

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1128 of 2018

In
Civil Writ Jurisdiction Case No.1994 of 2015

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1. Most. Radha Devi W/o Late Banwari Lal,
 2. Ratan Lal, S/o Late Banwari Lal,
Both residents of Mohalla Amradi Gali, Nala Road, House of Sri Chandra
Sekhar Rai, Police Station- Kadamkuan, Town and District- Patna.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Collector cum District Magistrate, Patna.
3. Senior Deputy Collector Established, Patna.
4. Additional District Magistrate, (Established), Patna.
5. The Account General, in the Office of Account General, Patna having its
office at Birchand Patel Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Nivedita Nirvikar, Advocate
For the State	:	Mr. Saroj Kumar Sharma, Advocate
For the Accountant General	:	Mr. Raj Nandan Prasad, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 02-04-2019

The present Appeal emanates from the decision of the learned Single Judge whereby the writ application filed by the wife of the deceased-employee to quash an order issued by the respondent-District Magistrate whereby the claim for grant of Super Time Scale to the husband of the



writ petitioner father of petitioner no. 2 has been rejected.

2. Aggrieved by the aforementioned order, the writ petitioner - Most. Radha Devi and Ratan Lal son of Banwari Lal have preferred this Intra Court Appeal on the ground that the claim of the employee had been arbitrarily rejected and is wholly untenable on both facts and law.

3. The facts briefly stated are as follows:-

- (i) Husband of the Appellant No.1, Banwari Lal was appointed to the post of Clerk at Patna Collectorate in the year, 1958 and belonged to the Scheduled Caste category and was subsequently promoted to the post of Senior Assistant in the office of the Collectorate of the District Magistrate, Patna.
- (ii) After rendering an unblemished service of 35 years, he retired on 28.02.1993 without any adverse



remarks.

- (iii) Since Banwari Lal was an employee of State of Bihar, as per the conditions, he was entitled to three promotions during the service tenure but despite having been in service for 35 years, he was deprived of the third level of promotion, though he had acquired sufficient seniority for inclusion of his name for consideration for promotion to the third super selection grade available to 2.5% of the cadre strength. Nevertheless, the same was not made available to the appellant's late husband in spite of having all the qualifications for grant of the same.
- (iv) Aggrieved by the aforementioned denial for grant of promotion, the appellant's late husband filed a representation before the then



Collector on 12.05.1992 during the service tenure upon which the Collector directed the A.D.M., Patna on 04.06.1992 (vide Annexure-1) that he be given the promotion to the super selection grade available to 2.5% of the cadre strength and his name be added in the seniority list.

(v) However, the matter drifted and no action was taken on the same and late Banwari Lal was denied of his third level promotion to the super selection grade post and he ultimately superannuated on 28.02.1993.

(vi) The husband of the petitioner filed C.W.J.C. No. 8820 of 1999 for grant of retiral benefits which was disposed of in the light of the general directions reported in 1996(2) PLJR 438. The late employee Banwari Lal



also preferred C.W.J.C. No. 11222 of 1999 for grant of the above noted promotion which was however, withdrawn on 18.01.2005 with liberty to make his claim before the appropriate authority.

(vii) However, when the claim of the petitioner was not considered by the authority, another writ application bearing C.W.J.C. No. 13218 of 2005 was filed which was dismissed by this Court on 07.09.2010 but the employee preferred an Appeal bearing L.P.A. No. 1824 of 2011 which was dismissed but thereafter, a modification petition had been filed bearing M.J.C. No. 4688 of 2007. However, during the pendency of the modification application, the employee Banwari Lal died and his legal heirs, being the Appellants herein were substituted and the



order dated 01.08.2011 passed in L.P.A. No. 1824 was recalled and the modification petition was disposed of with a direction that the petitioner may file a representation before the District Magistrate, Patna which shall be decided on merit in accordance with law within two months from the date of receipt/production of a copy of the order (Annexure-6).

(viii) The appellants in pursuance of the aforementioned order filed a representation before the Collector-cum-District Magistrate, Patna clearly giving details of the case and enclosing all documents relating to promotion which included documents relating to those juniors, who had been promoted to the said after retirement/death as a notional promotion.



(ix) However, the claim of the petitioner was once again rejected vide order dated 11.07.2013 without considering the documents of the petitioners. The case of the late employee for promotion to the super time scale/office superintendent was rejected and non-consideration of the documents placed by the petitioners amounted to discrimination, as the same was rejected not on account of the fact that the case of the late employee was wanting in merit but because he had superannuated, even though it was only notional promotion which had been sought due to death/retirement of the husband of the appellant no.1 and father of appellant no. 2. In this context, the appellants had also brought before the Authorities an order passed by



this Court in C.W.J.C. No. 3680 of 1999, wherein the case of Dr. Radhey Shyam Sharma, had been decided that promotion can be given even after retirement (Annexure-9). However, the authorities failed to consider the representation filed by the appellants nor was any information supplied to them under the Right to Information Act but ultimately the respondent-District Magistrate rejected the claim of promotion to the post of office superintendent/super time scale even notionally since 1992 vide order dated 11.07.2013. In the said order the claim for grant of super time scale to the husband of appellant no. 1 was rejected on the basis of pay revision for 01.01.1996.

- (x) The aforementioned order dated 11.07.2013 was again challenged in



the said writ application and claim of the appellants was again rejected taking note of the fact that in the counter affidavit filed by the Collector, it had been averred that the post of super time scale became vacant only after late Banwari Lal had retired from service and, therefore, there arose no question of discrimination as those who had been granted the benefit of super time scale had cleared the Departmental Accounts Examination.

(xi) Consequently, the writ court failed to consider the claim of the writ applicant and his case has also been once again rejected leading to the filing of the present Intra Court Appeal.

4. Mrs. Nivedita Nirvikar, learned counsel appearing on behalf of the Appellants has strenuously urged before this Court that time and



again the case of the late employee with regard to promotion of the super time scale/office superintendent has been ignored without considering the documents of the Appellants/petitioners and there has been a case of gross discrimination against the late employee for the reason that even though the case of others have been considered, the late employees claim has been rejected firstly on the basis of retirement and now a plea has been raised that the late employee had not passed the Departmental Examination, which is wholly wrong.

5. Learned counsel for the appellants further submitted that on the one hand while the respondent-District Magistrate rejected the claim of the late employee for grant of super time scale on the ground that the vacancy to the post of super time scale arose only when late Banwari Lal had retired from service but on the other hand, it has been stated stated that only those similarly situated employees got the benefit of super time scale, who had cleared the Departmental



Examination though Banwari Lal had also passed the aforesaid examination. It was thus, submitted that the District Magistrate had clearly acted against the mandate of law and thus, warranted interference by this Court in the light of the decision rendered by this Court in the case of Dr. Radhey Shyam vide order dated 10.11.2000 passed in C.W.J.C. No.3680 of 1999.

6. Learned counsel further contended that the learned Single Judge has failed to appreciate that the office of the District Magistrate at Patna Collectorate has wrongly denied the claim of the late employee, as this Court in M.J.C. No. 4668 of 2011 vide order dated 09.05.2012 had clearly directed the District Magistrate to consider the claim in the super time scale.

7. We have heard learned counsel for the appellants at length. The only reason why the District Magistrate came to reconsider the claim of the late employee was on account of the order passed in M.J.C. No. 4668 of 2011, wherein liberty had been given in L.P.A. 1824 of 2010 to re-agitate



his grievance before the authority. The order which followed came to be the subject matter of C.W.J.C. No. 1994 of 2015, but on the basis of the counter affidavit filed, which was not responded by the appellants herein, the learned Single Judge noted the fact that there was no case of discrimination and has rejected the claim of the appellant's late husband for the reason that he had passed the departmental examination after two employees who were granted the super time scale. The learned Single Judge came to the conclusion that since the stand of the State was not controverted by the writ petitioners, no relief could be granted to the late employee and thus, dismissed the writ application for want of merit.

8. We have however, noted that the authorities in order to negate the claim of the late employee have offered two different reasons at two different stages of the proceedings. On the earlier occasion when the writ petitioners approached this Court, the order impugned rejecting the case of the appellants appears to be



that there was no post available as 2.5 percent of promotional posts which were to be granted to employees for grant of super time scale was not available till the time of his superannuation and therefore, such relief as prayed for by the writ applicants was declined. This is also evident from the order dated 07.09.2003 passed in C.W.J.C. No. 13218 of 2005 which is extracted and is quoted hereinunder.

“Learned counsel for the State based on the averments made in the counter affidavit has stated that the benefit of time bound promotion as well as the super time scale can only be granted depending on the seniority of the persons based on the percentage of post available at the relevant time to the extent 2.5% with regard to super time scale, senior selection grade and junior selection grade. Since the petitioner did not fit in mode, the benefit has been rejected. No interference is warranted with the decision communicated to petitioner.

This writ application is dismissed”

9. Under such circumstances, the



prayer of the petitioner was declined. However, in the following writ, the same prayer came to be declined for the following reasons which is indicated in paragraph-8 of the counter affidavit filed. The same is quoted hereinunder.

“8. That it is further submitted that for the third level promotion (which is the subject matter of the present petition)

I) The third level promotion in super time scale is to be given to only 2.5% of the total cadre strength.

(ii) Out of 14 posts available, 2 posts are earmarked for the scheduled caste while one post is for for the scheduled tribe under the roster system.

iii) it was already granted to the eligible employees.

iv) as such there was no vacancy in the reserved category.”

10. Furthermore, it has been indicated that since the husband of the appellant had retired on 28.02.1993, on the said date, there was no vacancy in the super time scale and so far as the allegation of grant/extension of said benefits to the similarly situated employees/junior to him are concerned, those juniors had cleared the



departmental accounts examination earlier than the petitioner and they were rightly granted such benefits. We have however, noted that such pleas were not taken in the earlier round of litigation and the question of availability of posts was also not raised. The only ground urged at the earlier stage was that since the employee had superannuated, there was no question of granting him promotion. The counter affidavit further indicates that the claim of the late employee was not considered in preference to his juniors because he had passed the departmental examination after his juniors. However, we must note that on the date of consideration, the appellants late husband had in fact passed the aforementioned examination thus, such a criteria that he had passed after his juniors, could not be a sole factor for rejecting his claim as in the earlier round, seniority was the only criteria to be considered. We are also informed at the bar that since 1992 itself, on the basis of Resolution No. 279 dated 18.05.1991, promotion to the post of super time scale was available for 2.5 percent of



the cadre strength in which out of 14 posts, 2 posts of scheduled castes and 1 of scheduled tribes had been granted. If that be so, the petitioner had been in service till 1993 and his case would well have been considered during his service tenure itself. We find that the consideration for such promotion was made only after 1993 when the petitioner had already superannuated. Thus, in a nutshell, the only reason that can be culled out for denying the claim to the late employee is that on the date of consideration though he had passed the departmental examination, he was not considered as his date of passing such examination was later than that of those juniors who had been granted promotion. Such consideration does not seem to be legally tenable, as seniority can be the only criteria and no rule has been brought before us to show that the date of passing of departmental examination would be a relevant consideration rather than the seniority/date of joining of the employee

11. In the result, we find that the



rationale adopted by the District Administration for denying the claim appears to be in the abstract rather than based on some actual rule which renders the decision wholly erroneous. The case of the appellant's late husband Banwari Lal was admittedly not considered on account of the fact that though 2 posts were available, the promotions were granted to other two employees for the reason (i) that the petitioner's late husband had superannuated (ii) that he had passed the departmental examination after the two employees so promoted.

12. We are thus of the considered opinion that to the limited extent as indicated above, the authorities must re-examine the case of the late employee and in case it is found that such consideration, as has been adopted, was available to the authorities as per any circular, the order passed could sustain. However, in the event of there being no such circular, we are of the opinion that the case of the late employee Banwari Lal for grant of super time scale deserves a



reconsideration.

13. As such, we allow the Appeal and set aside the order dated 11.07.2013 passed by the District Magistrate, Patna and also the decision of the learned Single Judge subject to the aforementioned observations.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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