

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19677 of 2012

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Uday Shankar Prasad, son of Late Chaturbhuj Sahay, Resident of 304, Millennium Home Apartment, Sheikhpura, P.S.- Shastri Nagar, Patna- 800014.

.... Petitioner/s

Versus

1. The Bihar Vidhan Parishad, through its Secretary, Vidhan Parishad Secretariat, Patna
2. The Secretary, Bihar Vidhan Parishad, Vidhan Parishad Secretariat, Patna.
3. Deputy Secretary-Cum-Convener, Bihar Vidhan Parishad, Vidhan Parishad Secretariat, Patna.
4. The Secretary-Cum-Commissioner, Govt. of Bihar, Finance Dept., Patna.
5. The Accountant General (A & E), Veerchand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Atul Kumar Pandey, Advocate
Mr. Nitya Nand Mishra, Advocate

For the Respondents No.1 to 3 : Mr. Kaushal Kumar Jha, Advocate

For the Respondent No.4 : Mr. P. K. Verma, A.A.G.-3
Mr. Ujjwal Kumar Sinha, A.C. to A.A.G.-3

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 20-08-2016

The challenge in the present writ application is to an order passed by the Secretary, Bihar Vidhan Parishad on 3rd May, 2012 whereby, the petitioner has been ordered to be granted pension against the post of Hindi Translator, but with financial up-gradation on completion of 12, 24 and 30 years of service.

The petitioner was appointed against the post of Assistant Hindi Translator on 12.07.1978. Subsequently, he was appointed as Hindi Translator (Hindi Expert) which is a duly sanctioned post. Subsequently, he was promoted to the post of Section

Officer (Hindi Translator) on 13th September, 1984 and then Administrative Officer (Hindi Translator) on 2nd November, 1991 and then Under Secretary (Hindi Translator) on 27th November, 1995. The petitioner attained the age of superannuation on 31st of July, 2011.

The order passed by the Secretary, Bihar Vidhan Parishad is to the effect that the posts of Section Officer, the Administrative Officer and the Under Secretary are not the sanctioned posts against which the petitioner could be promoted and thus, he is not entitled to pension of the post from which he attained the age of superannuation. Since in the absence of promotion, the petitioner would have stagnated in the same cadre, therefore, he was granted benefit of Assured Career Progression Scheme on completion of 12, 24 and 30 years of service.

Learned counsel for the respondents refers to Rule 3 of the Bihar Vidhan Parishad Secretariat (Recruitment and Conditions of Service) Rules, 1965. The relevant rule 3 read as under:

“3. Strength and composition of the Secretariat.- (1) There shall be a separate Secretariat of the Bihar Vidhan Parishad in which there shall be-

- (a) such number of permanent posts as are specified in the First Schedule; and
- (b) such number of temporary posts of the categories specified in the Second Schedule as the Chairman may, by order from time to time, sanction:

Provided that no order sanctioning the creation of a temporary post in Class I shall be issued by the Chairman except after consultation with

the Finance Department:

Provided further that order creating temporary posts in Class II, Class III and Class IV shall be issued by the Chairman only for that financial year or part thereof in which the order is issued and that also only if the cost thereof can be met out of the budget savings of that year.

(2) The Chairman may, from time to time, amend the First Schedule by increasing or deducing the number of posts specified therein or by adding thereto any new category of post or posts:

Provided that no order sanctioning the amendment shall be made by the Chairman except after consultation with the Finance Department.”

A perusal of the Second Schedule appended to the Rules shows that the Under Secretary and Section Officer are Class II posts. Proviso to clause (b), as reproduced above, deals with creation for temporary post in Class I after consultation with the Finance Department. In respect of Class II, III and IV, the Chairman can make appointment for a particular financial year.

The fact remains that the petitioner was promoted by the Chairman in the year 1984, 1991 and 1995. It was for the Chairman to ensure that the Rules are complied with. An employee, who has been promoted by the Chairman of the Bihar Vidhan Parishad, cannot refused to work on the promoted post. Having worked for 33 years and almost 16 years on the post of Under Secretary before his superannuation, the petitioner cannot be denied the benefit of retiral benefits to the post of Under Secretary because in 1995, the Chairman promoted the petitioner without consultation of the Finance

Department. The continuation of the petitioner on the post of Under Secretary year after year would satisfy the requirement of the second proviso as the Chairman is competent to make appointment or promotion against Class II post for a financial year. The petitioner cannot be denied the benefit of pension of the post of Under Secretary for the reason that the Chairman has not complied with the Rules. For inaction or a wrong action of the Chairman, the consequences cannot fall on the petitioner, who is bound to comply with the orders of the Chairman.

Consequently, I deem it appropriate to allow the present writ application and direct the respondents to re-calculate the pensionary benefits payable to the petitioner as Under Secretary on the date of his superannuation. Needful be done within three months from today.

(Hemant Gupta, J.)

Sunil/-

AFR/NAFR	
CAV DATE	N. A.
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