

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13533 of 2013

=====

Deo Nandan Prasad S/O Late Ram Balak Prasad Resident Of Village-
Mojahidpur, P.S- Ekangarsarai, District- Nalanda.

.... Petitioner

Versus

1. The State Of Bihar, Through Principal Secretary, Department Of Water Resources, Govt. Of Bihar, Patna.
2. The Chief Engineer, Department Of Water Resources, Sone Bhawan, Patna.
3. The Superintending Engineer, Design Planning And Monitoring Circle, Department Of Water Resources, Anishabad, Patna.
4. The Executive Engineer, Water Wage Division, Jahanabad.
5. The Accountant General, Bihar Birchand Patel Path, Patna.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mrs. Manisha Prakash, Adv.
Mr. Jitendra Kumar, Adv.

For the Respondent/s : Mr. Suresh Kumar, AC to GP1

For the Accountant General: Mr. Dharmendra Chaubey, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

3 09-11-2016 Heard learned counsel for the petitioner and the

learned counsel for the State.

In the present case the petitioner is challenging the order issued vide Memo No. 2118 dated 15.6.2009, whereby his date of first time bound promotion has been shifted to 23.1.1990. The petitioner has challenged the order on the ground that the Chief Engineer has misdirected himself and treated his appointment as Junior Accounts Clerk with effect from 23.1.1980, whereas vide order dated 30.9.1981 the petitioner was appointed as Junior Accounts Clerk with retrospective effect from 12.5.1975.



The petitioner has entered in service on IV grade employee as Peon vide Memo No. 1285 dated 2.9.1971. He has applied for the post of Junior Accounts Clerk and accordingly, his case was recommended to the aforesaid post. In pursuance thereof, the Superintending Engineer granted him the benefit from 12.5.1975. The Kalawadhi for promotion was ten years. After completion of the said period the petitioner was given the benefit of first time bound promotion with effect from 12.5.1985 in the pay scale of Rs.785-1210. The benefit of time bound promotion was shifted on account of the fact that the respondent is of the view that he was appointed as Junior Accounts Clerk on 23.1.1980 and as such, the first time bound promotion cannot be given to the petitioner 12.5.1985 is factually incorrect in the sense that petitioner was appointed as Junior Accounts Clerk on 12.5.1975, the order of the Superintending Engineer was never modified or annulled by any authority.

In the counter affidavit, which has been sworn by the Executive Engineer, he has depicted the order dated 30.9.1981, is completely a wrong order. Admittedly the Executive Engineer is below than the Superintending Engineer. He cannot have authority to challenge the order of the Senior Officer and that too when the order was never modified or withdrawn or annulled.

If the respondents were of the view that the order passed by the Executive Engineer was wrong, then they could have withdrawn it or modified it or annulled it within a reasonable period. After a long gap it cannot be said that the order of the Executive Engineer was illegal.

This Court does not find any wrong in granting the benefit of first time bound promotion from 12.5.1985 as he completed ten years of service reckoning the period from 12.5.1975 and as such, the order passed by the Executive Engineer dated 15.6.2009 is completely misdirected, illegal and not sustainable in law. Accordingly, the same is quashed.

As a consequence thereof, if recovery has been made by the respondents of any amount, that would be returned to the petitioner, in view of the fact that the petitioner has already retired from service.

(Shivaji Pandey, J)

Surendra/-

U			
---	--	--	--