

Sijay Sharma Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-05-2004

Judge : Aftab Alam, J.

Acts : Service Law

Appeal No. : CWJC No. 4400 of 2003

Appellant : Sijay Sharma

Respondent : State of Bihar and ors.

Disposition : Petition dismissed

Judgement :

Aftab Alam, J.

1. The petitioner retired from service on 30.6.2000 as Surveyor. At the time of retirement he was posted in the Special Land Acquisition Office, Patna Flood Control Project under the Water Resources Department, Government of Bihar. His retiral dues remained unpaid even after two years of his superannuation and he, therefore, came to this Court in CWJC No. 10259 of 2002 seeking a direction to the concerned authorities for payment of his pension, gratuity and other dues.

2. In that case a counter affidavit was filed on behalf of the State in which office order No. 26, dated 19.9.2002 passed by the Director, Land Acquisition and

Rehabilitation was enclosed as Annexure-B. In that order it was stated that the petitioner was allowed second time bound promotion subject to the approval by the Finance Department. The Finance Department found that the second time-bound promotion was wrongly granted to him and, therefore, the second time-bound promotion given to him was cancelled and the excess salary paid to him on the basis of that promotion was directed to be recovered from his retiral dues. The Court was further informed that on cancellation of the second time-bound promotion the petitioner's pay was fixed in the lower scale of pay and all his retiral dues, including pension were determined on that basis. The cancellation of the second time-bound promotion further required an adjustment of Rs. 79,631/- paid to him as excess salary from his retiral dues. Out of the total recoverable amount Rs. 35,061/- was realised from his provisional gratuity and the balance Rs. 44,564/- from the amount receivable by him on encashment of unutilised salary. That writ petition was disposed of by order, dated 27.11.2002 (copy at Annexure 5).

3. By that order the Court held that the recovery of any excess salary paid to the petitioner from his retiral dues was unjustified and accordingly, directed the concerned authorities to release the deducted amount of Rs. 79,641/- to the petitioner within one week from the production/receipt of a copy of that order before the Director, Land Acquisition and Rehabilitation. But the question of fixation of pension and other retiral dues was expressly left open and the petitioner was given liberty to challenge the validity of the order, dated 19.9.2002 before the appropriate forum.

4. It may be noted here that the petitioner was allowed second time-bound promotion provisionally and subject to approval by the Finance Department. At that time the petitioner had also given a written undertaking that in case the promotion was found to be bad and not in accordance with the scheme of time bound promotions, it should be cancelled and the excess salary drawn by the petitioner on that basis should be liable to be recovered. Nevertheless, this Court observed that the petitioner had not obtained the promotion by misrepresentation or suppression of any material facts and relying upon the Supreme Court decision in *Sahib Ram v. State of Haryana*, (1995) Supp. SCC 18 held that any recovery

from his retiral dues was unjustified and gave direction for payment of the deducted amount to the petitioner. The issue of any recovery from the petitioner's retiral dues, thus, stands concluded.

5. By virtue of the liberty given by the previous order the petitioner filed the present writ petition challenging the order, dated 19.9.2002 by which the second time-bound promotion granted to him was cancelled and consequently his pay was fixed in the lower scale and all his retiral dues were determined on that basis.

6. At this stage it is required to take note of some basic facts which are simple and brief. The petitioner was initially appointed as Daftri, a Class IV post in the year 1962. On 2.2.1965 he was appointed as Amin on a provisional basis. The post of Amin is a Class III post and the petitioner's appointment was made against 25% vacancies in Class III reserved to be filled up from amongst the eligible candidates in Class IV. By order, dated 11.10.1980 he was given regular promotion as Surveyor. In December, 1981, the State Govt. introduced the scheme of time bound promotion with effect from 1.4.1981 but since the petitioner had already got a regular promotion on 11.10.1980, he was not allowed first time-bound promotion like other employees with effect from 1.4.1981. On 2.2.1990 the petitioner completed twenty five years of service calculated from 2.2.1965, the date of his appointment on the Class III post of Amin. And hence, by order No. 164, dated 14.1.1992 issued by the Director, Land Acquisition and Rehabilitation, Water Resources Department (Annexure 2) he was allowed second time-bound promotion with effect from 2.2.1990. As noted above in the promotion order it was clearly stipulated that the promotion was subject to approval by the Finance Department and in case it was found that the promotion was wrongly allowed, the entire excess amount paid to the promotee would be realised from him. Here it is important to note the scales of pay admissible to the posts of Amin and Surveyor as also the scale given to the petitioner on second time-bound promotion because the whole controversy regarding the validity of his second time-bound promotion depends on those scales.

7. It is an admitted position that on revision with effect from 1.1.1986 the pay scale of Amin was Rs. 975-1540/-. The scale next above it was Rs. 1200-1800 and the

next scale was Rs. 1320-2040/-. On the basis of the recommendation of the Pay Anomaly Removal Committee the Government allowed the basic scale of Rs. 1320-2040/- for the post of Surveyor. In other words, on his regular promotion as Surveyor the petitioner got a scale that was two stages above the scale of Amin. On getting second time bound promotion with effect from 2.2.1990 he was placed in the next higher scale of Rs. 1400-2600/-

8. According to 'the State, the petitioner's promotion, from the post of Amin had brought to him the benefit of a jump of two scales. He was, therefore, not entitled to any time-bound promotion under the scheme of time-bound promotions.

9. At the initial stages in the case there was some confusion. The petitioner believed (erroneously as it turned out later) that, the Finance Department had cancelled this second time-bound promotion on misapprehension of facts. The petitioner seemed to think that the Finance Department had wrongly assumed that Rs. 1320-2040/- was the junior selection grade scale for the post of Surveyor and since the petitioner was already in that scale, he was not entitled to second time-bound promotion with effect from 2.2.1990. Much effort was made by the petitioner and a lot of documents were brought on record to explain and to show to the Court that Rs. 1320-2040/- was in fact the basic scale for the post of Surveyor; that the petitioner was not granted first time-bound promotion and he was, therefore, rightly given the second time-bound promotion on completion of twenty five years with effect from 2.2.1990.

10. In order to clarify the position, the Court at one stage summoned a responsible and senior officer from the Finance Department and heard him personally. On hearing the officer from the Finance Department it became clear that there was no mis-apprehension of facts on the part of the concerned authorities and the petitioner was wrongly harbouring those doubts. The concerned authorities were fully aware that for the post of Surveyor the basic scale was Rs. 1320-2040/-. The officer, however, explained that there was a two scale jump on his promotion from Amin as Surveyor. He, thus, got an advancement of two scales by virtue of that promotion and that is all the two time bound promotions would bring to an employee in any event. Thus, on being allowed the second time-bound promotion

the petitioner was given a further jump in scale which was clearly not provided in the scheme of time-bound promotions. He invited my attention to the Government's resolution, dated 30.12.1981 by which the scheme of time-bound promotions was introduced and in support of his contention relied upon sub-paragraph (vii) of paragraph 11 of the resolution. Paragraph 11 (vii) is as follows :

'11 (vii) Since the aforesaid scheme is meant as an anti-stagnation measure, it should be applicable in case of only such employees who have not been able to get the first or the second promotion, as the case may be. In other words, the benefit of the time-bound system should be extended to those who are stagnating in the same pay scale to which they were appointed or its corresponding revised pay scale. The benefit should not be made applicable to such employees who, after once joining Government service have, for any reason, been elevated to a higher pay scale, by promotion, merger or even upgradation. This should require issue of specific orders in case of every employee which should obviously be done only after a careful examination of his service records.'

11. The under-lined passage in the above quotation fully supports the stand taken by the respondent authorities.

12. On the other hand Mr. Ambarnath Bannerjee who appeared as Amicus Curiae on behalf of the petitioner invited my attention to certain other passages in that resolution. He relied on the following passage in paragraph 10 and on sub-paragraph (iv) of paragraph 11 of the resolution. These are re-produced below :

'10. Where the revised scale for any existing Selection Grade has not been indicated in Schedule II, the revised scale for that existing selection grade will be the revised scale next above the corresponding basic revised scale. Where, however, two selection grades exist at present, and the revised scales for the existing Junior/Senior selection grades have not been indicated in Schedule II, the revised scale for the existing Junior Selection Grade will be the revised scale next above the corresponding basic revised scale while the revised scale for the existing Senior Selection Grade will be the revised scale next above the revised scale for the Junior Selection Grade.'

'11 (iv) The aforesaid facilities should be extended to all employees whether they belong to any formally constituted service or cadre, or not and including employees holding isolated posts. In their case, the pay scale immediately higher than the pay scale prescribed for the basic post should be considered as the pay scale for the junior selection grade, and the pay scale immediately higherto that of the aforesaid junior selection grade should be deemed to be the pay scale for the senior selection grade.'

13. Mr. Banerjee also relied on certain other Government orders and instructions. But on hearing counsel for the parties and on a careful consideration of the entire materials on record, I find that the case of the petitioner is fully covered by Paragraph 11(vii) of the resolution, dated 30.12.1981. As a result of his regular promotion from Amin to Surveyor, he was clearly excluded from the scheme of time-bound promotions.

14. Though from the point of view of the petitioner it may appear hard but there seems to be no denying that his case is not covered by the scheme of time bound promotions. The main object of the scheme was to mitigate the conditions of employees suffering from long stagnation. The second time-bound promotion allowed to him was, therefore, bad and it was not covered by the scheme. It was rightly cancelled.

The petitioner is, thus, held not entitled to the relief claimed by him this writ petition is dismissed.

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