

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.452 of 2011

Shivesh Kumar Karn son of Late Hem Narain Lal at present posted as Head Clerk
Sub Divisional office, Simri Bakhtiyarpur P.S. Simri Bakhtiyarpur District Saharsa
permanent resident of Naya Bazar Saharsa P.O. & P.S. Saharsa District Saharsa

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner cum Principal Secretary to Government in the Finance
Department, Old Secretariat, Patna
3. The Joint Secretary to Government in the Finance Department Old Secretariat
building, Patna
4. The District Establishment Committee, Saharsa through its Chairman
5. The District Magistrate Saharsa
6. The Additional Collector Saharsa
7. The Deputy Collector / Establishment Saharsa Collectorate Saharsa
8. The Sub Divisional Officer Simri Bakhtiyarpur P.O. and P.S. Simri
Bakhtiyarpur district Saharsa

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Suresh Chandra Giri

For the Respondent/s : Miss Aditi Hansari, AC to GP No. 30

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 11-01-2016

Perused the explanation given by the office in view of the
order dated 14.12.2015. Same is accepted with expectation that in
future office will be careful.

Heard Sri Suresh Chandra Giri, learned counsel for the
petitioner and Miss Aditi Hansari, learned AC to GP No. 30.

The petitioner invoking writ jurisdiction of this court under
Article 226 of the Constitution of India has prayed for quashing of
part of the order contained in Memo No. 942 – 2 dated 29.11.2010 ,
issued by the Additional Collector, Saharsa, whereby the benefit

granted to the petitioner under A.C.P. scheme was cancelled and it was directed to recover the excess paid amount in 20 equal installments. The order impugned has been brought on record as Annexure – '5' to the writ petition.

In this case a bench of this court on 12.1.2011 while adjourning the case has already directed for staying further operation of the impugned order. Learned counsel for the petitioner submits that in view of the impugned order no recovery has been effected.

Short fact of the case is that the petitioner was initially appointed against Class -IV post and was posted in Motihari Collectorate. Subsequently, in a Limited Competitive Test he appeared for Class -III post and thereafter, he was appointed against Class -III post. From Motihari Collectorate the petitioner was transferred to Saharsa Collectorate. In Saharsa Collectorate while he was functioning, after completion of 12 years of service, the petitioner was granted 1st A.C.P. under the A.C.P. Scheme of 2003. Thereafter, his pay scale was enhanced and he started drawing the same since 2007. Subsequently, in the year 2010 the Additional Collector considered the cases for grant of A.C.P. to number of employees and also examined the case of the petitioner. The learned Additional Collector, thereafter, has passed the impugned order.

Learned counsel for the petitioner while assailing the part



of the impugned order submits that once the petitioner was appointed afresh after competitive examination and after completion of 12 years of service in the same capacity he was allowed the benefit of 1st A.C.P., at subsequent stage, the authority concerned was not at all authorized to cancel the same, that too, without affording any opportunity of hearing to the petitioner. He submits that the impugned order taking away the right of the petitioner which had accrued in the year 1999 itself the order impugned without any notice to the petitioner is liable to be set aside primarily on the ground that same was passed in violation of the principle of natural justice. Besides this, it has been argued that the petitioner was rightly granted 1st A.C.P. considering 12 years of continuous service on his fresh appointment. He further submits that though the impugned order appears to have been passed in view of Annexure – ‘3’ to the writ petition, same was made applicable with effect from the year 2009 and it was not applicable in case of the petitioner.

Miss Aditi Hansari, learned AC to GP No. 30 while opposing the prayer of the writ petitioner, submits that under the provisions of A.C.P. Scheme once the petitioner was initially appointed as Class -IV employee and subsequently, though he was appointed on the basis of Limited Competitive Examination, the enhancement of pay being appointed as Class- III employee shall be

treated as grant of promotion, and as such, the impugned order has rightly been passed.

Of- course, in this case a counter affidavit has been filed but in the counter affidavit it has not been disputed that before issuance of the impugned order any notice was issued to the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. After going through the impugned order it appears that the said order was passed without giving notice to the petitioner which is further corroborated in view of the fact that in the counter affidavit it has not been denied whereas in the writ petition a specific plea has been taken that the said order was issued without giving any opportunity of hearing to the petitioner. It is settled that once a right is created in favour of a person by an action of the State, at subsequent stage, on any ground, such right cannot be taken away without giving opportunity of hearing.

Keeping in view the fact that without granting any opportunity of hearing to the petitioner the impugned order has been passed, certainly the impugned order to the extent whereby the right of the petitioner has been infringed, is liable to be set aside. Accordingly, part of the order whereby the benefit of 1st A.C.P. granted to the petitioner was cancelled and further direction was

given for recovery is hereby set aside.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

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