

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1813 of 2012

- =====
1. The State Of Bihar
 2. The Secretary Department Of Co-Operative, Government of Bihar, New Secretariat, Bailey Road, Patna
 3. The Registrar, Co-Operative Societies Bihar, New Secretariat, Bailey Road, Patna
 4. The Secretary, Department Of Personnel, Govt. Of Bihar, Patna
 5. The Secretary, Department Of Finance, Govt. Of Bihar, Patna

.... Appellant/s

Versus

Md Nasiruddin S/O Late Abdul Hameed R/O Mohallah- Pandariba Lane, P.S.- Khajekalan, District- Patna

.... Respondent/s

WITH
Letters Patent Appeal No 663 of 2013

- =====
- 1 The State of Bihar
 - 2 The Secretary, Department of Co-operative, Government of Bihar, New Secretariat, Bailey Road, Patna
 - 3 The Registrar, Co-operative Societies, Bihar, New Secretariat, Bailey Road, Patna
 - 4 The Secretary, Department of Personnel, Government of Bihar, Patna
 - 5 The Secretary, Department of Finance, Government of Bihar, Patna

.... Appellant/s

Versus

- 1 Md. Zobair Ahmad, son of late Mr Maqbool Jaan, resident of Mohalla – Bhawar Pokhar, PS – Pirbahore, District - Patna
2. Md. Shamsuddin S/O Sri Abdul Rahman R/O Village- Zamania, Railway Station, P.S.- Zamania, District- Ghazipur, Uttar Pradesh, Was Posted At Sasaram In The Office Of District Co-Operative Office, Sasaram, District- Rohtas In The Department Of Co-Operative, Retired Employee Of Co-Operative Department, C/O Registrar, Co-Operative Societies, Bihar, New Secretariat, Bailey Road, Patna
3. Sita Ram Mahto S/O Late Sri Dasrath Mahto R/O Mohalla- Begampur, Par Pothara, P.S.- Patna City, District- Patna, Was Posted In The Office Of Registrar, Co-Operative Department, Secretariat, Patna, Retired Employee Of Co-Operative Department, C/O Registrar, Co-Operative Societies, Bihar, New Secretariat, Bailey Road, Patna
4. A.N. Ambastha, Retired Employee of Co-Operative Department, C/O Registrar, Co-Operative Societies, Bihar, New Secretariat, Bailey Road, Patna
5. Jagannath Pd. S/O Badeo Singh Retired Employee of Co-Operative Department, C/O Registrar, Co-Operative Societies, Bihar, New Secretariat, Bailey Road, Patna
6. Rajdeo Prasad Sinha S/O Badeo Singh Retired Employee Of Co-Operative Department, C/O Registrar, Co-Operative Societies, Bihar, New Secretariat, Bailey Road, Patna
7. S.A. Arif S/O Abdul Quasim Retired Employee Of Co-Operative Department, C/O Registrar, Co-Operative Societies, Bihar, New Secretariat, Bailey Road, Patna

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr Md Anis Akhtar, AC to GA 1

For the Respondent/s : M/s Md Abu Haider, Md Abu Shajar &
Md Najmul Hoda, Advocates

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 27-06-2016

Heard learned counsel for the State and learned counsel
for the writ petitioners-respondents.

2 The present Letters Patent Appeal is directed against
the judgment and order dated 17.05.2011 passed in CWJC No 11253
of 2006 (Md Nasiruddin –Versus- State of Bihar & Others) with
CWJC No 11396 of 2006 (Md Zobair Ahmad –Versus- State of Bihar
& Others).

3 The grievance of the writ petitioners in the writ
proceedings was that they were not required to pass the departmental
examination in relation to accounts to be able to get the time bound
promotion and, as such, the time bound promotion and consequential
promotions dependent thereon were correctly and validly granted and
could not be cancelled.

4 It may be noted that petitioners had superannuated
and pursuant to the aforesaid plea of the State that they were wrongly



granted the time bound promotion, having not cleared the Departmental Accounts Examination, not only those promotions granted have been cancelled but money paid as a consequence thereof was to be recovered. The learned Single Judge allowed the writ petition, thus, holding that passing of departmental examination was not a condition precedent to grant of time bound promotion. Secondly, the demands for refund were also set aside.

5 We have heard learned counsel for the State and learned counsel for the writ petitioners-respondents in this intra-Court appeal and, with their consent, we are disposing of these appeals at this stage itself.

6 This Court has considered this aspect in detail in a Full Bench judgment in the case of *Maheshwar Prasad Singh & Others – Verus- State of Bihar & Others*, since reported in 2000 (4) PLJR 262 which Full Bench having been considered and by detailed judgment delivered by this Court in the case of *Daya Shankar Singh –Versus- State of Bihar & Others* since reported in 2010 (3) PLJR 220, clearly held that the very scheme for the time bound promotion was an anti-stagnation measure whereby persons found otherwise fit for promotion but who could not be promoted because of lack of promotional avenues or posts, they would be given time bound promotion. It was not promotion in the normal sense. The only



entitlement was to the next higher scale of pay. This Court clearly, upon examination of the scheme as originally propounded, came to a finding that the persons had to be otherwise fit for promotion. This clearly predicated passing of departmental examination if that was required as a condition precedent for being considered for promotion. Departmental examination being there and the writ petitioners-respondents not being exempted or within the exempted category, we are of the view that the condition precedent for the persons competent to be promoted was passing of departmental examination. Writ petitioners-respondents apparently not having passed the departmental examination, they could not have been considered for grant of time bound promotion. In our view, the Writ Court fell in error in not noticing and/or appreciating the Full Bench decision (*supra*) and the decision rendered in the case of Daya Shankar Singh (*supra*) which does not seem to have been brought to the notice of the learned Single Judge. Thus, the judgment of the Writ Court cannot be sustained. It is, accordingly, set aside. The writ petitions are directed to be dismissed.

7 In fairness to the learned counsel for the writ petitioners, we may note that he submitted that in all probabilities, the writ petitioners-respondents had passed the departmental examination, though subsequently. In our view, this fact has neither been pleaded

in the writ petition nor is there any counter affidavit even at the appellate stage in this regard.

8 However, in the interest of justice, if the writ petitioners-respondents are able to satisfy the authorities that they had in fact taken the Departmental Accounts Examination and passed, the authorities would consider the same with its logical consequence. So far as recoveries are concerned, in our view, the matter has now been settled by the Apex Court in a recent decision in the case of *State of Punjab & Others –Versus- Rafiq Masih (White Washer) & Others since reported in (2015) 4 Supreme Court Cases 334*. Keeping in view the fact that writ petitioners-respondents have already retired, recoveries will not be made.

9 With the aforesaid observations, both these applications stand allowed.

(Navaniti Prasad Singh, J)

M.E.H./-AFR

(Nilu Agrawal, J)

U			
---	--	--	--