

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 334 of 2012

IN

Civil Writ Jurisdiction Case No 12790 of 2009

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1. The Bihar State Electricity Board through Its Secretary Vidyut Bhawan, Bailey Road, Patna
 2. The Secretary Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
 3. Officer on Special Duty (Administration) Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna

.... Appellant/s

Versus

Ram Sewak Thakur S/O Late Jay Narayan Thakur R/O Village- Bituhar, P.S.- Hariakhi, District- Madhubani, At Present Posted As Junior Electrical Engineer, APDRP Cell Board, Head Quarter, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Vinay Kirti Singh, Advocate

For the Respondent/s : M/s Rajesh Kr Singh, Rana Pratap Singh, Shikha Singh & Dharmendra Kr Singh, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 01-09-2015

Erstwhile Bihar State Electricity Board (for brevity, *the Board*) is in appeal from the judgment and order dated 20.10.2011 passed in CWJC No 12790 of 2009. The sole contesting respondent in this appeal was the writ petitioner who was an employee of the Board. He had moved the Writ Court for grant of first and second time bound promotion which was long overdue. The Writ Court allowed the writ petition. Hence, the present appeal.

2 While admitting the present appeal, the Division

Bench had stayed the order of the learned Single Judge. Accordingly, an application for vacating the stay has been filed. Having heard the learned counsel for the Board and learned counsel for the contesting respondent, we are of the view that it would be rather appropriate to dispose of this appeal itself on merit and, accordingly with consent of parties, we have heard the matter at length.

3 Before the Writ Court, the issue was whether merely, on ground of pendency of criminal case as against the employee, can promotion and/or time bound promotion be denied? The writ petitioner, who is the contesting respondent in this appeal, had contended that the State Government's Resolution dated 11.09.2002 clearly lays down various conditions under which promotion could be denied. They were, inter alia, where an employee was either facing a disciplinary proceeding and/or a criminal case but that Resolution itself provided that if the criminal case or the departmental proceedings have been pending for more than two years then it would not be taken into account and ad hoc promotion could be granted. This Resolution of the State Government was adopted by the Board in terms of Section 79 (c) of the Electricity (Supply) Act, 1948 and, as such, the Resolution of the State Government became fully applicable to the Board and its employees. In the counter affidavit filed by the Board, there was no denial that in absence of the criminal case pending against the writ petitioner, he was in fact entitled to both

the first time bound promotion and the second time bound promotion. Annexure A to the counter affidavit is apparently the Resolution of the Board adopting the State Government's Resolution. The stand of the Board before the Writ Court was that in terms of Clause 2 of Government Resolution, promotion could be denied if there was a criminal case pending against the employee. Once the matter was taken up for hearing by the Writ Court, attention of Writ Court was drawn to Clause 6 of the Government Resolution and the Writ Court held that this Resolution itself provides an exception and clearly lays down that if a departmental proceeding or a criminal case has been pending for two years or more, the same cannot come in way of at least ad hoc promotion to be granted.

4 We have examined the provisions and we have no option but to agree with the learned Single Judge. In the present case, the criminal prosecution had been pending for over two decades. There were no departmental proceedings at all initiated against the writ petitioner. Still when it came to time bound promotion, the same was being denied to him by virtue of Clause 2 of the Government Resolution, as aforesaid. In our view, Clause 2 has to be read with Clause 6 and if so read then if the criminal case has been pending for over two years, it cannot be taken into account to deny promotion. Thus, the learned Single Judge was correct and there was no error in the judgment requiring interference by this Court in appeal.

5 We may note further events that took place during pendency of this appeal. The writ petitioner, who is the sole contesting respondent in this appeal, has since been acquitted by the Criminal Court. Thus, now there is neither any criminal case nor any departmental proceeding pending against the writ petitioner. Thus, there is absolutely no impediment in grant of time bound promotion. From the counter affidavit of the Board, as filed before the Writ Court, it was not disputed that the writ petitioner was entitled to time bound promotion on 26.12.1993 and 26.12.2001 which are decades back, the benefits whereof have been wrongly deprived.

6 We, accordingly, direct the Board to forthwith grant the time bound promotions, as aforesaid and revise the pay and prerequisites of the writ petitioner within a period of one month from today and pay the same within the said period. If there be any delay then the Board would be liable to pay simple interest on the amount due at the rate of 6 % per annum from the time it was due till the time it is paid.

7 This appeal is, accordingly, dismissed with the aforesaid directions.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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