

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1022 of 2011

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Bhulan Kumar ShrivastavaBhulan Kumar Shrivastava, son of Late Chandra Madhav Prasad, resident of Mohalla- Sri Krishna Vihar Colony, Yadav Nagar, P.S. Sadar, P.O. Bhagwanpur, District-Muzaffarpur, presently working as Assistant in the office of S.E., Road Construction Department, North Bihar Circle, Maripur, Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar represented through Principal Secretary, Road Construction Department, Govt. of Bihar, Patna
2. The Engineer-in-Chief, Road Construction Department, Bihar, Patna
3. The Chief Engineer, Road Construction Department, North Bihar Wing, Darbhanga
4. The Superintending Engineer, Road Construction Department, North Bihar Circle, Maripur, Muzaffarpur
5. The Superintending Engineer, Road Construction Department, Road Circle, Saharsa
6. The Divisional Commissioner, Tirhut Division, Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Manoj, Adv.

For the Respondent/s : Mr. Parth Sharthi GA-11

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 29-06-2016

Heard Sri Manoj Kumar Manoj, learned counsel for the petitioner and Sri Parthasharthi, learned Govt. Advocate no.11.

2. The petitioner, invoking writ jurisdiction under Article 226 of the Constitution of India, has made a prayer for quashing of an order, contained in letter no.899 dated 16.09.2010 (Annexure-6 to the writ petition), whereby the Superintending Engineer, Road Construction Department, Road Circle, Saharsa took a decision to cancel first time bound promotion, which was granted to



the petitioner on 11.01.1990. The said order was passed in respect of other seven persons also besides the petitioner. While passing the order, direction was also given for recovery of excess paid amount. The petitioner has also prayed for quashing of order, contained in Memo No.2598 dated 13.11.2009 (Annexure-2/1 to the writ petition), whereby the Respondent no.4/ Superintending Engineer, Road Construction Department, Muzaffarpur, in the light of non-approval by the Divisional Commissioner, Muzaffarpur in respect of granting first time bound promotion cancelled the first time bound promotion. The petitioner at the same time has also made a prayer for quashing of Annexure-2 to the writ petition i.e. letter no. 1022 dated 30.03.2009 issued by the Divisional Commissioner, Muzaffarpur to grant approval of the first time bound promotion.

3. The case of the petitioner is that he was initially appointed as correspondence clerk in the year 1980. Thereafter, in view of earlier decision of the government vide letter no.944 dated 25.09.1999, he was given first time bound promotion in the scale of Rs.1400-2300/- with effect from 11.01.1990. The case of the petitioner is that after grant of first time bound promotion, he was getting enhanced salary. He is having unblemished service record. However, suddenly in the year 2010, the Superintending Engineer has come out with a decision to cancel the first time bound promotion,

which was granted long back with effect from the year 1990. Besides cancelling first time bound promotion, a direction was also issued to recover the excess paid amount.

4. Learned counsel for the petitioner submits that the purported reason for cancelling the first time bound promotion has been assigned that the petitioner has not passed the departmental accounts examination. By way of referring to a Division Bench order of this Court passed in C.W.J.C.No.1824 of 1995(R) dated 14.12.1995, learned counsel for the petitioner submits that passing of departmental accounts examination was not mandatory for grant of first time bound promotion. He submits that the said order was passed in the light of an order passed in earlier writ petition i.e. C.W.J.C.No.42 of 1989(R). The said order dated 14.12.1995 passed in C.W.J.C.No.1824 of 1995(R) has been brought on record as Annexure-5 to the writ petition. Learned counsel for the petitioner has further argued that once the petitioner was already granted the benefit of first time bound promotion with effect from the year 1990, at belated stage, no recovery order can be passed cancelling the first time bound promotion. Moreover, all the actions, which has been taken by the Respondents, were taken without granting any opportunity of hearing to the petitioner and, as such, learned counsel for the petitioner submits that on both counts, the orders impugned are liable

to be set aside.

5. Sri Partha Sarthi, learned Govt. Advocate no.11 opposing the prayer of the petitioner submits that since the petitioner has not passed the department account examination, the Respondents have rightly passed order of cancellation. By way of referring to the statement made in paragraph-9 of the counter affidavit filed on behalf of Respondent no.3 he submits that sufficient opportunity was given to the petitioner and only thereafter order impugned was passed.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. In paragraph nos. 8 and 16 of the writ petition, a specific plea has been taken by the petitioner that before passing such order, no opportunity of hearing was given to the petitioner. Moreover, the order of this Court i.e. Annexure-5 categorically states that for grant of time bound promotion, passing of departmental account examination was not mandatory. Now in view of recent Judgment of the Hon'ble Supreme Court reported in (2015)4 SCC 334 (State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors. it has also been settled that in case of Class-III and Class-IV employees, unless there is allegation of suppression of fact/ misrepresentation or committing fraud in obtaining financial benefit, at subsequent stage no recovery order can be passed. It is an undisputed fact that the petitioner was granted first

time bound promotion with effect from the year 1990 itself. Of course in the counter affidavit, a vague statement has been made. On perusal of statement made in paragraph-9 of the counter affidavit, the Court is satisfied that a vague stand has been made regarding giving opportunity to the petitioner. Moreover, since long back, the benefit of first time bound promotion was granted to the petitioner and in view of Annexure-5 of the writ petition, the Court is satisfied that the order impugned mainly Annexure-2 and Annexure-6 so far as petitioner is concerned are liable to be set aside.

7. Accordingly, both the orders impugned in respect of the petitioner are hereby set aside. The writ petition stands allowed with all consequential benefits.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
CAV DATE	
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