

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18053 of 2011

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Trilok Nath Mishra Son Of Late Shanti Nath Mishra Resident Of Village + Post -
Jamsam, Police Station - Pandaul District- Madhubani, Bihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Water Resources Department, Government Of Bihar, Patna
3. The Deputy Secretary (Revenue Incharge), Water Resources Department, Government Of Bihar, Patna
4. The Chief Engineer, Water Resources Department, Muzaffarpur
5. The Superintending Engineer, Tirhut Canal Circle, Muzaffarpur
6. The Executive Engineer, Tirhut Canal Division, Ratwara, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha

For the Respondent/s : AC to GP 28

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 22-04-2016

Heard Sri Satish Chandra Jha, learned counsel for the
petitioner and learned AC to GP No. 28.

The petitioner, has approached this Court invoking its
writ jurisdiction under Article 226 of the Constitution of India , with
a prayer to grant following reliefs:-

- (i) *To quash the office order bearing letter no. 1256 dated 28.4.2011, issued under the signature of Sri Gunja Lal Ram, the Chief Engineer, Water Resources Department, Muzaffarpur whereby and where under time bound promotion granted to the petitioner by the competent authority w.e.f. 07.01.1987 vide letter no. 89 dated 23.11.1989 has been cancelled with retrospective effect, in complete violation of principle of natural justice, ignoring the fact that the petitioner has already*

passed account examination, though for grant of time bound promotion, passing of departmental examination / Account examination is not mandatory in terms of resolution of the Finance Department Resolution bearing No. 10770 dated 30.12.81.

- (ii) *To quash the consequential office order bearing letter no. 914 dated 02.08.2011 issued under the signature of Executive Engineer, Tirhut Canal Divison, Ratwara, Muzaffarpur whereby and where under in compliance to the office order bearing letter no. 1256 dated 28.04.2011, salary of the petitioner has been refixed w.e.f. 07.01.1987 and excess amount already paid has been directed to be adjusted at once from his payable benefits and difference amount of revised scale for the period 01.04.2007 to 31.12.2008 shall be adjusted in the financial year of 2011-12.*
- (iii) *To direct the respondent no. 4 to correct the office order no. 21 dated 27.04.2011 (Annexure 3) so far it relates to the petitioner whereby and where under the petitioner has been allowed 1st and 2nd Assured Career Progression (ACP) w.e.f. 13.10.2007 in the scale of Rs. 5000-8000/- and 5500-9000/- respectively, ignoring the fact that initially petitioner was appointed as Clerk in the year 1977 and till date he has not been allowed any regular promotion, therefore the petitioner is entitled to get 1st ACP after completion of 12 years of service w.e.f. 09.08.1999 and 2nd ACP after completion of 24 years of service, w.e.f. 07.01.2001, alongwith consequential monetary benefits.”*

It has been pleaded that petitioner was initially appointed on 7.1.1977 as Lower Division Clerk under the control of Deputy Collector (Revenue Division), Gandak Project, Bettiah. While he was working in the same capacity in view of decision of the Government for granting first time bound promotion after completion of ten years of service the petitioner vide letter no. 89 dated 23.11.1989 was granted first time bound promotion which was with effect from 7.1.1987. Thereafter, the Directorate of Water Resources



Department was abolished and the petitioner was transferred under the control of the Chief Engineer, Water Resources Department, where he joined. While the petitioner was continuing in service all of a sudden the respondent no. 4 / Chief Engineer, Water Resources Department has come out with the impugned order whereby a decision was taken to cancel the first time bound promotion, which was issued long back on 23.11.1989 with retrospective effect.

Learned counsel for the petitioner submits that reason has been assigned in Annexure – '1' for cancellation of first time bound promotion that petitioner had not passed departmental accounts examination. He submits that under the scheme of grant of time bound promotion there was no requirement for passing any examination. It was to be granted only after completion of certain prescribed period. He submits that under the scheme first time bound promotion was to be granted after completion of ten years of service and thereafter second time bound promotion was to be granted after completion of twenty five years of service. He submits that there is no provision for passing any departmental examination. He further submits that the Chief Engineer while passing the impugned order had relied on a government instruction dated 1.4.1980 whereas such said instruction, which has been brought on record as Annexure – 'A' to the counter affidavit has got no connection in relation to grant of



time bound promotion. He submits that the instruction prescribes for passing examination in case of consideration for promotion to a higher post. Besides this, learned counsel for the petitioner has also placed reliance on a recent judgment of this Court passed in CWJC No. 15349 of 2012 on 2.12.2014 (Annexure – ‘4’ to the rejoinder filed by the petitioner on 27th December 2015). He submits that in respect of the office of the same Chief Engineer step was taken to cancel the first time bound promotion and also step was taken for recovery, this Court after hearing the parties has quashed the same. Learned counsel for the petitioner further submits that the order impugned is liable to be set aside on the ground also that after lapse of several years the respondents authorities were not at all authorized to cancel the order, which was passed long back creating certain rights in the petitioner. He submits that in this case in the year 1989 itself the petitioner was granted first time bound promotion whereas the order impugned was passed in the year 2011. Learned counsel for the petitioner to substantiate his submission has placed reliance on **(2013) 12 SCC 580 (KUSHESWAR NATH PANDEY *Versus* STATE OF BIHAR AND OTHERS)**.

Learned counsel for the State opposing the prayer of the petitioner has placed reliance on the statement made in paragraph no. 8 of the counter affidavit as well as Annexure - ‘A’ to the counter

affidavit. He submits that the petitioner since had not passed the departmental accounts examination, the respondent no. 4 has rightly cancelled the first time bound promotion. However, the allegation of the petitioner that the order impugned was passed without affording any opportunity to the petitioner has not been disputed.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that petitioner was given first time bound promotion by an order which was issued on 23.11.1989. By the said order the petitioner was granted first time bound promotion with effect from 7.1.1987. Thereafter, without any hindrance petitioner enjoyed the scale given after grant of first time bound promotion till the order. In the year 2011, however, suddenly Annexure - '1' was issued. It has not been disputed that Annexure - '1' was issued without any notice to the petitioner. The Court is of the opinion that once a right was already accrued to the petitioner by virtue of grant of first time bound promotion in the year 1989 itself, at subsequent stage without affording any opportunity of hearing the respondent no. 4 was not at all authorized to pass the impugned order. Apparently, the order impugned is against the principle of natural justice and on this ground alone the order is liable to be set aside. Moreover, almost in an identical situation the Hon'ble Apex Court in **Kusheswar Nath Pandey Case (Supra)** has deprecated the action



taken by the authority concerned. In the said case the promotional order was granted in the year 1998 whereas order cancelling the said promotion was issued on 5.10.2009 i.e. after about eleven years whereafter, the Apex Court interfered with the matter, whereas in the present case time bound promotion was granted by an order issued in the year 1989 and the order impugned was passed in the year 2011. Meaning thereby, that after lapse of about twenty two years that too without providing any opportunity to the petitioner. It is further evident that almost in similar circumstances this Court in **CWJC No. 15349 of 2012 (Nagendra Nath Thakur versus The State of Bihar & Ors.)** (Annexure - '4' to the rejoinder filed by the petitioner) has quashed the impugned orders.

Accordingly, the Court is of the opinion that the order contained in Annexure – '1' and all consequential orders are required to be set aside. Accordingly, Annexures - '1', '2', '3' are hereby set aside with all consequential benefits.

It was informed by learned counsel for the petitioner that during the pendency of the writ petition petitioner has already retired. Accordingly, it goes without saying that the respondents after granting all consequential benefits to the petitioner shall also take steps for re-fixation of pension, if it has already been fixed. All the formalities are required to be completed within a period of three

months from the date of receipt / production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28-04-2016
Transmission Date	N.A.