

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12371 of 2013

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Rama Kant Singh Son of Late Kapildeo Singh, resident of Jawahar Nagar, South of New Bailey Road, P.S. Danapur, District – Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna
2. Secretary, General Administration Department, Govt. of Bihar, Patna
3. Commissioner and Secretary, Department of Finance, Govt. of Bihar, Patna
4. Additional Secretary, General Administration Department, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Abhay Kr. Singh No. 1 and Pramata Singh, Advs.

For the Respondent/s : M/s Rajiv Roy- GP-1 and Suresh Kumar, AC to GP-1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-09-2016

Heard learned counsel for the petitioner and learned counsel for the State.

In this case, the petitioner is claiming promotion to the Super Time Scale (Grade-I) of Rs.14300-18300.

The short fact of this case is, the petitioner has joined the Bihar Administrative Service in the year 1973 and discharged the duty at different places. In July 1999, the petitioner was Deputy Secretary, Department of Finance, he has claimed that he is entitled to the Super Time Scale (Grade-I) of Rs. 14300- 18300/-. When he could not get the relief, he approached this Court in C.W.J.C. No. 9261 of 2002, making a prayer for his promotion to the Super Time Scale (Grade-I) and this Court directed the respondent authority to take

decision on the representation filed by him within four months. When the respondent authority did not take any decision and by that time, he superannuated, he approached this Court in M.J.C. No. 766 of 2003.

During the pendency, the representation of the petitioner was disposed of, vide order dated 17th June 2003, against the interest of the petitioner, who challenged that order in C.W.J.C. No. 2693 of 2004 and he could not succeed in getting relief on account of his superannuation from service and accordingly, the writ petition was dismissed, vide order dated 3rd August 2005. Against the order of the Writ Court, the petitioner approached the Division Bench in L.P.A. No. 1015 of 2005, which was allowed with a direction to the authority to find out the number of vacancies available before the petitioner was superannuated from service and take decision in the matter of promotion of petitioner. It will be relevant to quote certain paragraph of the L.P.A. order, which is as follows:-

“We had the occasion to go through the order passed by learned Single Judge. On perusal of the same, we are of the opinion that the grounds taken in the counter affidavit that as the appellant was being superannuated on 31.01.2003, hence, his case was rejected, is not sustainable in the eye of law for the reasons that when the respondent authorities had considered the case of the petitioner-appellant herein for promotion, the vacant posts were

available and promotion was due to the appellant.

In absence of any other reasons forthcoming from the counter affidavit, we are of the opinion that the matter may be remanded back to the respondent-authorities for reconsideration of the case of the appellant for promotion. Accordingly, we remand the matter back to the respondent-authorities to reconsider the case of the petitioner-appellant herein taking note of availability of posts from the date it has fallen due to the appellant till his date of retirement and if case of the appellant comes within the zone of consideration and if he is found eligible for promotion, the promotional benefit shall be extended to him in accordance with law preferably within a period of three months from the date of receipt/production of a copy of this order.”

The Division Bench has directed to consider the case of the petitioner in the light of direction given as aforesaid Letters Patent Appeal, but the respondent authority taking plea of Rule 58 of Bihar Service Code and his superannuation, rejected the case of the petitioner. In the impugned order it has been said that the case of Bajindra Narain Singh was considered for promotion along with other 12 persons, as they were superannuated from service, their cases were not considered, the case of petitioner was rejected on the same line is



completely against the direction of this Court. In the said order authority was directed to calculate the number of vacancies available before his superannuation and in that context, they have to consider the case of the petitioner, as his case was coming under the zone of consideration, in such circumstances, the benefit was to be given to him, but instead of going in that manner, the respondent authority has acted *de hors* to the direction of this Court and rejected the claim of the petitioner.

The counsel for the State has tried to justify the order passed by the respondent authority and stated that as Rule 58 of Bihar Service Code does not authorise the person to claim promotion, who has superannuated from service so much so that no person below him has been superannuated from service. Further he has said that as in the order, it has been mentioned on calculation the vacancy would not be more than 3 or 4, certainly the petitioner would not have been adjusted, but all the findings are based on speculation, not the existing calculation.

In such view of the matter, the Order No. 391 dated 10.01.2012 (Annexure-7) is quashed and the matter is remanded back to the respondent authority for fresh consideration.

For the convenience, the petitioner would file a fresh detailed application giving all facts and the respondent authority after

giving proper opportunity of hearing to the petitioner, will pass order in accordance with law within a period of three months from the date of filing of the fresh application.

With the above observation/direction, this petition is allowed.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
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