

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13285 of 2013

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Ashok Kumar Singh S/o Late Anirudh Singh resident of village - Kuari Bugurg,
P.O.- Hazipur, P.S.- Ganga Bridge, Hazipur, District- Vaishali, at present working
in the office of Superintending Engineer (Mechanical) Irrigation Circle, Birpur,
District- Supaul.

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Irrigation Department, Govt. of Bihar,
Patna.
2. The Secretary, Irrigation Department, Govt. Of Bihar, Patna
3. The Chief Engineer (Mechanical), Irrigation Department, Bihar, Patna
4. The Superintending Engineer (Mechanical), Irrigation Mechanical Circle, Koshi,
Birpur, Supaul
5. The Executive Engineer, Mechanical Circle No-1, Birpur, Supaul.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Bankey Bihari Singh, Shailendra Prasad and
Sanjay Kumar, Advs.

For the Respondent/s : Mr. S.Raza Ahmad, Sr. Adv., AAG-5
Mr. V. Prasad, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-11-2016

In this case, the petitioner is challenging the order

Memo no. 4247 dated 27.11.2007 passed by the Chief Engineer,

Irrigation Department, Government of Bihar, thereby directed to

recover the excess amount paid to him in pursuance of the earlier

order.

In the present case, the petitioner was appointed as

Correspondence Clerk, on the recommendation of Establishment

Committee, Irrigation Department, Government of Bihar, by the

Superintending Engineer (Mechanical), Koshi Circle, Birpur, vide



Memo no. 1345 dated 1.9.1986, on compassionate ground, in the pay scale of Rs. 580-860 on account of death of his father, in harness. Accordingly, he joined the aforesaid post on 22nd August 1986 and he joined the office on 1st September 1986. He passed Hindi Noting and Drafting Examination, which was conducted in the year 1990 by the Directorate Rajya Bhasha Department, Government of Bihar, vide Memo no. 145 dated 22nd December 1990. The Accounts Examination was conducted in the year 1991. The petitioner appeared in the 1st and 2nd paper, he cleared the 2nd paper but failed in the 1st paper. In the year 1997, he appeared in 1st and 3rd paper, he cleared the 1st paper but failed in the 3rd paper and thereafter, he finally cleared the 3rd paper in the year 2010. In terms the A.C.P. Rule which provides the entitlement of 1st and 2nd A.C.P. on completion of 12 years and 24 years of service, on that basis, the petitioner was granted the 1st A.C.P. on 10.05.2005 in the scale of Rs. 5000-8000, vide Memo no. 1673 dated 10.05.2010. It was brought to the notice of the Chief Engineer that the petitioner has not cleared the Accounts examination whereupon the Chief Engineer, vide Office Order No. 4247 dated 27.11.2007, directed the Executive Engineer (Mechanical), Bhagalpur Division that the A.C.P. granted to the petitioner could not be allowed to sustain and had ordered to withdraw the benefit which had been given to the petitioner by way of 1st A.C.P. In pursuance thereof, the



Executive Engineer issued letter no. 1361 dated 16.12.2007, thereby passed the order of cancellation of earlier benefit granted to the petitioner by way of 1st A.C.P. and also passed the order for recovery of the same. The petitioner filed an application before the Chief Engineer informing that he passed the 1st and 2nd papers, in such view of the matter, the benefit granted to him, should not be withdrawn.

The question has been raised by the petitioner that the impugned order, which has been issued by the authority, is completely illegal as they were required to hold the examination on regular basis, but they have conducted the examination in a very irregular manner, as was only given two occasions to clear the paper, had there been a regular departmental examination of Accounts, he would have cleared the paper much earlier and in support of his submission, he has placed reliance on the judgment reported in **2015 (4) PLJR (SC) 65 (K.K. Gohil vs. State of Gujarat)** and on that strength, he submits that the order passed by the competent authority, is completely illegal, not sustainable in law on two grounds, first the regular departmental examination has not been conducted and another the equity does not lie in favour of respondents to recover the amount from class-III and IV employees.

The counsel for the other side submits that the judgment cited by the petitioner does not apply to the fact of this case,



the reason is that in that case, the examination was never conducted and the benefit was given on completion of 9 years of service and so much so that the Government of Gujarat has issued the subsequent Circular, which was not taken into consideration by the Gujarat High Court, but in the present case, the fact is otherwise does not show that the examination was not conducted, but the petitioner could not clear the examination on two occasions and there is no such Circular has been issued by the State of Bihar.

Heard the parties. One thing is very clear, though the Government was required to conduct the examination regularly, but it is not a fact that the petitioner was not given opportunity to clear the examination. The petitioner appeared in the 1st and 2nd paper, cleared the 2nd paper but could not clear the 1st paper. 2nd time, he appeared in 1st and 3rd paper, he cleared the 1st paper, but could not clear the 3rd paper. Ultimately he cleared the 3rd paper in the year 2010. The Hon'ble Supreme Court in paragraph 4 of the aforesaid judgment, has specifically recorded that during the period of 9 years, the Govt. had never conducted the examination and on completion of 9 years, the benefit was conferred. The Court has posed the question and has given an answer that when the examination was not conducted, the question of passing examination does not arise, but in the present case it is not such situation, as the petitioner was given opportunity on two

times but unfortunately he could not clear the paper so the judgment placed reliance by the counsel for the petitioner does not apply to the fact of this case. So far another judgment, the counsel for the petitioner has placed reliance on **2016 (4) PLJR (SC) 78 (*High Court of Punjab & Haryana vs. Jagdev Singh*)** that is the matter relates to retired employees, but in the present case, the petitioner is not a retired employees but he is a serving employee, the equity will only be applicable to the person who had already superannuated from service and getting half of the salary but in the present case, the principle that has been decided, does not apply.

In such view of the matter, this Court does not find any merit in the present petition and the same is, accordingly, dismissed.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
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