

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.529 of 2012

In

Civil Writ Jurisdiction Case No.6952 of 2004

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1. The State Of Bihar Through The Secretary-Cum-Commissioner Water Resources Department, Old Secretariat, Patna
 2. The Chief Engineer, Water Resources Department, Dehri-On-Sone, Rohtas
 3. The Superintending Engineer, Water Resources Department, Dehri-On-Sone, Rohtas

... .. Appellant/S

Versus

Sri Bhagwan Singh S/O Late Ram Bindeshwar Singh R/O Village- Chanda,
P.S.- Deo, District- Bhojpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. S.P.VERMA (AC-GA3)

For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-11-2017

Seeking exception to an order dated 2.2.2011 passed by the learned Writ Court in C.W.J.C. No.6952 of 2004, this appeal has been filed under Clause 10 of the Letters Patent.

Respondent was initially appointed as a Chaukidar and joined the post in the office of Executive Engineer, Water Ways Department, Jhajha on 15.11.1971 and with effect from 16.10.1973 he was assigned the duty of a Routine Clerk and work of a Routine Clerk was extracted from him. When the said work



was being extracted from him, he started making representations and sought wages for the post of Routine Clerk. After a long period of time, on 21.2.1985, the Superintending Engineer, Irrigation Circle, Khadagpur, granted regular appointment on the post of Routine Clerk by way of promotion and all consequential benefits retrospectively with effect from 16.10.1973 to the petitioner. The petitioner worked on the post based on the aforesaid order for more than 31 years. There was nothing against him when, all of a sudden, on 22.5.2003 the Chief Engineer, Water Resources Department, sought an explanation from him as to why the time bound promotion granted to him should not be cancelled. The petitioner submitted his show cause and pointed out that he has never been granted any time bound promotion. He was regularly promoted on the post looking to the nature of duties performed by him as a Routine Clerk and, therefore, the notice issued should be withdrawn. Since then he worked as a Routine Clerk when, by the impugned order dated 19.3.2004, the petitioner was demoted after 31 years from the post of Routine Clerk to the post of Chaukidar and, therefore, the writ petition was filed.

The learned Writ Court, after evaluating various aspects of the matter, found that apart from the fact that the impugned action has been taken after 31 years without issuing



proper notice to the petitioner and without granting opportunity of hearing to him, the explanation of the Department in the writ petition was that a work charged employee cannot be promoted in a regular establishment and, therefore, in passing the order of promotion on 22.2.2005 an error has been committed. The learned Writ Court rejected the aforesaid contention on account of various orders passed by this Court in L.P.A. No.1400/10, C.W.J.C. No.4211/04 and various other cases and interfered into the matter.

However, now before us, it is argued that certain Division Benches of this Court in other cases, including the Full Bench in the case of Durganand Jha Vs. The State of Bihar & Ors., 2007(4) P.L.J.R. 259, has held that absorption of a daily wage employee against a Class-3 post is not permissible.

We find that the judgment of the Full Bench in the case of Durganand Jha (supra) will not apply in the case in hand. That judgment was based on the principle laid down in the case of Secretary, State of Karnataka Vs. Umadevi (3) & Ors., (2006) 4 SCC 1. The said principle is not applicable in the present case.

This is a case where the petitioner was appointed on regular basis on the post of a Routine Clerk, worked for 31 years and without issuing proper notice and opportunity of hearing or presenting his defence, the impugned action was taken. That itself



is sufficient enough to hold that the action of the State Government was unsustainable. Having permitted him to work on a promotional post for 31 years, before cancelling the promotion and taking coercive action, the State Government should have at least issued notice, heard him and granted him an opportunity of defence and, in the present case, no notice was issued. The notice issued to the petitioner by the Chief Engineer on 22.5.2003 was only asking him to explain as to why the time bound promotion granted to him should not be withdrawn. The petitioner having explained to the same, the petitioner was never noticed about the illegality committed in promoting him and without notice to him, we see no reason to make any indulgence in to the matter as no error has been committed in allowing the writ petition on such consideration.

The appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

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