

Nalini Kant Sinha

Vs

State of Bihar and others

Special Leave Petition No. 6893 of 1989

(M. N. Venkatachaliah, S. C. Agarwal, Dr. A. S. Anand JJ)

22.10.1992

ORDER

1. We have heard Shri K. K. Venugopal, learned Senior Counsel for the petitioner under the "Supreme Court Senior Advocates Free Legal Aid Scheme" and Shri B. B. Singh, learned counsel for the State of Bihar.

2. The petitioner - Shri Nalini Kant Sinha - retired from service as Deputy Secretary to the Government of Bihar upon attaining the age of superannuation on 31 - 1- 1979. It was his case that he should have been considered for promotion to the post of Joint Secretary with effect from 31-12-1975 upon his completion of two years service as Deputy Secretary, or, at any rate, on 14-4-1976 when one of his juniors, Shri Ashutosh Chakraborty was so promoted. It is not disputed that Shri Ashutosh Chakraborty was a junior and had been so promoted on 14-4-1976. Shri Ashutosh Chakraborty was paid salary in the higher cadre of Joint Secretary from 14-4-1976 onwards. It is only on 22-4-1988 that the Government of Bihar bestirred itself to correct the position so far as the petitioner was concerned which also considered cases of some others as well - and made an order in terms following:

"No. 2615. Shri Nalini Kant Sinha, Deputy Secretary, Finance Department, is appointed to non-cadre post of Joint Secretary from 14-4-1976 to 31-1-1979 (up to date of retirement) by being given paper promotion.

The aforesaid officers will not be entitled, in accordance with R. 58 of the Bihar Service Code and Rule 74 of the Bihar Financial Rules, to pay during the period of promotion because they had not performed the work of post of Joint Secretary during the aforesaid period, but the benefit of counting pay for pension will be admissible to them."

3. The case of the respondent-State is that statutory rules do not permit the payment of the difference of salary in such cases on retrospective notional promotion. Explaining the circumstances under which the said Shri Ashutosh Chakraborty was paid, it was stated, that the payment was the result of a mistake and that, having regard to the circumstances of the case, the Government did not initiate proceedings for the recovery of the amount.

4. It appears to us that having regard to the facts and justice of the case, and without this decision constituting a precedent, we think that Government should accept the claim of the petitioner. So far

as the actual quantum of the difference under each head is concerned, the petitioner has set them out in his fourth supplementary affidavit dated 15-9-1992. The amounts that he has claimed are as follows:

(i) Difference of salary in the grade between Deputy Secretary and Joint Secretary for the period between 14th April 1976 and 31st January 1979. Rs. 11,934

(ii) Gratuity etc. Rs. 10,485

(iii) Difference in pension as Joint Secretary and Deputy Secretary for the period 1-2-1979 till 1-10-1992. Rs. 23,960. The aggregate is of the sum of Rs. 46,379. He has also claimed that from 1st November, 1992 onwards, his pension should be augmented by a sum of Rs. 258/- per month.

5. Shri B. B. Singh, learned counsel for the respondent-State, states that he would not be able to certify the correctness of these figures which would need to be worked out by the concerned Departments if the principle is settled. We are afraid, having regard to the circumstances of this case, we should not protract this litigation any further and there is no reason to reject the calculation as the State has not refuted its correctness. We, therefore, quantify the sum at Rs. 47,000/- as the amount payable to the petitioner in respect of all his claims up to 31st October 1992. So far as the difference in the future pension payable from 1st November, 1992 onwards is concerned, we direct that a proper computation be made by the concerned authorities within a period of two months from today and his pension augmented accordingly.

6. There is one other claim which the petitioner has put forward. He has sought a large sum by way of compensation for the mental anguish and suffering arising from the wrongful denial of promotion. This is more an expression of his anguish and festering sense of being wronged than legal claim allowable in law. Shri Venugopal, learned senior counsel, was unable to substantiate the principle on which this could be considered. But we think the petitioner should have the benefit of interest at the rate of nine per cent per annum on the sum of Rs. 47,000/- from 22nd April 1988 till the date of payment. This should put an end to all his claims and no further claim or any petition shall be entertained. The petitioner shall also be entitled to costs which we quantify at Rs. 3,000/-. The payments as aforesaid including the costs shall be made within two months from today. The Special Leave Petition is disposed of accordingly. Order accordingly.

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