

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15535 of 2008

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Gopal Goshwami, son of Late Ram Kishun Goshwami, resident of Mohalla and P.O. Dhelma, New Bye Pass Road Via Lohia Nagar, Police Station-Beur, District-Patna

.... Petitioner

Versus

1. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna
2. Chief Engineer, Mechanical, Road Construction Department, Bihar, Patna
3. Executive Engineer(Mechanical), National Highway, Mechanical Planning Division, Patna-14
4. Accountant General, Bihar, Patna
5. The State of Bihar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma
Mr. Lakshmi Kant Tiwary

For the Respondent/s : Ms. Divya Verma, AC to AAG-3
Mr. Ram Kinkar Chaubey,

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 17-04-2017

Heard Sri Naresh Chandra Verma, learned counsel for the petitioner, Ms. Divya Verma, learned AC to Addl. Advocate General no.3 as well as Sri Ram Kinkar Chaubey, learned counsel, who has appeared on behalf of Respondent no.4/ Accountant General, Bihar, Patna.

2. The petitioner, who superannuated with effect from 31.07.2003, while posted as Senior Mechanic Grade-II, National Highway Planning Division, Patna, has approached this Court, invoking its writ jurisdiction under Article-226 of the Constitution of



India, with a prayer to set aside an order contained in Memo No. 444 dated 14.05.2008 issued under the signature of the Chief Engineer (Mechanical), Road Construction Department, Bihar, Patna (Annexure-10 to the writ petition). By the said order, the promotion, which was granted to the petitioner as Senior Mechanic Grade-II long back in the year 1997, was cancelled.

3. As pleaded, the petitioner was initially appointed as Helper in Public Works Department on 01.05.1966. Thereafter, his service was regularized under permanent establishment on 16.04.1981. He was taken into permanent establishment. Subsequently, he was promoted as Junior Mechanic with effect from 01.10.1979 vide order dated 11.06. 1980 (Annexure-4 to the writ petition). He was again promoted as Senior Mechanic Grade-II by the Chief Engineer (Mechanical), Road Construction Department vide order dated 28.05.1987 (Annexure-5 to the writ petition). While functioning in the said capacity i.e. Senior Mechanic Grade-II, he superannuated with effect from 31.07.2003.

4. Learned counsel for the petitioner submits that after his superannuation, his pension was also fixed. However, after several years, Respondent no.2 issued the impugned order contained in Memo No.444 dated 14.05.2008 i.e. Annexure-10 and unilaterally a decision was taken for cancelling the promotion of the petitioner as



Senior Mechanic Grade-II, which was granted vide order dated 28.05.1987. The said order was purported to be passed with the aid of an order passed by a Bench of this Court (Hon'ble Mr.Justice V.N.Sinha, as he then was) in C.W.J.C.No. 2676 of 2007. Learned counsel for the petitioner has drawn my attention to an order dated 18.03.2008 passed in C.W.J.C.No.2676 of 2007. It has been argued that the said writ petitioner i.e. Abhinandan Sharma had claimed for grant of pensionary benefit for the post of Senior Mechanic Grade-II taking the plea that other two similarly situated persons, namely, Gopal Goshwami(petitioner herein) and one Raj Kumar Prasad were also granted the same benefit. This Court by order dated 18.03.2008 disposed of C.W.J.C.No. 2676 of 2007 by following observation:

“Having heard counsel for the parties, I am of the view that petitioner was promoted as Senior Mechanic Grade-II on adhoc basis under office order, bearing Memo No.5348 dated 28.5.1997, Annexure-7 along with Gopal Goswami and Raj Kumar Prasad was also promoted as Senior Mechanic Grade-II on ad hoc basis by a subsequent order dated 29.5.1997, Annexure-16 and both Gopal Goswami and Raj Kumar Prasad have been allowed the pensionary benefit as also the arrears of salary in the scale of Senior Mechanic Grade-II. In the circumstances, according to this Court, if the post was not available for the petitioner with effect from the date of his



promotion then both Gopal Goswami and Raj Kumar Prasad ought not to have been allowed to serve as Senior Mechanic Grade-II in any case the authorities were required to have cancelled the promotion order, hearing Memo No.5348 dated 28.5.1997, Annexure-7 for the reason that the posts were not available, but the authorities have allowed the petitioner to superannuate and until the date of the superannuation or even thereafter, office order dated 28.5.1997, Annexure-7 having not been cancelled then the similar benefit, which has been allowed to Gopal Goswami and Raj Kumar Prasad should also be allowed to the petitioner, however, if the authorities do not wish to allow such benefit to the petitioner then they should also recover the amount from Gopal Goswami and Raj Kumar Prasad after notice to them.”

5. Learned counsel for the petitioner has argued that in the said writ petition i.e. C.W.J.C.No.2676 of 2007 the petitioner or Raj Kumar Prasad were not impleaded party, but this Court had passed order as indicated herein above. He submits that taking the aid of the order dated 18.03.2008 passed in C.W.J.C.No.2676 of 2007, Annexure-10 to the writ petition was passed and similar order was passed also in respect of Raj Kumar Prasad, whose case was on similar footing like the case of the petitioner. By way of referring to Annexure-14 i.e. order dated 19.05.2010 passed in C.W.J.C.No.12368 of 2008 (Raj Kumar Prasad Vs. State of Bihar) to the supplementary



affidavit filed by the petitioner, which was filed on 3rd March,2017, Sri Naresh Chandra Verma , learned counsel for the petitioner submits that single Bench of this Court had rejected the claim of Raj Kumar Prasad. However, after the order dated 19.05.2010 passed in C.W.J.C.No.12368 of 2008 Raj Kumar Prasad filed an appeal vide L.P.A. No.1229 of 2010. A division Bench of this Court vide its order dated 18.04.2016 (Annexure-14A) to the supplementary affidavit set aside the order of the learned single Bench 19.05. 2010 passed in C.W.J.C.No.12368 of 2008 i.e. Annexure-14 to the writ petition. This Court proposes to incorporate the operative portion of the order dated 18.04.2016 passed by the Division Bench of this Court in L.P.A. No.1229 of 2010, which is as follows:

“In view of the Judgment of the Apex Court, we have no option but to allow the appeal, set aside the Judgment of the learned Single Judge. Annexure-6 to the L.P.A. i.e. consequential direction issued by the authority to recover the amount cannot, thus, be sustained. Consequently, the writ petition is allowed. There shall be no order as to be detrimental to the writ petitioner-appellant in regard to the service, either promoting him or making recovery of the amount paid to him

The Bond given to the Registrar General as directed by the Court, shall stand discharged.”

6. In view of order of the Division Bench, learned



counsel for the petitioner submits that the petitioner deserves the same relief, which has been granted to Raj Kumar Prasad. Accordingly, he makes a prayer to set aside the order impugned i.e. Annexure-10 to the writ petition and grant all consequential benefits

7. Ms. Divya Verma, learned AC to Addl. Advocate General no.3 has vehemently opposed the prayer of the petitioner. Even she tried to persuade the Court that the Judgment of the Division Bench passed in L.P.A. No.1229 of 2010 is contrary to the Judgment of the Hon'ble Apex Court reported in (1993)4 SCC 727. She submits that the Division Bench of this Court primarily in view of the said Judgment of the Hon'ble Supreme Court reported in (2015) 1 PLJR(SC) 261 (State of Punjab & Ors. Vs. Rafique Masih(White Washer) had passed order. According to learned State Counsel, the Judgment of the Apex Court in Rafique Masih's Case shall have application with prospective effect. She further submits that before passing of the impugned order, the petitioner was informed and, thereafter the order was passed. By way of referring to the averments made in the counter affidavit, she submits that the petitioner was in the Work Charge Establishment and there was no hierarchy for grant of such promotion. On the aforesaid ground, learned State Counsel submits that the writ petition is fit to be rejected.

8. Besides hearing learned counsel for the parties, I



have also perused the materials available on record. In this case, counter affidavit and supplementary counter affidavit were filed on behalf of the Respondents. However, the averment made in the writ petition i.e. paragraph nos. 5 and 6 of the writ petition have not been categorically denied or dealt with. In the writ petition, a specific stand was taken that the petitioner was regularized and taken under permanent establishment in the year 1979 itself which has not been categorically denied. Moreover, in the present case whatever action has been taken against the petitioner that was taken pursuant to an order passed by a writ court in C.W.J.C.No.2676 of 2007 dated 18.03.2008, in which the petitioner was not a party. In the said writ petition, besides the case of the petitioner direction was issued to examine the case of one Raj Kumar Prasad. The Court is of the opinion that since issue similar to the petitioner's case was already considered in Raj Kumar Prasad's case and same has finally been set at rest by a Division Bench order of this Court i.e. L.P.A. No.1229 of 2010 dated 18.04.2016, certainly no different order can be passed in the case of the petitioner and, as such, the petitioner deserves same relief. So far as the submission of learned State Counsel is concerned, that the order of the L.P.A. in teeth of the Supreme Court is concerned, the Court is of the opinion that once in the similar facts and circumstances, a Division Bench has passed an order, in that



event this Court may not pass any order contrary to the order of the Division Bench, which has been brought as Annexure-14 A to the supplementary affidavit.

9. Accordingly, the order impugned i.e. Annexure-10 to the writ petition is hereby set aside and the writ petition is allowed with all consequential benefits.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.04.2017
Transmission Date	

