

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3647 of 2011

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Rajendra Prasad, Son of Late Etawaru Ram, resident of Manpur Muffasil
More, P.O: Buniyadganj, P.S: Muffasil, District: Gaya, presently posted as
Technical Supervisor, Hastkargha Sudrirhikaran Yojna, District Industry
Centre, Aurangabad, District: Aurangabad.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Industry, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
3. The Director, Handloom and Silk Department of Industry, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
4. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
5. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
6. The Law Secretary, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Adv.

Mr. Sanjay Kr. Pandey, Adv.

For the Respondent/s : Mr. Neeraj Kumar, A.C. to S.C.-22

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 25-02-2016

Heard Sri Ganpati Trivedi, learned senior counsel, who
was assisted by Sri Sanjay Kumar Pandey, learned counsel for the
petitioner and learned A.C. to Standing Counsel - 22.

The petitioner, invoking writ jurisdiction of this Court
under Article 226 of the Constitution of India, has prayed for
quashing of an order, contained in memo no. 23 dated 03-01-2008
passed by the Director, Handloom & Sericulture, Department of
Industry, Bihar, Patna and also order, contained in Memo no. 2521



dated 30-11-2010. By the said order, 1st time bound promotion, which was given to the petitioner vide order contained in memo no. 457 dated 24-02-1997 (**Annexure - 4**), was cancelled and direction was issued to recover the excess paid amount to the petitioner. By order dated 03-01-2008 (**Annexure - 10**), his 1st time bound promotion, which was granted, vide Annexure - 4 dated 24-02-1997, was cancelled and direction was given to recover the excess paid amount. The representation filed by the petitioner against the order dated 03-01-2008 was rejected, vide order dated 30-11-2010 (**Annexure - 15**).

It has been pleaded that the petitioner was initially appointed as Assistant Supervisor and was posted in the office of General Manager, District Industry Centre, Bhagalpur, vide order dated 18-02-1982. Subsequently, considering the qualification of the petitioner, the petitioner was posted as Technical Supervisor. Thereafter, considering the fact that the petitioner has completed his services and was entitled to get 1st time bound promotion, he was provided with 1st time bound promotion, vide **Annexure - 4** to the writ petition i.e. order contained in memo no. 457 dated 24-02-1997 treating completion of ten years of service from 18-02-1982 on 20-02-1992.

Learned senior counsel for the petitioner has further



placed reliance on **Annexure - 5** to the writ petition and submits that the 1st time bound promotion was approved by the Director treating two posts i.e. Assistant Supervisor and Technical Supervisor as one cadre post, which was passed after obtaining approval from the Finance Department. The petitioner thereafter got two other benefits including benefit under the A.C.P. scheme. He was accorded 1st A.C.P. on 09-08-1999, 2nd A.C.P. on 24-08-2011 (effective since 20-02-2006) and also 3rd A.C.P. w.e.f. 20-02-2012 treating his completion of services from initial date of appointment i.e. 18-02-1982. However, suddenly the Director, Handloom and Silk Industry Department has come out with the impugned order i.e. **Annexure - 10** to the writ petition, whereby unilaterally, a decision was taken to cancel the 1st time bound promotion, which was granted to the petitioner in the year 1997 and also order was passed for recovery of excess paid amount to the petitioner. Sri Trivedi, learned senior counsel for the petitioner submits that once the same authority i.e. Director with the approval of the Finance Department had passed an order treating the post of Technical Supervisor and Assistant Supervisor as one cadre post, there was no reason to pass a different order by the same authority, that too without affording any opportunity to the petitioner. Accordingly, a prayer has been made to quash the impugned orders.



In this case, counter affidavit has also been filed on behalf of respondents. However, no plausible explanation has been given as to under what circumstances, once the 1st time bound promotion was granted by the then Director with the approval of the Finance Department, what was the reason for cancelling the order of 1st time bound promotion.

Learned State counsel tried to justify the case, however; he was not in a position to satisfy the Court that even the impugned order was passed after notice to the petitioner or not.

After hearing the parties and considering the facts and circumstances, the Court is of the opinion that once the Director, vide order contained in **Annexure – 5**, had already approved grant of 1st time bound promotion treating completion of 10 years of service w.e.f. 20-02-1992, which was with the approval of the Finance Department, there was no reason to pass impugned order, that too after such a long gap. The order impugned was passed without affording any opportunity to the petitioner. Once it was decided that post of Assistant Supervisor and Technical Supervisor was of the same cadre and treating the same, benefit was granted to the petitioner, obviously such right had accrued in favour of the petitioner, which was not required to be taken away without any reasonable ground, that too without affording any opportunity of

hearing.

In this case, by order dated 04-04-2011, while granting time for filing counter affidavit, a Bench of this Court had already directed for staying recovery from the salary of the petitioner.

Learned counsel for the petitioner informs that in view of interim order, no recovery has been effected.

In view of facts and circumstances, the Court is of the opinion that orders impugned are not sustainable in the eye of law. Accordingly, **Annexure - 10** as well as **Annexure - 15** are, hereby, set aside and respondents are restrained from interfering with the order of 1st time bound promotion, which was granted to the petitioner in the year 1997 itself.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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