

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15528 of 2011

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Shebida Nand Sinha S/o Late Ramji Prasad R/o Village + P.O.- Mirchaiganj,
District - Patna, Presently At - Gandhi - Chowk, P.S.- Sultanganj, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Department Of Health And Family Welfare,
Government Of Bihar, Patna
3. The Director-In-Chief Health Services, Bihar, Patna
4. The Under Secretary Finance Department, Government Of Bihar, Patna
5. The Principal, Patna Medical College And Hospital, Patna
6. The District Account Officer, Patna
7. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pawan Kumar

For the Respondent/s : AC to SC 1

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 21-04-2016

Heard Sri Pawan Kumar, learned counsel for the petitioner
and learned AC to SC No. 1.

The petitioner, who superannuated with effect from
28.2.2003 as Lab Technician from Patna Medical College and
Hospital has approached this Court invoking its writ jurisdiction under
Article 226 of the Constitution of India with a prayer to direct the
respondents to restore the benefit of second time bond promotion
which was granted to the petitioner with effect from 16.6.1989. It has
been alleged that unilaterally in view of Annexure – 4 to the writ
petition i.e. a communication dated 6.2.2004 issued by the Director-

in- Chief, Health Services, Bihar, Patna whereby second time bond promotion granted to one Sri Bhagwat Singh was withdrawn with effect from 24.10.1989 the petitioner second time bound promotion was also cancelled.

It is the case of the petitioner that he was initially appointed as Technician in the year 1964 in Prince of Wales Medical College. Subsequently, by Ordinance No. 355 dated 29.5.1971 without any change in service condition the services employees of the University was transferred to the State Government and from the date of ordinance the petitioner became State Government employee. While continuing as Technician after completion of 25 years of service he was granted second time bound promotion with effect from 16.6.1989. Thereafter, the petitioner started to get enhanced salary and in the same capacity he retired on 28.2.2003. His pension was accordingly fixed. However, subsequently it was noticed that his pension was reduced, then on enquiry the petitioner got an information that in view of Annexure - 4 to the writ petition unilaterally the second time bond promotion in respect of the petitioner was also withdrawn. It has been argued that vide Annexure - 4 basically second time bond promotion which was granted with effect from 24.10.1989 to one Sri Bhagwat Singh, Lab Assistant, like the petitioner a decision was taken to cancel the second time bound



promotion on the ground that service of Sri Bhagwat Singh was treated as Government servant with effect from Government Notification dated 29.5.1971 and after calculation of the period it had come that before completion of 25 years the policy of second time bound promotion had already come to an end and as such, vide Annexure - 4 direction was issued to withdraw the second time bound promotion of Sri Bhagwat Singh. By the same communication i.e. Annexure – 4 it was directed to identify such type of cases and take appropriate step. It has been argued that pursuant to Annexure - 4 without any notice or intimation to the petitioner the benefit of second time bound promotion which was granted to the petitioner with effect from 16.6.1989 was withdrawn and his pension was reduced.

Learned counsel for the petitioner submits that against cancellation of second time bound promotion Sri Bhagwat Singh had filed a writ petition vide CWJC No. 2688 of 2000 and a bench of this court by its detailed judgment dated 8th February 2008 quashed the order of cancellation of second time bound promotion in respect of Sri Bhagwat Singh. Learned counsel for the petitioner by way of referring to Annexure – 7 to the writ petition i.e. an order contained in memo no. 1925 (4) dated 8.12.2009 issued by the Director- in-Chief, Health Services submits that in compliance with the order of



the writ court the Director -in -Chief has already withdrawn the order of cancellation of second time bound promotion in respect of Sri Bhagwat Singh. Learned counsel for the petitioner has further placed reliance on an order dated 26.3.2012 i.e. Annexure – 11 to the reply filed by the petitioner on 5th April 2016. The said order was passed by a bench of this court whereby two writ petitions i.e. CWJC No. 15816 of 2011 and CWJC No.15979 of 2011 was allowed. In view of the fact that order passed by this Court in Sri Bhagwat Singh case i.e. CWJC No. 2688 of 2000 had attained its finality since no appeal against the said order was passed, this court on 26.3.2012 allowed the two writ petitions and quashed the order whereby in similar circumstance second time bond promotion was cancelled and direction was given to give all consequential benefits.

Learned State Counsel has opposed the prayer of the petitioner on the basis of certain orders passed by a single bench as well as a division bench of this court. It was submitted that of- course not in respect of the present dispute but in other similar matters the judgments are otherwise. However, learned counsel for the State has not disputed the fact that against the order passed in CWJC No. 2688 of 2000 (Sri Bhagwat Singh versus The State of Bihar) no appeal was filed. Meaning thereby, that the said order had attained its finality. He further accepts that in view of the order passed in CWJC No. 2688 of

2000 the Director- in- Chief vide Annexure – 7 had already withdrawn the cancellation order of second time bound promotion in respect of Sri Bhagwat Singh.

In view of facts and circumstances particularly the fact that once the petitioner retired in the year 2003 and if the respondents had decided to pass any order adverse to the petitioner without following the principle of natural justice, the respondents were not at all authorized to cancel the second time bound promotion, which was granted to the petitioner with effect from 16.6.1989. The present writ petition is also required to be allowed in view of the fact that in similar circumstances the case of Bhagwat Singh was allowed by this court and relying on the same judgment a bench of this court in identical situation has quashed the order of cancellation of second time bound promotion in CWJC No. 15816 of 2011 and CWJC No. 15979 of 2011. Accordingly, applying the principle of consistency also the present writ petition is required to be allowed. Accordingly, action of the State Government whereby second time bound promotion of the petitioner granted with effect from 16.6.1989 which was unilaterally withdrawn is hereby set aside with a direction to the respondents to restore the second time bound promotion as was given to the petitioner with the date of its cancellation and pay all consequential benefits and re-fix pension of the petitioner as if there

was no order of cancellation of second time bound promotion. All the formalities must 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	26-04-2016
Transmission Date	