10th July, 2001 (Annexure-1) whereby the prayer made by the petitioner for grant of Senior Selection Grade and Super Time Scale has been rejected. His prayer is to issue writ in the nature of mandamus commanding the respondents to grant promotion to senior selection Grade with effect from 1.4.1986 and super time scale with effect from 1.4.1989

2. Shorn of unnecessary details, facts giving rise to the present application are that in a proceeding initiated against the petitioner, he was held guilty in purchase of insecticides worth Rs. 11,22,000/- and was imposed the punishment of deduction

of 25% of his pension. For bungling in the purchase of medicine, a criminal case was also instituted and petitioner was charge-sheeted in the case. The learned Magistrate on consideration of the same took cognisance of the offence and issued process against the petitioner.

3. Earlier the case of the petitioner for grant of senior selection grade and super time scale was considered and by order dated 1.6.1996 the same was rejected. Petitioner preferred C.W.J.C. No. 13411/2000 before this Court and the learned Single Judge of this Court by order dated 20th December, 2000 disposed of the writ application with a direction to the respondents to consider the grievance of the petitioner. In the said case it was urged before this Court that the decision for deduction of 25% of the petitioner's pension as also the criminal case having been quashed by this Court, petitioner is entitled for grant of senior selection grade and super time scale. This Court answered the said plea in the following words:

Now, it has been contended on behalf of the petitioner that this Court has quashed the decision for deduction of 25% from the petitioner's pension vide Annexure-14, dated 10.12.1998 and the criminal case has also been quashed vide order contained in Annexure-12 dated 24.9.1998. It has further been contended that these subsequent developments have been brought to the notice of the concerned respondents through representations contained in Annexures-16 and 16/1.

In the facts of the case, it will be appropriate that petitioner's contention noted above are first considered by the concerned respondents themselves.

4. Accordingly the aforesaid plea of the petitioner has been considered by the Departmental Promotion Committee and by order dated 10th of July, 2001 the prayer made by the petitioner for grant of senior selection grade and super time scale has been rejected. The Departmental Promotion Committee found that the prosecution of the petitioner in criminal case has not been quashed by this Court on merits but on account of defect in the order of sanction. It also found that the order imposing punishment of withholding of 25% pension of the petitioner was also not quashed by the High Court on merits but on the ground that the proceeding was initiated beyond the period of limitation prescribed under Rule 43(b) of the Bihar Pension Rules.

5. Earned Counsel for the petitioner contends that consideration of criminal case and the order withholding of 25% of pension is absolutely illegal as the same are not relevant for the decision on the question of grant of grades to the petitioner. It has been emphasised that the criminal case as also the order of withholding pension have been quashed by this Court.

6. Earned Counsel appearing on behalf of the respondents, submits that on consideration of relevant materials the respondents have come to the conclusion that the petitioner does not deserve to be granted the grades and the said decision is not fit to be interfered by this Court in exercise of writ jurisdiction.

7. It is well-settled that Articles 14 and 16 of the Constitution guarantees right of consideration. This Court interferes with the decision of the Departmental Promotion Committee or the employer in declining the promotion only when it finds that while considering the case of promotion the employer had taken into consideration irrelevant materials or had not considered the relevant materials. Once, it is found that the decision has been taken on consideration of the relevant materials and without considering the irrelevant materials the decision cannot be faulted.

8. As stated earlier, prosecution of the petitioner in the criminal case has not been quashed by this Court on merits, further the order withholding the pension of the petitioner was not interfered by this Court on merits. In my opinion the filing of criminal case and withholding of 25% pension of the petitioner are relevant facts. Matter would have been different, had the petitioner's case not been considered at all, which is not the grievance of the petitioner. Hence, the action of the respondents in not granting the grades to the petitioner on consideration of the aforesaid facts cannot be said to be illegal.

9. Earned Counsel for the petitioner submits that while declining to grant the petitioner the grades, the respondents have taken into consideration the filing of the criminal case, which has already been quashed by this Court as also the order of withholding of 25% of pension which too was quashed by this Court and as such the action of respondents in declining grant of grades to the petitioner is impermissible as same would amount to sitting over the judgment of this Court.

10. In my opinion consideration of relevant material by the employer will not meant that it had sat over the judgment of this Court. The very fact that this Court had directed the authority to consider the case of the petitioner for grant of grades after it was brought to its notice in earlier writ application that the prosecution as also the order of withholding of 25% pension have been quashed, clearly goes to show to the contrary, In fact respondents were obliged to consider those materials.

11. In the result, I do not find any merit in this application. It is, accordingly, dismissed.

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