

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7657 of 1999

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1. Krishna Kant Jha Son of Shri Jaidev Jha, Typist, Rajbhasa Department, Old Secretariat, Patna -800001
 2. Kamal Narayan Thakur, son of Shri Harish Chandra Thgaur, Routine Clerk, Rajbhasa Department, Old Secretariat, Patna

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Old Secretariat, Patna-800001
2. Secretary, Department of Rajbhasa, Government of Bihar, Old Secretariat, Patna-800001
3. Director, Rajbhasa, Old Secretariat, Patna-800001
4. Deputy Director (Establishment), Rajbhasa, Old Secretariat, Patna-800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. J.P. Shukla, Senior Advocate
With Mr. R.K. Shukla & Mr. Amresh Kumar Sinha

For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 11-05-2015

1. Though CWJC No. 7657 of 1999, CWJC No.7386 of 2001, CWJC No. 214 of 2000, CWJC No. 1070 of 2000 and CWJC No. 217 of 2000 have been listed to be heard together as analogous cases, separate judgments are being delivered in CWJC No. 7657 of 1999 and other cases, as though certain facts are identical in all cases, there are certain marked distinguishing features between the two sets of cases.

2. The petitioners of CWJC No. 7657 of 1999 have



sought for quashing of an order dated 09.12.1999 passed by the Director, Rajbhasa Department, Government of Bihar, whereby their services had been reverted back from Class III post to Class IV post. This is on the ground that for appointment to Class IV post, selection and recommendation by the Bihar State Subordinate Staff Selection Board was/is mandatory but they were granted promotion to Class III post without any such recommendation.

3. From the pleadings it appears that the petitioner No.1 was appointed as Peon in the year 1980 on temporary basis. However, he was deputed to work as Typist in the Headquarter. On 03.03.1982, he was provisionally promoted as Typist and subsequently on the recommendation of Departmental Promotional Committee, he was promoted to the post of Typist by an order dated 6.12.1983 with effect from 03.03.1982. His services came to be confirmed by an order dated 21.9.1988. He was granted first time bound promotion with effect from 03.03.1992 by an order dated 20.3.1993. On 04.11.1996, a show cause notice was issued to him, seeking his explanation as to why his promotion to the post of Typist be not cancelled as such promotion was not granted to him without holding any examination by the Board. He submitted his show cause.

4. On the other hand, petitioner no.2 was appointed as peon on Temporary basis on 31.10.1972 and was confirmed on the



said post with effect from 06.12.1975. He was promoted temporarily as Routine Clerk by an order dated 16.12.1983 and was confirmed on the post of Routine Clerk with effect from 01.02.1987. He was given junior selection grade of Routine Clerk with effect from 12.01.1989. A show cause notice dated 04.11.1996, was issued to him seeking his explanation against cancellation of the promotion granted to him on same ground. From Annexure-12 to the writ application, it appears that petitioner no.1 and another person had preferred writ application before this Court by filing CWJC No. 11787 of 1996, challenging the show cause notice dated 4.11.1996, seeking their explanation as to why their promotion to Class III post should not be cancelled. Though it is not evident from the order-sheet which has been annexed as Annexure-12 to CWJC No. 11787 of 1996 as to who was petitioner no.2 in that case, it has been submitted by the learned counsel for the petitioners that petitioner no.2 of the present case was the petitioner no.2 in CWJC No. 11787 of 1996 and in support of this submission, reference has been made to the statements made in paragraph 8 of I.A. No. 12973 of 1999.

5. This Court disposed of the writ application i.e. CWJC No. 11787 of 1996 by an order dated 23.9.1997 in following terms:-

“Heard learned counsel for the parties.

This writ petition is directed against annexures-13(A) and 13(B), both are dated

4.11.1996 and were issued to the petitioner. By the said order an explanation was asked from the petitioner as to why his promotion to Class III post could not be cancelled and pursuant to that order the petitioner replied to the show cause but no final order has been passed till today.

In that view of the matter, this Court makes it clear that if the petitioner has actually given reply to the show cause notice, the respondents are directed to pass final order to the show cause notice within a period of two months from the date of service of a copy upon the respondents.

It is made clear that if reply to the show cause has not been filed by the petitioner already, the petitioner will not be given any further chance to file further reply and the respondents are at liberty to pass final order.

If final order is not passed within the aforesaid time, the show cause notice shall stand quashed.

With the aforesaid observation and direction this writ application is disposed of.”

6. This is not in dispute that the respondents did not pass final order on the explanation submitted by the petitioners within the period of two months time as prescribed by this Court by the said order dated 23.9.1997. Much thereafter, through notices dated 30.7.1999, the petitioners were asked to appear before the Director, Rajbhasa Department, Government of Bihar in connection with their explanations submitted with respect to grant of promotion to Class III post.

7. Subsequently, by orders dated 09.12.1999, both the

petitioners came to be reverted back to their original post of Peon which are under challenge in the present writ application.

8. This writ application was taken up on 04.05.2000. While admitting the writ application, this Court stayed the operation of the said orders dated 09.12.1999 (Annexures-16 and 17) which are under challenge in the present writ application. Petitioners accordingly continued to work against Class III posts and to get emoluments accordingly by virtue of interim order of this Court.

9. Learned Senior counsel appearing on behalf of the petitioners has contended that the orders under challenge have been passed in violation of and contrary to specific direction of this Court dated 23.9.1997 passed in CWJC No. 11787 of 1996. He has submitted that no appeal was preferred against the said order nor any extension of time was sought by the respondents for the purpose of passing an order on the show cause replies filed by the petitioner as mandated by this Court in the order dated 23.9.1997. He has, accordingly, submitted that the show cause notices issued to the petitioners which are the basis for passing of the impugned orders stood quashed by operation of the said order dated 23.9.1997. He has relied upon an order passed by Jharkhand High Court dated 28.10.2002 passed in CWJC No. 1275 of 2001, where the High Court, in identical situation, taking into account similar order

passed by this Court dated 03.9.1997 in CWJC No. 11943 of 1996, allowed the writ application in the following terms:-

“Curiously enough the respondents did not comply the aforesaid order for about two years nor filed any application for extension of time for compliance of the order. On the contrary, as stated in the counter affidavit, ignoring the aforesaid order they acted on the decision taken by the Law Department to issue fresh show cause notice and to pass a final order. This attitude of the respondents can not and shall not be tolerated. The respondents cannot be allowed to ignore or supersede the order of this Court and act at their sweet will and upon the decision taken by the Department of Law. Admittedly, the petitioners worked on the promoted post for about ten years when the impugned order was passed reverting them from class III to Class IV post. In the matter of appointment in Class III post 25% posts are to be filled up by promotion from Class IV post., this aspect of the matter has also not been considered by the respondents.

Be that as it may, having regard to the facts that respondents have taken the order of this Court so lightly and acted on the decision of the Government. I am of the opinion that impugned order passed on the basis of fresh show cause notice is absolutely illegal and without jurisdiction. Since the order/direction given in the year earlier writ application for disposal of the show cause was not complied with, the earlier show cause notice stood quashed. Consequently, the respondents have no authority to issue fresh show cause notice and to pass the impugned order reverting the petitioners from Class III to class IV post.

Taking into consideration all these facts, the impugned order of reversion of the petitioners cannot be sustained in law. The petitioner shall be deemed to be continuing in Class III post since the date of their promotion and they are entitled to get their difference of salary.

This writ application is, therefore, allowed and the impugned order passed by the

respondents is set aside.”

10. He has placed reliance upon a judgment of this Court reported in 1986 PLJR 455 (Mostt. Naulakha Devi and ors. vs. State of Bihar & ors) in order to contend that a departmental proceeding is a must before reverting an employee to an inferior position, if the petitioners were confirmed on the higher post, paragraph 9 of which is being quoted hereinbelow:-

“9. Before I part with this judgment, I may indicate that confirmation of a person to a post is in effect permanent appointment to the post as would be evident from Rule 37 of the Bihar Service Code as well as from the decision of the Supreme Court in case of Parshotam Lal Dhingra V. Unionof India (8).”

11. I do not find any such provision under Rule 37 of the Bihar Service Code. Rule 37 of the Code simply defines a permanent Government servant, which means a Government servant who holds earlier on a permanent post or would hold such a post as his lien not being suspended. The said judgment has no application in the facts and circumstances of the case.

12. I need not go into the various other issues involved as I am of the view that the respondents were not within their jurisdiction to proceed in breach of an order dated 23.9.1997 passed in CWJC No. 11787 of 1996. It was specifically mentioned in the

said order that the show cause notice would stand quashed, if no final order was passed on the replies filed by the petitioner within two months from the date of service of copy upon the respondents. I must deprecate the conduct of the respondents who proceeded to pass orders in breach of the order of this Court dated 23.9.1997. They had accepted the order, they did not seek any review of the order, they did not prefer any appeal against the said order nor they filed any petition seeking extension of time which was granted to them peremptorily for taking a decision on the show cause replies filed by the petitioners.

13. I do not find any reason to take a different view than what has been taken by the Jharkhand High Court in the order dated 28.10.2002 passed in CWJC No. 1275 of 2001.

14. Accordingly, this application is allowed. The impugned orders dated 30.7.1999 (Annexures 14 and 15) as well as orders dated 09.12.1999 (Annexurs 16 and 17) are quashed. The petitioners shall be entitled for all consequential benefits.

15. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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