IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3687 of 2013

==

Ganesh Lal Son Of Late Bankey Lal Resident Of A-16, Anand Vihar, Anishabad, P.S. - Phulwarisharif, District - Patna, Presently Posted As Accounts Officer (Look After), Electricity Supply Division, Nawadah

.... Petitioner/s

Versus

1. The Chirman, Bihar State Power Holding Company Ltd. Patna
2. The Director (Finance), Bihar State Power Holding Company Ltd., Patna
3. The Director (Administration), Bihar State Power Holding Company Ltd., Patna
4. The Secretary, Bihar State Power Holding Company Ltd. Patna
5. The Company Secretary, Bihar State Power Holding Company Ltd., Patna
6. The Managing Director, South Bihar Power Distribution Company Ltd., Patna

.... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha,
	:	Mr. Girindra Gaurav
For the Respondent/s	:	Mr. Vinay Kirti Singh
For the respondent No.4	:	Mr. Ranjit Sinha

==

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 03-02-2016

1. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar State Power Holding Company Limited.

2. In the present case, the petitioner is seeking relief of granting the benefit of pay of Accounts Officer as he has worked/ officiated on that post for a long time and so much so that he is entitled the benefit of 1st, 2nd and 3rd A.C.P. which was adopted by erstwhile Bihar State Electricity Board.

3. As per the claim of the petitioner he was appointed as

Junior Accounts Clerk and in the year 1976, he was promoted to the post of Accounts Assistant in the year 1981 and later on, was promoted to the post of Accountant on 23.02.1988 and thereafter, the petitioner was asked to perform the work of Accounts Officer vide order dated 04.10.2002 and accordingly he joined the post of Accounts Officer, which is apparently clear from Annexure-2 series and since then he continued to perform the duties of Account Officer till his retirement i.e. upto 31.01.2014. While discharging duty of Accounts Officer, the petitioner was posted at different stations including the head-quarters since 2012 and from the head-quarters the petitioner has superannuated.

4. Learned counsel for the petitioner has submitted that the Board had adopted the provisions of Bihar Service Code and made it applicable to the employees of the Board, later on, the Bihar State Electricity Board trifurcated and after trifurcation the Bihar State Power Holding Company Limited has succeeded the assets and liability of the Company including the employees attached to the head-quarters became the employee of the Bihar State Power Holding Company Limited.

5. As per the claim of the petitioner his service condition continued to be governed by the earlier Board Rules as well as the provisions of Bihar Service Code applies to the employees of the Bihar State Power Holding Company *mutatis mutandis*. In such view of the matter, in terms of Rules-89 and 103 of the Bihar Service Code, the petitioner cannot be deprived of the benefits of higher post, which are attached to the higher post.

6. Learned counsel for the Bihar State Power Holding Company Limited submits that in terms of Board's Accounts Rule, unless an employee of the accounts department passes the "Lekha Pravin Examination", cannot be considered for further promotion as the petitioner did not pass the said examination he could not have been promoted to the said post of Accounts Officer on substantive basis, mere direction to perform the duty of higher responsibility *ifso facto* will not give a right to the petitioner to claim the pay and other benefits of higher post.

7. The plea taken by the learned counsel for the petitioner that no examination was conducted till the date of his superannuation was vehemently opposed by the learned counsel for the Power Holding Company and brought a fact that before his superannuation the Board had conducted "Lekha Pravin Examination" in the year 2010 and 2012 but the petitioner did not appear, rather he filed an application for grant of exemption from passing the examination as he has already crossed the age of 50 years.

8. Learned counsel for the Power Holding Company has taken a plea that grant of exemption from examination at the age of 50 years was not applicable to the employees of the Board and also to the employees of Holding Company. The Board vide resolution dated 10.04.1958 took policy decision, providing that the employees of the Board will be governed by Bihar Service Code, The Bihar T.A. Rules, the Bihar Government Servants' Discipline and Appeal Rules, the Bihar Government Servants' Conduct Rules and the Bihar government Servants' Medical Attendance Rules were applicable *mutatis mutandis* to all categories of the Officer and staffs of the Board other than those who were governed by the Industrial law of the Standing Order framed therein. So, it includes the granting the exemption to the person who has already reached to the age of 50 years, but the Board has not disposed of the application of petitioner of granting exemption, rather the learned counsel for the State Power Holding Company submits that rejection of the aforesaid application was communicated to the petitioner through S.C./S.T. Commission.

9. Learned counsel for the Bihar State Power Holding Company submits that Rule-89 does not deal with granting the exemption and no employee attached to the Accounts Department were given the benefit of exemption from passing the examination, but the fact remains that the petitioner had discharged his duties of the Accounts Officer since 5th October, 2002 till the year 2014, a long period of 12 years without raising any finger and therefore, in terms of Rule-89, which provides that a person who is discharging the duty with higher responsibility and having a higher pay, will be entitled to same pay and same benefit and as such, the petitioner is entitled to the benefit of pay of Accounts Officer.

10. This issue is no longer *res integra* as in the judgment in ***Prafulla Ranjan Shrivastava vs. The State of Bihar and Ors.*** reported in ***2008(3) PLJR, page 144***, in ***Dr. Nitya Gopal Bandyopadhyay vs. The State of Bihar & Ors.*** reported in ***2008(1) PLJR,*** page ***245*** and ***in Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma & Ors***. reported in ***1998(5) SCC,*** page ***87,*** has been settled, it has been consistently held by this Court as well as the Hon'ble Supreme Court that if the employer asked the employee to perform a duty of higher post attached with higher responsibility, he cannot be deprived from the pay attached to that post. It is an admitted fact that the work of Accounts Officers is a work of higher responsibility than the Accountant, having a higher pay.

11. In such view of the matter, the petitioner cannot be deprived the benefit of salary that has been attached to the post of Accounts Officer. But looking to the facts and circumstances, the respondent-Bihar State Power Holding Company is directed the petitioner be given the benefit of 20% officiating allowance as the petitioner was discharging the higher responsibility. The respondent-Bihar State Power Holding Company is also directed to consider the case of the petitioner with regard to grant the benefit of 3rd A.C.P. as per submission of the petitioner he has been given the benefit of 1st and 2nd A.C.P. This Court is not giving any opinion with regard to entitlement of petitioner for 3rd A.C.P. and the same will be decided in its own merit.

12. Learned counsel for the petitioner submits that the petitioner has retired from Headquarter. If the pensionary benefit has not been given to the petitioner, the Power Holding Company must ensure that all retirement benefits will be given to the petitioner in terms of the Pension Rule without unnecessary delay.

13. With the aforesaid observations and directions, this writ petition is disposed of.

(Shivaji Pandey, J)

pawan/-

U			