

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13144 of 2008

Upendra Sah son of late Lakhan Sah, resident of village Jagatpur, P.O. Barail,
Police Station and district Supaul

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Water Resources Department,
Government of Bihar, Patna
2. Chief Engineer, Water Resources Department, Birpur, District Supaul
3. Joint Secretary, Water Resources Department, Government of Bihar, Patna
4. Superintending Engineer, Baraj Anchal Birpur, District -Supaul

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Santosh Kr.Verma, Adv.

Mr. Jitendra Prasad Singh, Adv.

For the Respondent/s : Mr. Sunil Kumar Mandal, S.C.3

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-07-2016

Heard Mr. Santosh Kumar Verma, learned counsel for the
petitioner and Mr. Sunil Kumar Mandal, learned S.C.3 for the State.

The petitioner has questioned the order of the Chief Engineer,
Water Resources Department, Government of Bihar as contained in
the letter No. 1906 dated 7.5.2005 whereby the time bound promotion
granted to the petitioner has been cancelled inter alia on grounds of
having not passed the departmental accounts examination, a copy of
the order under challenge is annexed at Annexure-2 to the writ
petition.

Facts of the case briefly stated is that the petitioner was
appointed as a Lower Divisional Clerk on 5.9.1979 and was granted
first time bound promotion vide order passed on 15.3.2003 with effect



from 5.9.1989 i.e. on completion of 10 years of satisfactory service. The time bound promotion granted to the petitioner was reexamined by the Chief Engineer and since it transpired that while the petitioner has passed two papers in the departmental accounts examination in February, 1994 and November, 1994 he was yet to pass one more paper. His time bound promotion was thus held to be illegal and was set aside. An order for recovery of the excess salary paid to the petitioner by virtue of the promotion was passed and which has since been recovered from the petitioner as stated at the Bar by Mr. Verma, learned counsel for the petitioner. The petitioner being aggrieved is before this Court.

Mr. Verma learned counsel for the petitioner while questioning the impugned order has submitted that neither the petitioner was required to pass any examination for securing a time bound promotion nor the respondent were within their jurisdiction to make any recovery. He submits that not only the recovery has taken place during the service period rather even the salary of the petitioner was down scaled and thus the petitioner has been deprived of the financial benefit. Learned counsel submits that the petitioner has also passed the examination on 11.3.2002 i.e before the impugned order was passed.

The argument of Mr. Verma has been contested by Mr. Mandal

learned counsel for the State to submit that since under the Government Circular, it was obligatory on the part of the employees to pass the departmental examination even for securing time bound promotion and since the petitioner has admittedly not passed such examination hence there is no infirmity in the order impugned.

The legality of the order impugned rests on the fact whether the petitioner at all was required to undergo a departmental accounts examination for securing a time bound promotion. I will not delay any long to hold in the negative for this issue stands well discussed in a judgment of this Court reported in **2011 (2) PLJR 136 (Bishwa Nath Prasad Vs. State of Bihar)**. This Court on examination of the departmental circular No. 10770 dated 30.12.1981 as well as some earlier judgments of this Court, has proceeded to hold that there is no requirement for an employee to undergo any examination for grant of time bound promotion if he is otherwise found fit for promotion in terms of the stipulations present in Clause (ii), (vi) and (vii) attached to the departmental Circular No. 10770 dated 30.12.1981 which inter alia provides for time bound promotion on completion of 10 years and 25 years of service. The issue thus is no more res integra and this Court has been informed that the opinion expressed by the Bench has not been upset by a Superior Court.

Learned counsel for the petitioner is again fair to inform that



this issue did come up for consideration in a matter arising from L.P.A.No.266 of 2011 and the Division Bench vide judgment reported in **2013 (1)PLJR 939 (State Vs. Kusheswar Nath Pandey)** has though upheld the requirement of passing the departmental examination for time bound promotion but he informs that the judgment of the Division Bench has since been set aside by Supreme Court in the Special Leave Petition filed by the writ petitioner Kusheswar Nath Pandey bearing S.L.P.(Civil)No. 4037 of 2013 vide judgment and order passed on 5.8.2013. He submits that even the recovery has been restrained. He further submits that just in the case of **Kusheswar Nath Pandey** even in the present case the petitioner had passed his departmental examination much before the passing of the impugned order.

I have heard learned counsel for the parties and persued the records. In my opinion in the circumstances discussed hereinabove and in view of the opinion expressed by writ Court in the case of Kusheshwar Nath Pandey as upheld by the Supreme Court as well as the judgment in **Bishwa Nath Prasad** (supra), the impugned order of cancellation of the time bound promotion of the petitioner by the Chief Engineer bearing Memo No. 1906 dated 7.5.2005 impugned at Annexure-2 cannot be upheld and is accordingly set aside. As a consequence, the time bound promotion granted to the petitioner with

effect from 5.9.1989 stands restored and as a consequence not only the petitioner becomes entitled for refund of the amount recovered rather he is also entitled to all consequential benefits upon restoration of his promotion in the form of arrears of pay and allowances. Since the petitioner has already superannuated on 31.1.2013 hence the respondents particularly the respondent No.2, the Chief Engineer and such other authority concerned, are directed to take steps for providing consequential benefits to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

The writ petition is allowed

(Jyoti Saran, J)

Bibhash/-

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Transmission Date	