

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1895 of 2010
IN
Civil Writ Jurisdiction Case No. 8420 of 2005**

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Ram Kishore Prasad Singh, S/O Sri Ramanuj Prasad Singh, R/O Vill.- Haripur, Kadrabad, P.S.- Bachchwara, Distt.- Begusarai, at present posted as Junior Accounts Clerk, Rural Engineering Organisation (R.E.O.), Rural Development Department, Govt. of Bihar, Works Division, Rosera, P.S.- Rosera, Distt.- Samastipur

.... Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Rural Engineering Organisation (R.E.O.), Rural Development Department, Govt. Of Bihar, 5th Floor, Visheshwaraiya Bhawan, Patna-1
3. The Engineer-In-Chief Rural Development Department, Govt. Of Bihar, 5th Floor, Visheshwaraiya Bhawan, Patna-1
4. The Chief Engineer Rural Engineering Organisation (R.E.O.), Iind Zone, Rural Development Department, Govt. Of Bihar, 5th Floor, Visheshwaraiya Bhawan, Patna-1
5. The Superintending Engineer Rural Engineering Organisation (R.E.O.), Rural Development Department, Govt. Of Bihar, Work Circle, Darbhanga
6. The Executive Engineer, R.E.O. Rural Development Department, Govt. Of Bihar, Works Division, Begusarai
7. The Executive Engineer, R.E.O. Rural Development Department, Govt. Of Bihar, Works Division, Rosera, Samastipur

.... Respondent/s

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Appearance :

For the Appellant : Mr. C.M.Chaurasia, Advocate
For the State : Mr. Syed Arshad Alam, SC 3
Mr. Mahtab Alam, AC to SC-3

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and**

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 30-06-2016

The writ petitioner-appellant in this intra-court appeal is challenging the judgment and order of the learned Single Judge dated 27.09.2010, passed in C.W.J.C. No. 8420 of 2005 (Ram

Kishore Prasad Singh Vs. The State of Bihar and others) whereby petitioner's challenge for withdrawal of first time bound promotion granted to him has been negated.

We have heard the parties and examined the records.

The petitioner's case is that in 1998 he was granted first time bound promotion with effect from 22.01.1995 on completion of 10 years of service, having not been granted either upgradation or any promotion. Five years later upon audit objection the same was withdrawn in the year 2003 on the ground that the petitioner-appellant had not passed the departmental accounts examination. On the face of it the stand of the State does appear to be prima facie correct. This Court had considered the Full Bench judgment of this Court in the case of Maheshwar Prasad Singh and others Vs. The State of Bihar and others since reported in 2000(4) PLJR 262 and as held in the case of Daya Shankar Singh Vs. The State of Bihar and others since reported in 2010(3) PLJR 220 that passing of departmental examination was a mandatory condition precedent for grant of time bound promotion. The matter in the present case in the facts thereof does not end there.

Learned counsel appearing on behalf of the State submits that the petitioner sat in the departmental accounts



examination in the year 2002, result whereof was declared in the year 2005 declaring him pass, therefore, he could not be given the first time bound promotion in 1998 with effect from 1995 and now that time bound promotion scheme itself has come to an end with effect from 01.01.1996, he, on the strength of passing this examination in the year 2005, cannot get the same.

To the contrary, learned counsel for the petitioner-appellant states that if passing of departmental examination is mandatory then holding of departmental examination has to be equally mandatory. It is stated that since 1990 to 2000 no departmental examination was held in accounts. Though apparently there is counter affidavit, which is not on record, State does not deny this fact. All that the stand the State maintains is when the first time bound promotion was granted petitioner had not cleared the departmental examination, therefore, the fact and situation is that there was no departmental examination as was required to be held. In fact, the departmental examination was to be held twice a year but this fact remains uncontroverted that it was not held for over a decade. If the departmental examination is not held, can a person be deprived of their right to get time bound promotion? Petitioner- appellant rightly contends that right from 1990 till 1996 for six years, petitioner had a chance to appear if departmental examination would have been held.



It is submitted that for failure of the State to timely and regularly conduct departmental examination the right of the petitioner to get time bound promotion cannot be defeated. All we can say is referred to in the judgment of the Apex Court in the case of All India Groundnut Syndicate Ltd. Vs. Commr. Of Income Tax, Bombay City since reported in AIR 1954 Bombay 232, which is quoted hereunder :

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under subsection (2) of S. 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person – we take it that the Income-tax Department is included in that definition- can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default”.

What the State says is that notwithstanding that I failed to conduct examination that you, the employee had not passed the departmental examination, you will not be entitled to time bound

promotion.

We cannot agree with this submission. Considering the aforesaid facts that the departmental accounts examination was not held for over a decade the right of the petitioner to get time bound promotion cannot be frustrated. We are, accordingly, of the view that cancellation of the time bound promotion as earlier granted to the petitioner- appellant was itself wrong. We, accordingly, hold that the petitioner was rightly granted time bound promotion with effect from 22.01.1995 and its withdrawal was illegal. We, accordingly, allow the appeal, set aside the order of the learned Single Judge, allow the writ petition and direct the authorities to act accordingly forthwith.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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