IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20606 of 2013

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Jagat Lal Son Of Late Deoki Lal Resident Of Mohalla- Gola Road, Police Station- Danapur, District- Patna, At Present Working As In-Charge Superintendent Of Excise, Samastipur .... Petitioner

Versus

1. The State Of Bihar Through The Secretary, Registration, Excise And Prohibition, Government Of Bihar, Patna
2. The Deputy Secretary, Registration, Excise And Prohibition Department, Government Of Bihar, Patna
3. The Commissioner Of Excise, Bihar, Null New Secretariat, Bailey Road, Patna
4. The Collector, Samastipur, District- Samastipur
5. The Joint Commissioner Of Excise, Bihar, New Secretariat, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. KRIPA NAND JHA, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 06-05-2016

IA No.8586 of 2013 has been filed praying therein to set aside Memo no. 3678, dated 12.11.2013 and Memo no. 3799, dated 20.11.2013 by which he has been reverted from the post of Superintendent, Excise to the post of Assistant Sub Inspector, Excise.

2. For the reasons mentioned in the IA, the same is allowed and prayer made in the IA would form part of the writ petition.

3. State has filed counter affidavit and has justified the impugned action.

4. Before I consider the relative merits of the case, it would be relevant to notice the facts of the case in brief:-

The petitioner was appointed on the post of Sub inspector, Excise on 1.11.1983 in Dumka. In the year 1993, he was posted as In-charge, Gaya Sadar Country Spirit Warehouse. He is alleged to have caused huge loss to the State exchequer for which he was put under suspension. A regular departmental proceeding was initiated against him vide Memo no. 1784 (3), dated 20.09.1994. In the departmental proceeding, the petitioner was held guilty and was punished with the deduction of half of his salary for the rest period of his service. The said order of punishment was communicated to the petitioner by Assistant Commissioner, Excise vide by Memo no. 167, dated 2.2.1998. Later on, he was transferred and posted in Nalanda in the year 2006. In the same year, the Departmental Promotion Committee (herein after referred to as the

DPC) headed by the Excise Commissioner recommended his case for promotion to the post of Inspector, Excise. An office order of promotion was also issued on 25.6.2010 and was made in charge Superintendent of Excise vide memo no.2113, dated 2.8.2011. However, the order of promotion, dated 8.9.2006 was postponed vide Memo no. 4048, dated 12.09.2006 as he was already under suspension at the relevant time and his promotion would depend upon the outcome of the suspension order.

5. The DPC in its subsequent meeting held in the year 2007-08 did not find the petitioner fit for promotion for the post of Excise Inspector again for the same reasons. However, in the year 2010 on the recommendation of the DPC held on 14.06.2010, petitioner was promoted to the post of Excise Inspector vide Memo no.2098, dated 25.06.2010. Thereafter, petitioner was made In-charge, Superintendent of Excise, vide memo no. 2113, dated 2.08.2011 (Annexure 8), issued under the signature of the Additional Secretary, Registration, Excise and Prohibition

Department, Bihar, Patna and was posted at Bhagalpur. In the meantime, the Bihar Excise Service (Recruitment and Service Conditions) Rules, 2009 came into force with effect from 25.5.2009. It appears that as the petitioner was promoted in the year 2010, not as per the new rules, particularly clauses 13 and 15 of Rules, 2009, promotion awarded to him in the year 2010 was withdrawn and was reverted to the post of Excise Sub-inspector.

6. The petitioner has challenged the impugned order reverting him to the post of Excise Sub-inspector. He also seeks direction to the respondents to give effect to his promotion on the post of Inspector of Excise with effect from 8.9.2006 (Annexure 3) on the basis of the decision of the DPC meeting, dated 29.8.2006 as he has already been exonerated in all the departmental proceedings vide LPA No.710 of 2012 disposed of on 01.04.2014. He next submits that the respondents vide recommendation of DPC in the year 2007, promoted a number of “Excise sub inspectors junior to him.

7. Counsel for the State submits that as all facts were not before the department, the petitioner's promotion was deferred. He next submits that the department made a mistake in the year 2010 in granting promotion to the petitioner, which it corrected.

8. I have heard learned counsel for the petitioner as well as learned counsel appearing for the respondents.

9. It is well settled that if an employee is subsequently exonerated in the departmental proceeding, the sealed cover has to be opened and he has to be granted promotion, as if no proceeding was pending against him. I find that the petitioner's case is on a better footing in so much so, the DPC recommended his case for promotion on 29.8.2006 and order promoting him was also issued on 8.9.2006. As the proceeding was pending against the petitioner at the relevant time, the department was within its right to defer/ postpone his promotion vide order, dated 12.09.2006. The petitioner had been finally exonerated of the charges vide order, dated 1.4.2014, passed in LPA No. 710 of 2012. The petitioner's

promotion was deferred/postponed because of departmental proceeding, pending against him at the relevant time, which subsequently ended in his exoneration. The petitioner would thus be entitled to promotion to the post of Excise inspector with effect from 12.9.2006, as originally ordered.

10. The State had argued that as new Rules came into effect in 2009, the earlier recommendation of the DPC, dated 8.9.2006, promoting the petitioner would loose its efficacy.

11. In my view, submission of the petitioner is only to be noted, to be rejected. The new Rules, 2009 have not been made operational with retrospective effect. Petitioner's case was considered by the DPC in the year 2006 favourably, much prior to year, 2009 pursuant to which he was granted promotion to the post of Excise Inspector on 8.9.2006. However, as a departmental producing was pending, his promotion was postponed. The proceeding finally ended in his exoneration as per order, dated 1.4.2014, passed in LPA No. 710 of 2012. The petitioner

accordingly would be entitled to promotion with effect from 8.9.2006 with consequential benefits and it is directed accordingly. The impugned orders reverting the petitioner to the post of Excise Sub-Inspector, contained in Memo no. 3678, dated 12.11.2013 and Memo no. 3799 dated 20.11.2013 are set aside.

12. The writ application is allowed.

(Samarendra Pratap Singh, J)

Shashi.

AFR/NAFR
CAV DATE
Uploading Date
Transmission Date