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Court : Patna

Decided On : Sep-01-2000

Judge : Sudhanshu Jyoti Mukhopadhyaya, J.

Appeal No. : Civil Writ Jurisdiction Case No. 338 of 1993

Appellant : Bindeshwari Prasad Sinha

Respondent : State of Bihar and ors.

Disposition : Petition Allowed

Judgement :

Sudhanshu Jyoti Mukhopadhyaya, J.

1. This application has been preferred by the petitioner for direction on the Respondents to pay him the salary of higher post of Inspector of Police with effect from 1st December, 1987, the date from which he has been promoted.

2. The brief fact of the case shows that the promotion of petitioner to the post of Inspector of Police was due since 1st December, 1987, but because of pendency of a departmental proceeding, the D.P.C. in its meeting dated 11th August, 1987 did not consider his case for promotion. Subsequently, the petitioner was awarded major punishment against which he preferred appeal, when the appellate authority converted the same with minor punishment of censure.

3. In spite of conversion of punishment to that of minor punishment of censure, the case of petitioner having not considered for promotion to higher post of Inspector of Police, he filed representation, where in after the D.P.C. in its meeting dated 12th February, 1990 treated the petitioner unfit because of adverse entries in the Character Roll. The petitioner, at that stage, brought to the notice of the authorities that the adverse entries had already been expunged, but no action having taken, the petitioner moved this Court in C.W.J.C. No. 4683 of 1992. The case aforesaid was disposed of on 3rd August, 1992, when this Court remitted the matter to the Respondents to reconsider the case of the petitioner for his promotion and to pass specific order within a stipulated period.

4. Admittedly, on such remand, the case of the petitioner was considered for promotion to the post of Inspector of Police and having found fit, he was promoted to higher post with effect from 1st December, 1987, but in the order, contained in Memo No. 4882 dated 22nd December, 1992, it was mentioned that the arrears of salary prior to 24th November, 1992 shall not be paid.

5. In view of the aforesaid decision of the State, the present Writ petition has been preferred by the petitioner with prayer to pay the arrears of salary, he having promoted with effect from 1st December, 1987.

6. The Respondents in their counter-affidavit while did not choose to controvert the fact aforesaid, stated that as per Finance Department's Circular No. 2074/(F) 2 dated 4th April, 1985 sub para (ii) on promotion from retrospective date, no arrear of pay and allowances is payable.

7. In this connection, they have also placed reliance on an order dated 3rd August, 1992 passed in C.W.J.C. No. 4683/92.

8. The question as to whether a person will be entitled for arrears of salary on promotion to higher post or not, fell for consideration before this Court and Supreme Court, from time to time.

9. In *Dr. Paras Nath Prasad v. State of Bihar and Ors.* (1990) 2 P.L.J.R. 248, while this Court allowed arrears of salary, held that the employee cannot be denied such

benefit for no fault in his part.

In the aforesaid case, while the Court took into consideration the circular, as referred by the Respondents, in the case of Union of India v. K.V. Jankiraman reported in (1991) 4 S.C.C 109, similar finding was given by Supreme Court.

10. In the case of State of Haryana and Ors. v. O.P. Gupta and Ors. reported in (1996) 7 S.C.C. 533, the Supreme Court while held that the arrears of salary on retrospective promotion is not always payable, but further held that in cases where promotion is kept pending in view of departmental proceeding, on completion of such proceeding and promotion, a person is entitled for arrears of salary.

11. In the present case, there was no fault on the part of the petitioner, but the case of his promotion was kept pending because of a departmental proceeding. The same having concluded and now the petitioner having been promoted from retrospective date, the authorities cannot deny the benefit of arrears of salary, giving reference of one. or other circular.

12. This apart, persons junior to petitioner having promoted from such earlier date, the petitioner has a right to be considered for such promotion and on promotion is also entitled for arrears of salary.

13. Accordingly, I direct the Respondents to fix the pay of the petitioner in terms with order of promotion to the post of Inspector of Police and pay the arrears of salary as due since 1st December, 1987, the date from which the petitioner has been promoted, within a period of three months from the date of receipt/production of a copy of this order.

14. The Writ petition is allowed with the aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order, as to costs.