

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20331 of 2010

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Braj Kishore Singh S/O Ram Briksha Singh R/O Vill. + P.O.- Majhauri, P.S.-
Lalganj, Distt.- Vaishali At Hajipur, Presently Officiating As Head Assistant In The
Office Of State Food Corporation, Chapra

.... Petitioner

Versus

1. The Bihar State Food And Civil Supplies Corporation Limited Sone Bhawan, Bir
Chand Patel Path, Patna, Through Its Managing Director
2. The Managing Director Bihar State Food And Civil Supplies Corporation
Limited, Sone Bhawan, Birchand Patel Path, Patna
3. The Chief Of Administration Bihar State Food And Civil Supplies Corporation
Limited, Sone Bhawan, Birchand Patel Path, Patna
4. The District Manager, State Food Corporation, Chapra

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bishnu Kant Dubey, Adv.
Mr. Sanjeev Kumar, Adv.
For the Respondent/s : Mr. R.S.Pradhan, Sr.Adv.
Mr. A.N.Rai, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 30-06-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as
follows:

“To quash the office order bearing Memo No. 7242 dated
16.4.2010 issued under the signature of Managing Director,
whereby in so called compliance of the order of this Hon’ble
Court without considering the claim of the petitioner as per
the direction/ order of this Hon’ble Court passed in
C.W.J.C.No. 4746 of 2010 vide order dated 20.3.2010 on
entirely nonest ground the representation of the petitioner
dated 31.3.2010, has been rejected saying that giving
promotion to the petitioner will establish a wrong precedent
which is not in accordance with law and for issuance of a
consequential writ in the nature of mandamus directing and



commanding the respondents to grant promotion to the petitioner on the post of Assistant and make payment of salary of the said post on which post he is officiating since the year 1996 and/or in alternative make payment of salary of post of Assistant/ Head Assistant upon which post the respondents are taking work from the petitioner since the year 1996 without payment of single farthing in lieu of work taken from the petitioner on the post of Higher post of Assistant/ Head Assistant.”

Mr. Bishnu Kant Dubey, learned counsel appearing on behalf of the petitioner, in support of the aforementioned prayer has basically raised two issues while assailing the impugned order. Firstly, according to him, two junior persons to him, namely, Akshybat Pandey and Uday Shankar, were promoted on the post of Assistant ignoring the claim of the petitioner and secondly, the plea now being taken in the impugned order that the petitioner cannot be given such promotion because it will amount to double promotion by way of jumping promotion on an existing lower post cannot be justified because the respondents themselves had earlier promoted the Assistant directly to the post of Assistant Manager. Mr. Dubey in this regard has referred to various documents including two earlier orders passed by this Court in the earlier writ petitions filed by the petitioner which shall be taken note of at an appropriate place.

Mr. R.S.Pradhan, learned Senior counsel appearing on behalf of the Bihar State Food and Civil Supply Corporation



(hereinafter referred to as 'the Corporation'), on the other hand, has not only supported the impugned order but has also explained that the petitioner by virtue of his being still holding the Class IV post on substantive basis cannot equate his case with Akshybat Pandey and Uday Shankar because as the service history would bear it out, the aforesaid two persons were initially promoted on Class III post of Salesman and thereafter as per promotional channel decided by the Corporation they were also promoted on the post of Assistant. He has also explained that as of now since the petitioner is holding substantive Class IV post and there are more than hundred persons senior as per the date of appointment on Class IV post to the petitioner, his case for promotion even on feeder post of Lower Division Clerk/ Salesman cannot be considered in isolation much less he can be given a double promotion on the post of Assistant which in fact in the Corporation promotional post is of the post of Lower Division Clerk/ Salesman. He has also submitted that the instance given by the petitioner with regard to promotion of the Assistant directly to the post of Assistant Manager was given only in order to comply the direction of this Court, especially when sword of contempt application was hanging on the head of the officials of the Corporation.

In the considered opinion of this Court the case of promotion of the petitioner admittedly holding a substantive Class IV post has to



be essentially governed by the Rules of Promotion. There is no defined Rule of Promotion in the Corporation but then in the year 2008 channel of promotion has been fixed, according to which a Class IV employee initially can be promoted only against a post of Salesman/ L.D.C. in Class III post, whereafter such Salesman/ L.D.C. becomes eligible for promotion on the higher post of Assistant. Thus, whatever has been followed by way of rule in the matter of promotion would definitely go to show that Class IV employees are one lot who become eligible at best for promotion on the post of Class III of Salesman/ L.D.C..

There is no dispute that the petitioner also entered in the services of the Corporation as a daily wager on daily wages and later on, was regularized as a Class IV post. Subsequently, the petitioner was promoted/ regularized against the post of Salesman in the year 1990 but such order of regularization of the petitioner was cancelled in the year 1997. Thus, from 1997 the petitioner again stands reverted back who is substantive Class IV post.

The plea being taken by Mr. Dubey that the petitioner was assigned the higher post or work of Assistant and therefore, he will become entitled for promotion on the post of Assistant has to be only noted for its being rejected. Such fortuitous arrangement made in service jurisprudence does not vest any right to an incumbent to be promoted. This aspect of the matter has been dealt by the Corporation



very clearly in the order that was passed pursuant to the earlier direction of this Court wherein it was mentioned that while the petitioner was working as a Class IV employee at Chapra he was assigned the work of Assistant as per recommendation made by the District Manager on account of a vacancy which had arisen. The Corporation in fact had made it clear that such working arrangement will neither vest the petitioner any right nor would be entitled for any financial benefit for the same.

Thus, the fact remains that the petitioner still works on a substantive Class IV post in the pay scale of Rs.2050-4000. The petitioner's ambition to become Assistant by way of earning promotion on the post of Assistant has a clear impediment, inasmuch as in between Class IV post in the pay scale of Rs.2050-4000 and the post of Assistant having pay scale of Rs.4000-6000 there is a post in between the post of Lower Division Clerk/ Salesman in the pay scale of Rs.3050-4590. It was actually this post on which the petitioner was initially given promotion in the year 1990 but that promotion also was rescinded and despite the petitioner moving this Court on more than two occasions his such order of cancellation of promotion was never recalled. The effect, therefore, would be that the petitioner still continues to be against a Class IV post.

Coming to the case of discrimination this Court must first note that whatever has been stated behind the back of Akshybat



Pandey and Uday Shankar since they have not been made party to this writ application, has to be governed strictly by the pleadings on record. From the pleadings and specially the order of the Corporation passed on two occasions in view of the two orders passed by this Court is very clear that though Akshybat Pandey and Uday Shankar had initially been engaged on Class IV post alike the petitioner but subsequently they were promoted on the post of Salesman i.e. next promotional post and their such promotion still had remained valid till they were again promoted on the post of Assistant. The plea of the petitioner that since he was also discharging the duty of the post of Assistant at Chapra and therefore, his case should have been considered has no merit because as a matter of fact at that point of time when promotion to Akshybat Pandey and Uday Shankar was given they had already been promoted against the higher post and were working on the post of Salesman. Their regular promotion from the Salesman to Assistant in no way could have benefited the petitioner merely on account of his continuance by a fortuitous arrangement holding the post of Assistant on the recommendation of the District Manager, Chapra.

As a matter of fact if the petitioner had any cause of action against their promotion of Mr. Akshyabat Pandey and Mr. Uday Shankar those promotion were required to be assailed. The petitioner, however, did not make them party in any writ petition and when he



had moved for the first time by filing his writ petition, C.W.J.C.No. 8484/2009 he has limited for consideration of his case on the ground that Akshybat Pandey and Uday Shankar were being given such promotion. As a matter of fact whatever was said in the order of this Court dated 30.10.2009 while asking the Corporation to consider the case of the petitioner by taking instance of Akshybat Pandey and Uday Shankar had limited only the Corporation to consider his case and the Corporation did consider this aspect by passing a reasoned order on 29.1.2010, wherein it was held that the petitioner was not entitled for promotion on the post of Assistant and that the plea of discrimination was also wholly ill-founded because Akshybat Pandey and others were directly appointed on the post of Salesman and had earned promotion on the post of Assistant, whereas the petitioner was directly appointed only against a Class IV post.

Let it be noted that when this order dated 29.1.2010 passed in compliance of the order of this Court dated 30.10.2009 in C.W.J.C.No. 8484/2009 was assailed by the petitioner the same was not interfered and in fact taking a clue from the aforementioned order that there was a case of double promotion and jumping promotion on account of availability of promotional post of Lower Division Clerk or Salesman, the matter was again remitted in the second writ petition filed by the petitioner, C.W.J.C.No. 4116/2010 disposed of on 22.3.2010. It thus become clear that either the petitioner has



voluntarily given up this point of seniority and claim of promotion vis-à-vis Akshybat Pandey and Uday Shankar or this Court did not find any merit in the same on account of the reason given in the earlier writ petition or the order passed by the Corporation while disposing of the representation of the petitioner in terms of the order dated 30.10.2009 in C.W.J.C.No. 8484/2009 and therefore, this Court now while deciding the present impugned order passed in pursuance of the order dated 22.3.2010 in C.W.J.C.No. 4116/2010 cannot allow the petitioner to raise an issue by applying the principle of resjudicata and constructive resjudicata.

The petitioner moreover having in fact not even made Akshybat Pandey and Uday Shankar as a party to the writ petition cannot allege discrimination in this writ petition where the issue has to be confined to the impugned order holding that the petitioner has continued only on a Class IV post and there are more than 132 Class IV employees who are senior to the petitioner apart from 13 Salesman holding Class III post who too are senior to the petitioner. Thus, in effect the impugned order says that there are 145 persons who are having better claim for being promoted on the post of Assistant than the petitioner and in fact as per line of promotion the petitioner has to be initially promoted on the post of Salesman/ Lower Division Clerk, whereafter he can be dream of becoming Assistant. This Court does not find any error in such stand of the respondents because any



organization cannot function by way of practicing disorder. If the Class IV employees straightway are promoted on the post of Head Clerk/ Assistant Manager, the whole organization set up shall collapse. That cannot be permitted especially when the Corporation keeping in view certain observation made by this Court itself had notified the line of promotion defining the promotional post as also laying down the number of sanctioned post with minimum qualification required for such promotion. In presence of the aforementioned decision of the Corporation dated 31.1.2008, contained in Annexure 'B' to the counter affidavit, this Court will not find that the Corporation has committed any error either in rejecting the claim of promotion of the petitioner for a Class IV post directly on the post of Assistant or giving him the benefit of his alleged seniority.

This Court also must take into account the second submission of learned counsel for the petitioner that the Corporation has in past given double promotion when the Assistants were directly promoted on the post of Assistant Manager. This argument also has obvious loop hole. As per the office order dated 31.1.2008 the post of Assistant Manager as a matter of fact is a non-cadre post and secondly, such order was issued when a direction has been given by this Court and a contempt application was pending. That order passed under the rigors of contempt cannot be used as a precedent for more than one reason. Firstly, the petitioner is not among those Assistant

who has been denied the post of Assistant Manager. The petitioner still continues to be a Class IV post. Secondly, what would happen to 132 Class IV post who are working still on Class IV post and why they should be left out and not made Assistant in preference to the petitioner specially when they are senior to the petitioner. This fact is not denied that there are 132 Class IV employees senior to the petitioner. The difficulty, however, is that the number of post as per the office order dated 31.1.2008 has also been clearly laid down and since there would not be sufficient number of post available for 132 Class IV employees the petitioner cannot claim his promotion in isolation.

For all these reasons this writ application must fail and is, hereby, dismissed.

(Mihir Kumar Jha, J)

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