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Court : Patna

Decided On : May-06-2011

Judge : Mridula Mishra, J.

Appeal No. : CIVIL WRIT JURISDICTION CASE No.9202 OF 1997 In the matter of an application under Article 226 of the Constitution of India

Appellant : Kameshwar Prasad Singh,

Respondent : The State of Bihar, and ors

Judgement :

1.Initially, the writ application has been filed for two prayers. First prayer was for quashing of the order dated 4.8.1997 passed by the A.I.G. of Police, Wireless, Bihar, Patna in Departmental Proceeding No. 39/92, whereby a punishment of reversion in rank for one year was awarded against the petitioner. Second prayer of the petitioner was for a direction to the respondents to

2.consider his case for promotion to the post of Sub- Inspector of Police, Wireless, with effect from the date juniors to him have been promoted to that post and for all consequential benefits. However, at the time of final hearing of the case petitioner did not press the first relief prayed by him and confined it to relief no. 2 only, as such the matter is being decided accordingly. Petitioner entered into the Police service as Constable Writer in March, 1972, in the Police Wireless Department. In the year, 1975 he was promoted to the post of A.S.I. Petitioner's case is that till February, 1991 he had unblemished service record. On 29.3.1991 a departmental

proceeding was initiated against him framing three charges. The charges related to outraging the modesty of one Nilam Kumari and committing rape upon her giving allurement of marriage, proceeding on unauthorized leave for five days and over staying for further period, proceeding on leave, on false pretext of illness of his father, on being pressurized by Satyabhama Devi to marry her daughter Nilam Kumari. A complaint case was also filed in the criminal court for offences under Sections 366 and 376 of the Indian Penal Code, with regard to allegation of committing rape upon Nilam Kumari. Sessions Trial No. 9/97 was conducted with respect to offences under Sections 366 and 376 of the I.P.C. in which a judgment of acquittal was passed by the District & Sessions Judge, Samastipur on 5.1.1997 as the charges were not proved. Complainant Nilam Kumari and other witnesses did not support the case of prosecution. So far departmental proceeding is concerned, show cause was submitted by the petitioner, Nilam Kumari and her father were summoned as witness to support the charge but they did not appear before the Conducting Officer. Petitioner brought a copy of judgment passed in Sessions Case before the Conducting Officer and furnished a list of defence witnesses to be examined and defence documents to be exhibited. Defence witnesses could not be examined as none of them appeared and relevant documents were not brought on record. The petitioner on conclusion of the departmental proceeding was awarded punishment of reversion in rank for one year.

3. Petitioner's case is that on account of continuation of the departmental proceeding till 1997 his case for promotion to the post of Sub-Inspector of Police, Wireless could not be considered in terms of Police Manual Rule 726(iii) and persons junior to him were granted promotion with effect from 10.9.1996. Petitioner, though otherwise eligible for being considered for promotion, had earned disqualification on account of major punishment awarded against him in the departmental proceeding. Police Manual Rule 726(iii) relates to disqualification for admission to a promotion list, in case of infliction of any punishment in any rank within the last three years. It provides three years disqualification on infliction of major punishment, and an officer is debarred for three years from being considered for promotion.

4. Counsel for the petitioner submits, Rule 726(iii) of Police Manual, do not specifies that with effect from which date the period of disqualification will be counted. The Rule in itself being vague in regard to the date with effect from which the period of disqualification will start. This issue has been considered and decided in a decision of High Court reported in 1992 B.B.C.J. 440. In this decision the date of occurrence has been considered the date, with effect from which three years period can be counted. Counsel for the petitioner submits that in the present case the date of occurrence being 16.6.1991, three years period of disqualification will come to an end on 16.6.1994. Persons junior to him were given promotion to the post of Sub-Inspector on 10.9.1996. At the relevant time, petitioner's period of disqualification had already ended, as such he should have been considered for giving promotion, with effect from same date, his juniors were given promotion.

5. In the counter affidavit filed on behalf of the State also it has been stated that on 10.9.1996, juniors to the petitioner as well as petitioner was also considered for promotion to the post of Sub-Inspector of Police. Petitioner's case was kept pending on account of pendency of the departmental proceeding, which ended in 1997.

6. I find that as provided under Rule 726(iii) of Bihar Police Manual Rules and the finding recorded in 1992 B.B.C.J. page 440, the period of disqualification on account of major punishment, will be deemed to have started on 16.6.1991 i.e. the date of occurrence and the period would come to an end after three years i.e. 16.6.1994. Petitioner, thus was eligible for being considered for promotion to the post of Sub-Inspector of Police, on the date juniors to him were granted promotion i.e. 10.9.1996.

7. This application is being allowed, so far relief no. 2 prayed by the petitioner is concerned. Respondents are directed to consider the case of the petitioner for promotion to the post of Sub-Inspector of Police with effect from 10.9.1996, with all consequential benefits. The Respondents are further directed to issue necessary orders in this regard within ten weeks from the date of production/communication of this order.