

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15811 of 2008

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Amrawati Sinha, wife of late Radhika Raman Sinha, resident of Mohalla Chhota
Telpa, Lala Toli Koran, P.O. Chapra, P.S. Chapra-Town, District Saran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Finance Department, Government of Bihar, Patna
3. The Commissioner, Saran at Chapra
4. The Collector, Saran at Chapra
5. The Deputy Collector, Saran at Chapra
6. The Sub Divisional Officer, Sadar at Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Tiwary
For the State : Mr. Kumar Alok, SC 7

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioner and learned counsel
for the State.

In the present case, petitioner is claiming first and second
time bound promotion of her with effect from 1.4.1981 and
second time bound promotion with effect from 1.4.1986, as her
husband has died in harness on 17.9.1986.

The husband of the petitioner was appointed on 26.9.1951
as Lipik Clerk in the establishment of Chapra Collectorate. The
husband of the petitioner appeared in Hindi Noting and Drafting
examination conducted on 4.5.1958, he was declared successful
in the same. In view of the resolution no. 31 P.A. 5206 dated
24.5.1980 of Finance Department pay of husband of the petitioner



was fixed at Rs.340/- in the pay scale of Rs.284-6-308 E.B.-8-371. The husband of the petitioner passed first Accounts examination on 26.3.1963 and second examination on 9.3.1964 and he was allowed to officiate on the post of assistant in the pay-scale of basic grade. For the first time the scheme of first and second time bound promotion was introduced vide resolution no.10770 dated 20.12.1981 whereas first time bound promotion was given after completion of 10 years of service and second time bound promotion was given after completion of 25 years of service subject to passing the examination. The husband of the petitioner during life time had not taken effort for grant of time bound promotion.

After his death the wife started struggling for getting a justice of late husband, ultimately she succeeded in obtaining the order in her favour, vide Memo No. 453 dated 11.4.2017 the first time bound promotion was given but husband of the petitioner was deprived of second time bound promotion on the score, that the husband of petitioner had failed to pass the accounts examination on or before 29.3.1982 which was a condition precedent for granting the benefit of time bound promotion.

Learned counsel for the petitioner has raised two objections, first the husband of petitioner had already completed



25 years of service in 1976 as at the relevant time there was no scheme of time bound promotion as scheme has been introduced on 1.4.1981 on that account he did not get the benefit of time bound promotion. There is rider of Kalawadhi that there should be gap of 2-5 years for getting second time bound promotion after 1st time bound promotion. He has further submitted that on or after 29.4.1982 no accounts examination was ever conducted by the department till the death of husband of the petitioner. So the rider of passing of examination does not arise. He has placed reliance on the judgment of this Court in the case of Maheshwar Prasad Singh v. The State of Bihar, reported in 2000(4) PLJR 262 in that judgment, issue was raised, is an employee is entitled to time bound promotion in the event of failure to pass the examination in view of amended Rule 157(3)(J) of the Board's Miscellaneous Rules. The Court took consideration, there were two grades of the clerk one is L.D. Clerk and another is U.D. Clerk and both L.D. Clerk and U.D. Clerk merged and formed uniform cadre. It has been held in between 1.5.1980 to 29.3.1982 there was no stipulation to pass the accounts examination but thereafter the amendment was made and later on 29.4.1985 further amendment to Rule was made. The Court has held that executive instruction can not be given retrospective effect and those who



could not pass the examination on and before 29.3.1982 will not be deprived of the benefit of time bound promotion. It will be relevant to quote paragraph nos. 13, 14 and 15 of the aforesaid judgment:

“13. On the basis of the above discussion I have no hesitation in holding that the State Government was fully competent to amend rule 157(3)(J) of the Board’s Miscellaneous Rules by executive instruction and the amendment made vide correction slip no.30 dated 29.3.82 was a valid amendment. Thus, clerks were required to pass the final examination in Accounts as a condition for promotion to the selection grade after 29.3.82.

14. The above discussion, however, covers the period between 29.3.82 and 29.4.85. So far as period between 1.5.80 and 29.3.82 is concerned, I am inclined to agree with the petitioners that after amalgamation of the posts of L.D. and U.D. Clerks, in the absence of any provision requiring the clerks to pass Accounts examination for promotion to selection grade, and the erstwhile provision having become redundant or otiose, the promotion could not be denied to them on account of non-passing of the Accounts examination during that period. The amendment dated 29.3.82 was result of administrative instruction and could not have any retrospective effect. To that extent, I would also endorse



the decision of this Court in Shamsuddin's case.

15. As regards the period from 29.4.85, counsel for the petitioners fairly agreed that the amendment having been brought under Article 309 of the Constitution, the statutory nature of which cannot be doubted, the clerks could not be promoted to the selection grade posts without passing the Accounts examination. In view of the fair stand of the counsel for the prisoners it is not necessary to discuss the case with respect to the period from 29.4.82 onwards.”

Learned counsel for the State submits that during life time the husband of the petitioner did not pursue the time bound promotion as he was knowing the fact that he was not entitled the same, inasmuch as the husband of the petitioner could not pass the examination after 29.3.1982 in terms of amendment made in Rule 157(3)(J) of the Board's Miscellaneous Rules, in failure to pass the examination he cannot claim second time bound promotion. As the husband of petitioner became entitled for the first time bound promotion during the period from 1.5.1980 to 29.3.1982 and as such husband of the petitioner has been given the first time bound promotion, unless employee passes accounts examination cannot claim the benefit of second time bound promotion.



Having considered the rival contentions of the parties, the Collector while passing the impugned order has granted the first time bound promotion but refused to grant the benefit on account of the reason that husband of petitioner could not pass the accounts examination on or after 29.3.1982, the question would arise whether any examination was conducted after 29.3.1982 till death of husband of petitioner. If the answer is affirmative, the husband of the petitioner either appeared and failed or he did appear. In all situation he will not be entitled for second time bound promotion but if examination itself was not conducted by the department question of passing does not arise and in such circumstances the husband of petitioner cannot be deprived from the same.

In such view of the matter, this Court directs the District Magistrate, Saran at Chapra to release the benefit of first time bound promotion. So far second time bound promotion is concerned, the District Magistrate will examine as to whether any examination was conducted after 29.3.1982 till the death of husband of petitioner and decide the case in accordance with law. If he is not agreeable with the claim of the petitioner, the District Magistrate will be obliged to give notice to the petitioner and after hearing, will pass a reasoned order.



For convenience, the petitioner is directed to file a detailed representation before the District Magistrate, Saran at Chapra who will be obliged to pass a reasoned order within a period of three months from the date of filing of the representation.

With the aforesaid observation and direction this writ petition is disposed.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2017
Transmission Date	NA

