

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.74 of 2010

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Sita Ram Pandit, son of Late Ragho Pandit, resident of Village- Beri, Dharamgachhi, P.O.- Mohiuddin Nagar, P.S.- Mohiuddin Nagar, District- Samastipur, presently residing in Mohalla- Chanakyapuri, Raja Bajar, P.O.- Veterinary College, P.S.- L.B.S. Nagar, Patna-800014

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Public Health Engineering Department, Bihar, Bishweshwaraiya Bhawan, Patna
3. The Chief Engineer (Mechanical), Public Health Mechanical Engineering Deptt., Bihar, Bishweshwaraiya Bhawan, Patna
4. The Superintending Engineer, Public Health Engineering Circle, Bihar Veterinary College, Patna-800014
5. The Executive Engineer, Public Health Mechanical Division, B.V. College, Patna-800014
6. The Accountant General (Accounts and Claims), Bihar, Birchand Patel Path, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar, Advocate

For the Respondent/s : Mr. Mani Kant Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 01-03-2016

Heard learned counsel for the petitioner and the respondents.

2. The petitioner has challenged the order dated 10.11.2009 passed by the Principal Secretary, Public Health Engineering Department, Bihar, Patna as well as order dated 08.08.2009 passed by the Superintending Engineer, Public Health Mechanical Circle, Patna withdrawing second Assured Career Progression (ACP) granted w.e.f. 09.08.1999 vide office order dated 12.08.2006.



3. The core issue of the matter is that if the appointment of the petitioner as Rig Assistant vide letter dated 16.02.1978 is considered as a promotion, no fault would be found with the impugned letter dated 10.11.2009 passed by the Principal Secretary, Public Health Engineering Department, Bihar, Patna and letter dated 09.08.2009 passed by the Superintending Engineer, Public Health Mechanical Circle, Patna. However, if the said letter is taken as a fresh appointment then in that case, the office, order dated 12.08.2006 withdrawing the second ACP w.e.f. 09.08.1999 would not be sustainable in law.

4. The petitioner was appointed as Khalasi Grade-II in the year 1967. Thereafter vide office order dated 14.07.1982, he was confirmed w.e.f. 05.07.1977. It is the case of the respondents that the petitioner was promoted to the post of Rig Assistant vide office order no. 71, dated 16.02.1978 (Annexure-3) w.e.f. 01.01.1978. The petitioner thereafter was promoted to the post of Rig Man vide office order no. 248 dated 29.10.1983.

5. The main dispute is whether the office, order no. 71, dated 16.02.1978 would constitute a promotion or a case of fresh appointment. The petitioner submits that office order dated 16.02.1978 should be construed as a fresh appointment, as the petitioner was shifted to a technical cadre from the general cadre in

the initial pay scale of Rs.205/- without any other benefit. He thus submits that it would not be a case of promotion, rather a case of fresh appointment.

6. I find that the aforesaid aspect has not been considered in order dated 10.11.2009 passed by the Principal Secretary, Public Health Engineering Department, Bihar, Patna.

7. In the result, the matter is remitted to the Principal Secretary, Public Health Engineering Department to consider the matter afresh after taking into consideration the issue whether the office order no. 71 dated 16.02.1978 constituted a case of change of cadre and a case of fresh appointment. It is expected that the matter would be considered expeditiously within a period of three months from the date of receipt of a copy of this order. It will be open for the petitioner to bring on record such other orders wherein such cases has been considered in past to be a case of fresh appointment.

8. In case, the petitioner succeeds, he would be entitled to refund of the amount, already recovered.

9. With the aforesaid observation, this application stands disposed of.

(Samarendra Pratap Singh, J.)

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