

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.498 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 2123 of 2004

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Ram Ekbal Mukhiya S/O Late Raghubir Mukhiya Resident Of Village- Kunwarpur,
P.S.- Pipra, District- East Champaran, Presently Posted As Karya-Darsak (Work
Sarkar) In The Office Of The Executive Engineer, Tirhut Nahar Pramandal,
Chakiya, East Champaran

.... Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. Of Bihar, Patna
2. The Secretary, Water Resources Department, Govt. Of Bihar, Patna
3. The Joint Secretary, Water Resources Department, Govt. Of Bihar, Patna
4. The Chief Engineer, Water Resources Department, Balmikinagar, West Champaran
5. The Superintending Engineer, Tirhut Nahar Anchal, Motihari
6. The Superintending Engineer, Tirhut Nahar Anchal, Raxaul
7. The Executive Engineer, Tirhut Nahar Pramandal, Chakiya
8. The Executive Engineer, Triveni Nahar Anchal, Narkatiyaganj, West Champaran
9. The Account Clerk, Triveni Nahar Nirman Pramandal, Narkatiyaganj, West Champaran

.... Respondent/s

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Appearance :

For the Appellant : Mr. Shashi Bhushan Singh, Advocate
For the State : Mr. R.B. N. Singh, AC to GA 10

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 16-09-2016

Heard learned counsel for the parties.

2. The challenge in the present intra-court appeal is to the order dated 08.07.2010 passed by the learned Single Bench by which C.W.J.C. No. 2123 of 2004 filed by the appellant has been dismissed.

3. The appellant was appointed on the post of Canal



Mate on 09.03.1973 on temporary basis and he was promoted to the post of Gauge Reader by order dated 01.10.1981. His service was made regular as Canal Mate by order dated 20.07.1982. By order dated 01.10.1986, the concerned Executive Engineer posted him as Work Sarkar on a sanctioned and vacant post. By order dated 18.02.1994 of the Chief Engineer, the appellant was granted 1st Time Bound Promotion with effect from 02.10.1991 and accordingly his salary was fixed with effect from the same date. By letter dated 02.07.2003, the appellant was asked to show cause by the Chief Engineer as to why he should not be reverted from the post of Work Sarkar to that of Canal Mate and 1st Time Bound Promotion granted be not cancelled and also for recovery of the amount so paid. The appellant submitted his show cause on 09.09.2003 to the Executive Engineer. He also submitted a representation through post to the Chief Engineer dated 10.11.2003 seeking 2nd Time Bound Promotion. His 1st Time Bound Promotion was cancelled under letter dated 01.12.2003 and directions given for recovery of payment made. The appellant being aggrieved by his show cause had moved this Court in C.W.J.C. No. 8592 of 2003 which was disposed off by order dated 14.10.2003 holding the writ petition to be premature as no final decision had been taken in the matter and the petitioner had a remedy by way of show cause to satisfy the authority that he has a good case.



When the representation submitted by the appellant, pursuant to disposal of C.W.J.C. No. 8592 of 2003 remained pending, he moved before the learned Single Bench in C.W.J.C. No. 2123 of 2004 and dismissal of the same by order dated 08.07.2010 has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that the service of the appellant having been made regular, promotion on the post of Work Sarkar was in accordance with law and on a sanctioned vacant post and, thus, the Time Bound Promotion was also justified. He submitted that the authorities cannot be permitted to raise the plea of wrong promotion as it was done by the competent authority and without there being any fault or laches on the part of the appellant.

5. Learned counsel for the State submitted that the manner in which the appellant was appointed and later on promoted, in quick succession, was in clear violation of the relevant Rules and also without any procedure adopted in accordance with law for such appointment/promotion. It was submitted that the appellant not being entitled to such benefit cannot be allowed to hold on to or retain the excess money drawn by him and, thus, even the recovery order is in accordance with law.

6. Having considered the rival contentions, we do not find any merit in the present appeal. The appellant has not been able



to demonstrate the validity or legality of the manner in which he was appointed and later on promoted. The same was without adhering to any Rules or norms and, most importantly, in contravention of the requirement of Articles 14 and 16 of the Constitution of India. The appellant has also not been able to establish the validity of his appointment and promotion in accordance with law. Thus, on merit, the action by the authorities to revert him to the post of Canal Mate itself was a grace as he was not thrown out of service and the same cannot be faulted. This is also in consonance with the law laid down by a Full Bench of this Court in the case of **Ram Sevak Yadav vs. The State of Bihar** reported as **2013 (1) PLJR 964** relating to absorption and regularization of the service of an employee.

7. Accordingly, we do not find any ground to interfere with the order of the authority which has not been interfered by the learned Single Bench. However, in view of law laid down by the Hon'ble Apex Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334**, since the petitioner had no role in him getting the monetary benefit of initial promotion and 1st Time Bound Promotion, there cannot be any recovery of amount already paid.

8. In view thereof, the present Letters Patent Appeal stands disposed off without interfering in the order of the authority or the learned Single Bench of reversion of the appellant to the post of



Canal Mate and cancellation of his 1st Time Bound Promotion but as far as recovery is concerned, the same is held to be impermissible in view of the decision of the Hon’ble Apex Court in the case of **Rafiq Masih** (supra).

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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