

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15058 of 2006

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Lagandeo Shahi son of Late Baidyanath Shahi resident of
Banker's Colony Ramganj P.O. Lalbagh, P.S. Laheriasarai,
District Darbhanga (retired).

..... Petitioner

Versus

1. The State of Bihar, through the Commissioner and
Secretary, Human Resources Development Department,
Vikash Bhawan, Patna.
2. Commissioner and Secretary, Human Resources
Development Department, Vikas Bhawan, Patna.
3. Director, Primary Education, Bihar, Human Resources
Development Department, Vikas Bhawan, Patna.
4. Regional Deputy Director of Education Darbhanga
Division, Darbhanga.
5. District Superintendent of Education Darbhanga.

..... Respondents

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Appearance :

For the Petitioner : Mr. Awadheshwar Prasad, Adv.
For the State : Mr. Apurva Kumar, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 13-04-2015

Heard Sri Awadheshwar Prasad, learned
counsel for the petitioner and learned A.C. to
Govt. Advocate - 11.

The petitioner, invoking writ
jurisdiction of this Court under Article 226 of
the Constitution of India, has prayed for quashing
of an order contained in Memo No. 1017 dated
10-09-2004 issued by the Regional Deputy Director
of Education, Darbhanga (**Annexure '1'** to the writ
petition). By the said order, petitioner's second
time bound promotion, which was given earlier



w.e.f. 01-04-1984 was directed to be shifted to 01-04-1986 and further direction was issued to recover the excess amount paid to the petitioner. It is the case of the petitioner that he retired w.e.f. 31-01-1996 and he was getting pension and all the retiral dues were paid, however; suddenly, in the year 2004, the respondent-State had come out with the impugned order and shifted the date of promotion from 01-04-1984 to 01-04-1986 and also direction was issued to recover the excess amount paid to the petitioner.

Learned counsel for the petitioner submits that though the petitioner retired in the year 1996, after retirement no opportunity was given and suddenly without any rhyme & reason, the impugned order has been issued. According to learned counsel for the petitioner the order impugned is itself liable to be set aside on the ground of violation of principle of natural justice. He further submits that there is no allegation against the petitioner that he made any misrepresentation or committed fraud in getting second time bound promotion. The petitioner retired as Clerk from the office of District

Superintendent of Education, Darbhanga.



In this case, a counter affidavit has been filed on behalf of respondent and in paragraph - 8, a stand has been taken that since the petitioner had not completed five years before granting second time bound promotion, after noticing the error, same has been corrected by the impugned order. According to the learned counsel for the State, there is no error in the order, rather the order has been passed in compliance with the instructions issued by the State Government.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that before issuance of **Annexure '1'** to the writ petition, which was issued in the month of September, 2004, no notice was given to the petitioner. Moreover, in the counter affidavit, it has not been asserted that the petitioner got second time bound promotion by misrepresentation. Once the petitioner was already granted second time bound promotion long back in the year 1984, after 20 years from the grant of second time bound

promotion, there was no occasion for the State to change the date of promotion. Moreover, no opportunity was given to the petitioner while making correction in the date of second time bound promotion.

In view of the fact that the petitioner retired in the year 1996 after about eight years from the date of retirement, that too without giving any opportunity, the respondent has committed serious error by changing the date of promotion, which is in violation of the principle of natural justice.

Accordingly, the order impugned i.e. the order contained in Memo No. 1017 dated 10-09-2004 issued by the Regional Deputy Director of Education, Darbhanga (**Annexure '1'** to the writ petition) is set aside.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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