

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14494 of 2006

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Rajnandan Prasad Rabidas, son of Late Marachu Prasad Ravidash, resident of village-Ravikar, P.S.-Ram Vilash Nagar, District- Aurangabad at present posted as Head Assistant in Tirhut Cannal Circle, Raxaul Water Resources Department.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Commissioner-cum-Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Balmikinagar, District- West Champaran.
4. The Superintending Engineer, Tirhut Canal Circle, Water Resources Department, Raxaul, District- East Champaran.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Sharma, Advocate

For the Respondent/s : Mr. Satyendra Kumar Jha, AC to GP-3

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 31-03-2016

I have heard the parties and perused the record of this case.

The petitioner claims to have been appointed on the post of Correspondence Clerk in Water Resources Department and he joined as such on 06.08.1973. It is further claimed by the petitioner that vide Annexure 4 series which are office orders dated 08.05.1999, he was given three promotions with retrospective effect. By the first order, he was given Selection Grade, w.e.f., 06.08.1978. By the second order he was given promotion on the post of Head Clerk, w.e.f., 06.08.1980 and by the third order, he was given promotion on



the post of Head Assistant in the old scale of 850-1360/- and new scale of 1640-2900/-. The promotion was given with effect from 06.08.1987. It is claimed on behalf of the petitioner that he was required to be given promotion from the dates disclosed in the orders but, since it was not given, an order was passed for granting promotion from the retrospective date after realizing the mistake having been committed.

However, vide Annexure 5 dated 04.02.2000, which is the office order issued by the Chief Engineer, the aforesaid promotions were cancelled for the reasons that the petitioner could not pass account examination which was required for such promotions. The aforesaid order as contained in Annexure 5 was put to challenge by filing C.W.J.C. No.2024 of 2000 which was disposed of in following terms:-

“In such view of the matter, the aforementioned promotions of the petitioner could not be cancelled and the petitioner could not be reverted back as was done by the impugned order dated 4th February 2000, Annexure-10 to the writ petition. The same is accordingly quashed.

It must, therefore, be deemed that the said order dated 4th February 2000 was never in existence and as such the petitioner's status in terms of the aforementioned promotions should be restored forthwith and he shall also be paid the remuneration to which he was entitled to in accordance with such promotions but which had not been paid to him. Those must be reached to the petitioner as quickly as possible but not later than 12 weeks from the date of service of a copy of this order upon the respondent no.3.

This order will not prevent the

respondents to re-consider whether in terms of Annexures-1, 2 & 3 to the writ petition or for any other decision of the Government, the petitioner was not entitled to such promotions, as was sought to be urged by the learned counsel for the State before me, which consideration did not find place in Annexure-10 to the writ petition.”

It is manifest from the aforesaid order that the Single Judge Bench of this Court has held the cancellation of promotion as bad and has further gone to observe that it would be deemed that the said order dated 04.02.2000 was never in existence and, as such, the petitioner's status in terms of aforementioned promotions should be restored forthwith and he shall also be paid remuneration to which he was entitled considering such promotions but the same was not paid to him.

On such direction having been given under the aforesaid order (Annexure 6), the Chief Engineer has finally written to the Superintending Engineer, Tirhut Canal Division, Raxual that since the earlier order that 04.02.2000 has been cancelled by a Single Judge Bench of this Court, the same is now a nullity and, as such, the petitioner should be given salary and other allowances admissible to him in lieu of promotions from the date of his joining and not from the retrospective effect.

The petitioner, thereafter, approached this Court by filing M.J.C. No.3223 of 2005 for initiation of a proceeding of



contempt against the respondents as, according to him, the earlier order of this Court was not being complied in its totality inasmuch as the direction was given that the petitioner's salary and allowances would not be paid from the retrospective effect though the promotion was granted from earlier date. Learned Single Judge vide order dated 07.09.2006 as contained in Annexure 9, held that the dispute cannot be sorted out in the contempt proceeding and, thus, granted liberty to the petitioner to approach the competent forum for redressal of his grievance. Hence, this writ application has been filed by the petitioner earlier for a direction to the respondents for payment of salary with due increment along with interest on the posts in lieu of promotions granted vide Annexure 4 with retrospective effect as stated in the order of promotion itself and later on also seeking quashing of the subsequent letter no.617 dated 09.09.2005, letter no.865 dated 19.09.2005, letter no.866 dated 19.09.2005, letter no.867 dated 19.06.2005 and letter no.868 dated 19.09.2005 by which a decision was taken for granting financial benefits in lieu of promotion only from the date of his joining and not from the retrospective date and also the final calculation made on the basis of Annexure 8 fixing admissible pay scale of the petitioner following the direction contained in Annexure 8, by filing I.A. No.7899 of 2015.

Learned counsel for the petitioner raises a simple



issue. It is contended that whenever promotion is granted notionally then it is always written in the order of promotion itself, however, the order of promotion which has been annexed as Annexure 4 discloses in clear terms that the promotions were being given from the retrospective date without recording that the financial benefit would be given from the date of his joining. In fact, scales have been disclosed in the office orders which are to be given from the specific dates. Thus, it is contended that after the aforesaid orders having been held to be valid by a Single Judge Bench of this Court and that order having attained finality, the Chief Engineer was not empowered to modify the same and, thereafter, to hold that the financial benefit would be given from the actual date of joining of the petitioner itself on such posts on promotion. Learned counsel places reliance upon a decision rendered by a Division Bench of this Court in this regard in ***Dr. Paras Nath Prasad Vs. the State of Bihar and others [1990 (2) PLJR 248]***.

A counter affidavit has been filed on behalf of the State taking a stand that the petitioner has been allowed admissible scale as per the orders passed by the Chief Engineer itself. It has also been tried to demonstrate that the petitioner is at no financial loss after grant of such benefit from the date of his joining. Lastly, learned counsel for the State draws attention of this Court towards the last



paragraph of the order passed by the learned Single Judge, as contained in Annexure 6 while disposing of the C.W.J.C. No.2024 of 2000. It is contended that liberty was granted to the respondents to reconsider whether in terms of Annexure 1, 2 and 3 to the writ petition or for any other decision of the Government, the petitioner was entitled to such promotions?

However, in my considered view, that would not improve the case of the respondents as they have not reconsidered the matter of promotion of the petitioner for any reason rather, after passing of the aforesaid order, the earlier order recalling or cancelling the promotion has been withdrawn. Thus, it can be safely held that there has been no fresh consideration regarding grant of promotion to the petitioner in view of the aforesaid observation of the learned Single Judge.

Having held so, in my view, the respondents have committed gross error in granting financial benefit to the petitioner from the date of his joining. For taking such decision, the most suitable and acceptable way would be to read the conditions or the statements recorded in the office order itself. Annexure 4 series is clear in its term that the promotion was granted from the retrospective date, i.e., the date that has been disclosed in the orders and it has also been recorded in the orders that from what date a particular scale



would be given. In such a situation, without holding that the aforesaid order was bad, the Chief Engineer could not have taken a decision for granting financial benefit from the date of joining of the petitioner especially when it is not stated in the office orders at all that such promotions were given from the retrospective date only notionally. In fact, in clear terms it is stated that scale which has been stated in the office orders is to be given from a retrospective date and that date has also been recorded. The Division Bench in ***Dr. Paras Nath Prasad (supra)*** has also held that a person who is entitled to promotion but not promoted, is entitled to invoke the writ jurisdiction. Such due promotion is not a claim of anything notional but it is attached to the status and the service contract of the employee concerned and, as such, the Government servant would be entitled to get his arrears of salary which were denied to him for no fault on his part.

In above view of the matter, in my considered opinion, the impugned orders as contained in Annexure 8 and 10 are not at all sustainable in law and, as such, they are quashed and set aside.

It is further held that the petitioner would be entitled for all the financial benefits from the respective dates and scales which have been stated in the concerned office orders granting promotions to the petitioner and which have been upheld already by a Single Judge Bench of this Court vide Annexure 6.

Learned counsel for the petitioner has informed that the petitioner has already retired from service in the year 2012 itself and, as such, the retiral benefits which would be admissible to the petitioner should also be revised.

It is further ordered that the authorities would be obliged to calculate the due amount/arrear admissible to the petitioner in lieu of the promotion which ought to have been granted in view of Annexure 6 as well as the present order but has not been paid to him. Such amount should reach him as quickly as possible but not later than three months from the date of receipt/production of a copy of this order.

Accordingly, this writ application stands allowed in terms of the aforesaid observations and directions.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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