

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3520 of 2000

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Harinandan Singh, S/O Late Satya Narayan Singh, resident of village- Shambhupur,
P.O. Sarai, P.S. Sarai, District- Vaishali

.... Petitioner

Versus

1. The State of Bihar , through the Chief Secretary, Govt. of Bihar, Old Secretariat Building, Patna
2. The Director General-cum- Inspector General of Police, Bihar, Patna
3. The Secretary to Government in the Department of Personnel and Administrative Reforms, Old Secretariat Building, Patna
4. The Additional Secretary to Government in the Department of Personnel and Administrative Reforms, Old Secretariat Building, Patna
5. The Deputy Secretary to the Government in the Department of Personnel and Administrative Reforms, Old Secretariat Building, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Yashbardhan, Adv.

For the Respondent/s : Mr. AC to AAG-2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 02-07-2015

Heard Sri Yashbardhan, learned counsel for the petitioner
and Sri Sudhir Kumar, learned AC to AAG-2.

2. This is the second attempt by the petitioner, whereby he has prayed to grant him promotion to the Junior Selection Grade with effect from 04.06.1983 and consequential promotion in Senior Selection Grade and also to higher post. Earlier, the petitioner had approached this Court with the same relief by filing a writ petition vide C.W.J.C.No.5857 of 1998. The said writ petition was disposed of on 29.09.1999 and the matter was remitted back in following terms:

“For the reason aforesaid, I remit the matter to the



Secretary, Personnel and Administrative Reforms Department with direction to consider the case of the petitioner for promotion to Junior Selection Grade Scale with effect from 4th June, 1983 i.e. the date the post was kept reserved for the petitioner and if so necessary, they will issue appropriate notification/corrigendum shifting back the date of promotion to Junior Selection Grade.

The authorities on such consideration are also required to provide the consequential benefit of the same, including promotion to senior selection Grade Scale, on completion of three years Kalawadhi taking into consideration the date of promotion to Junior Selection Grade.

A decision in this respect be taken and communicated to the petitioner within a period of four months from the date of receipt/production of a copy of this order.

The writ petition stands disposed of with the aforesaid observations and direction.”

3. Since the order of the writ court was not complied with, it appears that the petitioner approached this Court by filing a contempt petition vide M.J.C.No.1360 of 2000 for initiating contempt proceeding against the concerned Respondents, particularly against the Secretary, Personnel and Administrative Reforms Department. During pendency of the contempt petition, since the order was also passed by the Secretary, Personnel and

Administrative Reforms Department, which was assailed by the petitioner by filing the present writ petition, a Bench of this Court on 16.04.2004 dismissed the same in following terms:

“It has been admitted by the counsel for the parties that the order of this Court, Annexure-1 has been complied with and the petitioner has challenged the said order in C.W.J.C.No.3520 of 2000.

Thus, this MJC petition is dismissed.”

4. The petitioner has claimed that he was appointed in the State Service on 21st June, 1967 and was confirmed as Secretariat Assistant on 21st June, 1971. Subsequently, the petitioner became eligible for promotion to Selection Grade Scale. However, he was not given promotion on the ground of non-passing of the departmental examination. However, in terms of the guidelines issued by the Government of Bihar, after attaining the age of 50 years, the petitioner was granted exemption from passing the departmental examination vide order dated 19th July, 1994 (Annexure-1).

5. The case of the petitioner is that in the year 1983 itself, his case for grant of promotion to Junior Selection Grade was considered, but since he had not passed the departmental examination, the said post was kept reserved in 1983 itself. After grant of exemption in the year 1994, the Personnel and



Administrative Reforms Department issued Notification dated 8th June, 1998 for granting promotion to the petitioner to Junior Selection Grade with effect from 9th June 1994 i.e. the date on which exemption was granted. He was also given Senior Selection Grade after completion of three years of Kalwadhi with effect from 9th June, 1997. The said notification was assailed by the petitioner and it was claimed that he should be granted Junior Selection Grade with effect from the date, on which one post was kept reserved for the petitioner i.e. 4th June, 1983. This Court considering all the issues disposed of the writ petition on 29.09.1999 vide C.W.J.C. No.5857 of 1998 as indicated above.

6. After the case was remitted back, the Government of Bihar issued an order, contained in Memo dated 8th March, 2000 (Annexure-8 to the writ petition), which was issued under the signature of the Deputy Secretary to the Government of Bihar. However, subsequently same order was reiterated by the Secretary, Personnel and Administrative Reforms Department, which has been brought on record as Annexure-9 to the writ petition. The Secretary reiterating the earlier order of the Deputy Secretary vide its Memo dated 22.10.2003 rejected the application of the petitioner regarding claim of his promotion with retrospective effect.



7. Learned counsel for the petitioner submits that while remitting back the matter, this Court had issued a specific direction holding that the petitioner was required to be given Junior Selection Grade with effect from 1983, the date on which one post was kept reserved for the petitioner. The Secretary of the Department is not at all authorized to reject the claim of the petitioner. By filing a supplementary affidavit, the petitioner has also assailed the order, contained in Memo No.22nd October, 2003 (Annexure-9 to the writ petition).

8. In this case, no counter affidavit on behalf of the State is on record. However, learned AC to AAG-2 has opposed the prayer of the petitioner. He submits that the Secretary as well as the Deputy Secretary have rightly rejected the claim of the petitioner keeping in view the fact that the petitioner, on the date from which the post was kept vacant i.e. 1983, was not at all eligible for being given Junior Selection Grade. He submits that eligibility for grant of promotion to the petitioner has occurred when exemption was granted by the State Government from appearing in departmental examination, which was issued in the year 1994 and, as such the State has rightly granted Junior Selection Grade to the petitioner with effect from the date of exemption and after completion of Kalawdhi of three years, he

was given Senior Selection Grade and, as such, learned counsel for the State justifies the impugned order.

9. Besides hearing the parties, I have also perused the materials available on record. Fact remains that once on the issue of grant of Junior Selection Grade, the matter was already set at rest by this Court in C.W.J.C.No.5857 of 1998, of course, the matter was remitted back to the Secretary to the Personnel and Administrative Reforms Department, the Secretary was required to simply implement the order of the writ court. He was not having any jurisdiction to deviate from the order of the writ court. Had the State preferred any appeal against the order of the Single Bench or the order was modified, the matter would have been different, but the order of the Single Bench had already attained its finality. In that view of the matter, in terms of the order of the writ court, the Secretary of the Personnel and Administrative Reforms Department was required to issue Notification in respect of grant of Junior Selection Grade to the petitioner with effect from 1983, which was the direction of the writ court and consequently other relief should have been granted, which has already been held in C.W.J.C.No.5857 of 1998.

10. In view of facts and circumstances, the orders impugned i.e. orders contained in Annexure-8 and 9 are hereby set



aside. The writ petition stands allowed with a direction to implement the order of the writ court by way of issuance of notification in respect of grant of Junior Selection Grade to the petitioner with effect from 1983 as was directed by this Court and consequential order may be issued. All the formalities must be completed within a period of two months from the date of receipt/production of a copy of this order.

11. With above observation and direction, the writ petition stands allowed.

(Rakesh Kumar, J)

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