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Court : Patna

Decided On : Aug-03-2005

Judge : Radha Mohan Prasad, J.

Appeal No. : C.W.J.C. No. 1072 of 2004

Appellant : Chandrawati Devi and ors.

Respondent : State of Bihar and ors.

Disposition : Petition dismissed

Judgement :

Radha Mohan Prasad, J.

1. Heard learned counsel for the petitioners and the learned counsel for the State.
2. In this writ petition, the petitioners have sought for direction to quash the minutes of the Departmental Promotion Committee dated 23.12.2000 to the extent it adversely affected that original petitioner and to command the respondents to promote him in Bihar Education Service Class I (Senior Selection Grade) with effect from the date he was entitled according to his date of appointment or at least from the date the juniors to the original petitioner have been promoted.
3. The original petitioner has neither challenged the validity of the orders of promotion, contained in Annexures-4 and 5, whereby, according to him. His juniors

have been promoted nor has made the said juniors party to the writ petition. Besides this, it appears that the original petitioner earlier filed writ petition, bearing CWJC No. 3315 of 1998, seeking similar direction and the High Court, vide order dated 17.11.1999, contained in Annexure-7, finding that only FIR had been filed and that no charge-sheet had been submitted, held that the promotion cannot be denied only on the ground of lodging of FIR following the decision of the Apex Court in the case of Union of India v. K.V. Janki Raman, reported in 1992 (1) PLJR 27 (SC) and, accordingly, quashed the order denying promotion on the ground of pendency of original case and directed to consider his case for promotion afresh in the light of the above.

4. Thereafter when the case of the original petitioner was not considered, he filed M.J.C. No. 3596 of 2000. This Court after noticing the fact that the charge-sheet had been submitted against the original petitioner in a criminal case found that no case for initiation of a proceeding of contempt is made out. However, this Court further considering the fact that one Khagendra Kumar against whom also the charge-sheet had been submitted, gave liberty to the petitioner to challenge the order refusing him promotion by taking it as a ground that Khagendra Kumar, who has also been charge-sheeted, has been given promotion. Thereafter the present writ petition was filed again for the same relief on 22.1.2004. However, after filing of the writ petition, the original petitioner died on 16.2.2004, whereafter a substitution bearing I.A. No. 1537 of 2004, was filed, which has been allowed vide order dated 11.5.2004.

5. As the original petitioner died. The criminal case lodged against him did not proceed and hence the learned counsel for the petitioners has submitted that the original petitioner was entitled for promotion from the date his juniors were given promotion, vide Annexures-4 and 5.

6. On the other hand, learned counsel for the State has submitted that the original petitioner was prime accused in the case instituted by the department against the irregular appointment and, as such, he was not entitled for any promotion more so when he has not challenged the validity of the orders of promotion to his so-called juniors in the year 1997-98, vide Annexures-4 and 5. Moreover, the consideration

was done in the year 1997-98 as is apparent from Annexures-4 and 5 itself whereas the petitioner had already superannuated on 31.1.1991.

7. According to the learned counsel for the State, the promotion granted to other co-accused Khagendra Kumar related to the State of Jharkhand and, as such, the State of Bihar is not responsible for the same. However, the Director (Administration)-Cum-Deputy Secretary, vide Annexure-A to the counter affidavit, informed the Joint Secretary of the Human Resources Development Department, Jharkhand that the entire file relating to the charges framed against Khagendra Kumar was made available to him and also about the order of this Court passed in the M.J.C. in order to find out as to under what circumstances, said Khagendra Kumar was given promotion, However, he submitted that since only because the original petitioner died, criminal case did not proceed against him, but the fact remains that the charges framed against him are of serious nature and he could not get promotion on the account. Learned counsel for the State further submitted that merely because other persons with similar charges had been granted promotion cannot be made the basis for claiming promotion on the facts and circumstances of the case.

8. I find substance in the submission of the learned counsel for the State. Having regard to the fact that on the date of consideration, charges were pending against the original petitioner, he was not entitled to claim promotion merely because his junior during the pendency of the charges against him had been granted promotion. It may be serious matter that a person against whom similar charges were pending was granted promotion, but that cannot be made the basis for claiming promotion of the original petitioner against whom charges were pending on the date of consideration of the cases of other so-called juniors to him. Apart from this, the order of their promotion has not been challenged nor they have been made party and, thus, in my opinion, in their absence this Court find it difficult to proceed to decide about their inter-se seniority and direct the authority to consider the case of the petitioners, especially when it is not clear as to whether on the relevant date, there were enough vacancy available for which the case of the original petitioner can be considered.

9. In the facts and circumstances aforementioned, I do not find any merit in the writ petition and the same is, accordingly, dismissed.

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