

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.532 of 2015

In

Civil Writ Jurisdiction Case No. 21106 of 2013

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Avinesh Kumar Verma S/o Late Chandra Kishore Prasad Resident of Flat No. 302, Rameshwaram Apartment, Mandal Compound, Boring Road, P.S. Budha Colony, District- Patna. At present posted as Joint Secretary (Management Cell), Public Health Engineering Department, Government of Bihar, Patna.

.... Petitioner.

Versus

1. The State of Bihar
2. Mr. Anjani Kumar Singh, The Chief Secretary, Government of Bihar, Old Secretariat ,Patna.
3. Mr. Shisir Sinha, the Principal Secretary, Department of Public Health Engineering, Government of Bihar, vishveshwariya Bhawan, Patna.
4. Mr. Rajendra Prasad Singh, the Additional Secretary, Department of Public Health Engineering , Government of Bihar, Vishveshwariya Bhawan, Patna.
5. The Bihar Public Service Commission through its Secretary, namely , Radha Mohan prasad, Bailey Road, Patna.
6. The Chairman , Bihar Public Service Commission, namely , K.C. Saha, Bailey Road, Patna.
7. The Secretary, Bihar Public Service Commission, namely, Radha Mohan Prasad, Bailey Road, Patna.

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Bishnu Kant Dubey

For the Respondent/s : Mr. Md. N. Hoda Khan

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

8 09-12-2015

Heard the learned counsel for the parties.

This application has been filed praying for initiation of the contempt proceeding against the opposite parties for willful disobedience of the directions as contained in the order dated 24.12.2014 passed in CWJC No. 21106/2013 and to convict and punish the opposite parties suitably.



The petitioner filed CWJC No.21106/2013 praying for quashing the resolution of the disciplinary authority imposing punishment of censure and withholding of two increments with cumulative effect and further for quashing the corrigendum dated 16.09.2013 amending the earlier resolution and directing for incorporating the punishment of censure in the confidential report. The petitioner also made prayer for issuing a writ of mandamus commanding the respondents not to give effect to the resolution of punishment while considering the case of the petitioner for promotion on the post of Chief Engineer (Civil). The interlocutory application (I.A.No. 7884/2013) was also filed in the writ application praying for addition of relief by amendment for quashing the minutes of the meeting of the Departmental Promotion Committee whereby the recommendation was made for grant of promotion to seven vacant posts of Chief Engineer and the petitioner was not found fit for promotion due the punishment in the departmental proceeding.

By judgment/order dated 24.12.2014 the aforesaid writ application with directions was allowed quashing the impugned resolution and corrigendum by which the punishment was imposed upon the petitioner. The relief prayed by the petitioner in the interlocutory application (I.A.No.7884/2013) was

also considered and it was held/directed as follows:

“... From the averments made in the writ application which have not been denied by the respondents, it is evident that the petitioner was the senior most superintending engineer in the gradation list and was entitled for promotion on the post of chief engineer (civil) against the seven such posts lying vacant since 2010-11.

In the interlocutory application (I.A. No. 7884 of 2013) filed by the petitioner during the pendency of the writ application, it has been stated that during the pendency of this writ application the Departmental Promotion Committee has taken the decision not to grant promotion to the petitioner in view of the punishment in the departmental proceeding.....

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After considering the submission and facts of the case, this Court does not find substance in the submission on behalf of the

respondents that the subsequent relief as prayed by the petitioner in the interlocutory application (I.A.No.7884/2013) cannot be granted.

It is apparent that the petitioner's case for promotion as Chief Engineer has been turned down by the Departmental Promotion Committee only on the basis of his punishment in the disciplinary proceeding, in its decision dated 24.10.2013 which has been taken during the pendency of this writ application. The correlation between the two events is explicit. After quashing of the order of punishment in the departmental proceeding, this Court finds no reason to withhold the consequential benefits to which the petitioner becomes entitled thereafter. Accordingly, this Court directs the respondents to allow the consequential benefits to the petitioner to which he is entitled including the consideration of his promotion in accordance with law /rules expeditiously keeping in view the superannuation of the petitioner on 30.11.2015..."



On behalf of the opposite parties the show cause and supplementary show causes have been filed and the petitioner has also filed rejoinder to the show cause. However, in the show cause dated 14.10.2015 it has been stated that the petitioner has been posted as Chief Engineer (Civil), P.H.E.D., Patna vide notification no. 602, dated 08.10.2015 and he has taken charge of the said post since 09.10.2015. It has been further stated that after the consent of the Finance Department the matter has been placed before the Departmental Minister for granting actual promotion to the petitioner since 22.11.2013 and with economic benefits since 03.12.2013 which was the date when his junior took charge and was granted benefits.

During the course of submission the learned counsel for the petitioner has accepted the fact that the petitioner has been granted promotion to the post of Chief Engineer as stated by the opposite parties in their aforesaid show cause. However, the learned counsel for the petitioner has raised the grievance that though the petitioner thereafter has become entitled for promotion to the post of Engineer-in-Chief but the opposite parties have deliberately delayed the consideration of the same on technical and other non-existent grounds with ulterior motive to deprive the petitioner awaiting his superannuation on 30.11.2015. It has been

canvassed by the learned counsel for the petitioner that this Court by order dated 24.12.2014 has directed the respondents to allow the consequential benefits to the petitioner which would follow after quashing the resolution of punishment upon the petitioner and the said direction would include the grant of further promotion to the petitioner on the post of Engineer-in-Chief.

After careful consideration of the matter and submissions made on behalf of the parties, it is manifest that in the writ application (CWJC No.21106/2013) as well as the interlocutory application (I.A.No.7884/2013) the petitioner's grievance was specific that he had not been granted promotion to the post of Chief Engineer because of the punishment imposed upon him. The entitlement and grant of further promotion on the post of Engineer-in-Chief to the petitioner was neither pleaded nor canvassed during the course of hearing of the said writ application. The direction to the respondents to allow the consequential benefits to the petitioner can only be the benefits which directly and immediately followed after quashing of the resolution of punishment against the petitioner and the import of the direction is also apparent when this Court directed the respondents to allow the consequential benefits to the petitioner to which he was entitled including the consideration of his promotion



in accordance with law/rules. On behalf of the petitioner it has been accepted that he has been granted promotion to the post of Chief Engineer (Civil) in pursuance to the direction as contained in the order dated 24.12.2014 and he has also joined on the said post. The grievance that the petitioner has not been granted promotion on the next post of Engineer-in-Chief malafidely or illegally cannot be the subject matter of determination in the domain of contempt jurisdiction. The law in this regard has been clearly laid down by the apex court in the case of ***Sudhir Vasudeva Vs. M. George Ravishekar***, 2014 (2) SCALE 50 as follows:

“17... The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not,

adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while



exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above.....”

In the backdrop of above facts and dictum, this Court comes to the conclusion that no case for initiation of a proceeding of contempt against the opposite parties, as prayed, has been made out. The petitioner may seek the redressal of his grievances in accordance with law against the opposite parties.

This application is accordingly, dismissed.

(V. Nath, J)

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