

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16269 of 2016

- =====
1. Ajit Kumar Singh Son of Sri Surendra Nath Singh, Resident of Kashi Bazar, Main Road, P.S. Bhagwan Bazar, District Chapra (Saran).
 2. Raghunath Tiwari son of Late Nag Narayan Tiwary, Resident of Village Jagannathpur, P.S. Gorai Kothi, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Additional Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Joint Director, Agriculture Statistics Department of Revenue and Land Reforms, Government of Bihar, Patna.
4. The Principal Secretary, Department of General Administrative Department Government of Bihar, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 13209 of 2016

- =====
1. Wakil Singh Son of Late Ram Kripal Singh Resident of Village : Kudarbadha, P.S. Garkha, District : Saran , at present Revenue Officer cum In-charge Circle Officer, Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
3. The Joint Director Agricultural Count, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
4. The Commissioner, Saran Division, Chapra (Saran).
5. The District Magistrate, Siwan.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 16751 of 2016

- =====
1. Satyendra Narayan Singh son of Late Munni Singh Resident of Village- Pahlejpur, P.O. Laxmi Ganj, P.S.- Goriyakothi, District- Siwan, presently working as Revenue Officer-cum-Inchage Circle Officer, Raniganj, District- Araria.

.... Petitioner/s

Versus



- Respondent/s

Civil Writ Jurisdiction Case No. 12518 of 2016

- Petitioner/s

.... Respondent/s

Civil Writ Jurisdiction Case No. 12556 of 2016

- Petitioner/s

.... Respondent/s

Mr. S.D. Sanjay, Sr. Adv. with
Mr. Alok Kumar Agrawal, Adv.



For the Respondent/s : Mr. Vipula Kumar, Adv.
Mr. Anjani Kumar, AAG-4
Mr. Subhash Chandra Yadav, GP-15
Mr. Rajiv Kumar Singh, Adv.
Mr. Ajay Kumar Pandey, Adv.

(In CWJC No.13209 of 2016)
For the Petitioner/s : Mr. Ajay Kumar Pandey, Adv.
Mr. Arbind Kumar Singh, Adv.

For the Respondent/s : Mr. Anjani Kumar, AAG-4
Mr. Subhash Chandra Yadav, GP-15

(In CWJC No.16751 of 2016)
For the Petitioner/s : Mr. Vijay Kumar Singh, Adv.

For the Respondent/s : Mr. Anjani Kumar, AAG-4

(In CWJC No.12518 of 2016)
For the Petitioner/s : Mr. Rajendra Pd. Singh, S. Adv.
with Mr. Rajeev Kumar Singh, Adv.

For the Respondent/s : Mr. Anjani Kumar, AAG-4
Mr. Rishi Raj Sinha, SC-19

(In CWJC No.12556 of 2016)
For the Petitioner/s : Mr. Rajendra Pd. Singh, Sr. Adv.
with Mr. Rajeev Kumar Singh, Adv.

For the Respondent/s : Mr. Anjani Kumar, AAG-4 A.C. to Mr. Sajid Salim
Khan, SC-25

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-07-2017

The petitioners in each of the four writ petitions which have been heard analogous, have prayed for quashing of the letter bearing No.423 dated 16.9.2016 whereby the petitioners who are substantively a Revenue Karamchari/Draftsman and were posted as Incharge Circle Officer vide order bearing Memo No.1063 dated 3.4.2010 by way of working arrangement, have been posted as Kanungo, a post lower than the post of Circle Officer.

The petitioners are also aggrieved by the respective show cause notice served on them asking them to explain as to why their promotion to the post of Circle Inspector cum Kanungo vide different



orders passed in 1990-91 be not cancelled inter alia on grounds that the petitioners had not completed the 'Kalawadhi' prescribed for such promotion.

With the consent of the parties, the writ petitions have been heard with the view to final disposal at the stage of admission itself.

Since the issue raised and the relief prayed in all the writ petitions are identical, they have been heard analogous and are being disposed of by a common judgment.

While the petitioners are represented by Mr. Rajendra Prasad Singh learned Senior counsel assisted by Mr. Rajiv Kumar Singh, Mr. S.D. Sanjay learned Senior counsel assisted by Mr. Alok Kumar Agrawal, Mr. Ajay Kumar Pandey and Mr. V.K.Singh, the State is represented by the respective State counsel but the lead arguments have been advanced by Mr. Anjani Kumar, learned AAG 4.

While the petitioners have collectively questioned the posting orders bearing Memo No. 423 dated 16.9.2016 whereby they have been posted as Kanungo, inter alia on grounds that it is in the nature of the demotion, the individual show cause notices issued to the respective petitioners as against their promotion to the post of Circle Inspector-cum-Kanungo is also put to challenge in the respective writ petitions, the details of which are as follows:-

The show cause as against the promotion to the post of Circle



Inspector-cum-Kanungo to the two petitioners in C.W.J.C.No.16269 of 2016 bearing Memo No.370 dated 12.8.2016 and Memo No.294 dated 20.7.2016 are impugned at Annexures-7 and 7/A respectively to C.W.J.C.No.16269 of 2016.

The show cause notice issued to the petitioners in C.W.J.C.No.13209 of 2016 bears memo No.307 dated 20.7.2016 impugned at Annexure-3 to the said writ petition.

The petitioner in C.W.J.C.No.16751 of 2016 has been served with show cause notice bearing memo No.296 dated 20.7.2016 impugned at Annexure-P6 to I.A.No.3843 of 2017 filed in the proceedings.

The petitioner in C.W.J.C. No. 12518 of 2016 is served with the show cause notice bearing memo No.297 dated 20.7.2016 impugned at Annexure-1 to the said writ petition.

The petitioner in C.W.J.C.No.12556 of 2016 has been served with the show cause notice bearing memo No.298 dated 20.7.2016, a copy of which is placed on record vide Annexure-1 to the said writ petition.

Mr. Rajendra Prasad Singh, learned Senior counsel has led the arguments on behalf of the petitioners in reference to the pleadings made in C.W.J.C.No.12518 of 2016. It is submitted that the petitioner was appointed as a Revenue Karamchari on 22.2.1998 on the basis of



advertisement, selection etc. and was promoted as Circle Inspector cum Kanungo on 21.8.1991 vide Annexure-2 to the said writ petition. With reference to the promotion order at Annexure-2 he submits that it was passed by the Divisional Establishment Committee under the Chairmanship of the Commissioner, Saran Division at Chapra. He submits that the Committee was fully empowered to pass orders on promotion as manifest from the circular dated 22.10.1952 issued under the signature of the Additional Secretary to the Government of Bihar, Revenue Department (Land Reforms Section) present at Annexure-4 to the said writ petition. He submits that the Divisional Commissioner was empowered for appointment/ promotion to the post of Circle Inspector. In reference to the circular he submits that the qualification for the post of Circle Inspector is matriculate and is a promotional post to be filled up from suitable Karamchari and Sarkari Amins.

He next refers to a judgment of this Court passed in C.W.J.C.No.7676 of 1991, a copy of which is placed at Annexure-3 to the writ petition to submit that the promotion granted to the petitioners was put to challenge by the Employees Union which was not interfered with by the Court rather the promotion was upheld with no objection forthcoming from the State respondents. It is stated that since after the promotion of these petitioners to the post of Circle



Inspector-cum- Kanungo way back in the year 1991 they have continued to serve on their respective post for almost two decades when their cases were considered for posting as Incharge Circle Officer on interim/ working arrangement basis, until regular appointments/promotion was made by the department and order passed vide memo No.106 dated 3.4.2010, a copy of which is placed at Annexure-3 to C.W.J.C.No.16269 of 2016 whereby 235 Circle Inspectors/ Kanungo/ Assistant Chakbandi Officer were posted as Incharge Circle officer by way of interim arrangement, until regular appointment/promotion were made. Although Clause (4) of the posting order clarified the nature of posting, Clause (3) provided that these Circle Inspectors would be reverted back to their substantive post in case the departmental promotion committee does not find them qualified for regular promotion.

It is thus the submission of Mr. Rajendra Prasad Singh learned Senior counsel that the posting order itself stipulated the nature of posting and since no opinion has been expressed by the Departmental Promotion Committee as to the ineligibility of these petitioner to continue on the post of Circle Officer on regular basis, the impugned order reverting them as Kanungo, is de hors the stipulations.

Learned counsel has next referred to the Bihar Revenue Service Cadre Rules 2009 (hereinafter referred to as the 'Service Rules'), a



copy of which is enclosed at Annexure-2 to C.W.J.C. No. 16751 of 2016 and in reference to Rule 10 thereof, he submits that 50% of the post of Circle Officer is to be filled up by promotion from the post of Circle Inspector or equivalent grade on the basis of seniority cum merit.

In reference to the show cause notice issued to the petitioners against the promotion to the post of Circle Inspector, he submits that although the qualification prescribed for such post, is possessed by the petitioners but there is no 'Kalawadhi' for promotion to the post of Circle Inspector. It is in reference to paragraph 4 of the counter affidavit filed in the said proceeding submitted that an incorrect statement has been made by the respondents that the petitioner does not hold the prescribed qualification which is not correct and stands falsified by the statement made in the rejoinder at paragraph 3 read alongside Annexure-10 which is the graduation degree of the petitioner and which has also been entered in the service book. He submits that even the gradation list enclosed vide Annexure-11 to the rejoinder at running page 158 upholds the graduate qualification of the petitioners.

Mr. Singh has next referred to an order of this Court passed in C.W.J.C. No. 10596 of 2005 to submit that the promotion of 3 persons was again challenged by one Birendra Prasad Verma. A bench of this



Court vide order passed on 8.2.2012 disposed of the writ petition with the direction to the Commissioner Saran Division, Chapra to consider the request of the said writ petitioner for grant of promotion from the date his junior colleagues, if any, had been promoted. The non compliance of the direction led to filing of a contempt application giving rise to M.J.C.No.4494 of 2013 and which was again disposed of with the direction to the Commissioner to consider and dispose of the matter. He submits that although the dispute raised in C.W.J.C.No.10596 of 2005 was an inter party dispute, not involving the petitioners herein, but it is in the garb of implementation of the said order, that the show cause notice against the promotion to the post of Circle Inspector cum Kanungo issued way back in the year 1991, has been issued which is impugned at Annexure-1. It is stated that once the promotion of the petitioner to the post of Circle Inspector cum Kanungo was tested before this Court and not interfered with as manifest from Annexure-3 and even the subsequent challenge in C.W.J.C. No. 10596 of 2005 was not drawn against the petitioners, there was no occasion for the respondents to initiate a second round proceeding by issuance of show cause notice in the garb of implementation of the order passed in the said writ petition filed by Birendra Prasad Verma. It is submitted in reference to the counter affidavit filed in the proceeding that the promotion of the petitioners



on the post of Circle Inspector cum Kanungo is being questioned after two decades inter alia on grounds that they did not complete the 'kalawadhi' for the post and that they do not possess the required qualification.

Reverting the guideline issued from the Land Revenue Department present at Annexure-4 to the writ petition he submits that while the qualification at the relevant time was a matriculate for the post of Circle Inspector, neither the guideline at Annexure-4 nor the 'Service Rules' at Annexure-2 to C.W.J.C.No.16751 of 2016 prescribe for any 'Kalawadhi'. Learned counsel while questioning the posting orders dated 16.9.2016 submits that since the stipulations present in the posting order dated 3.4.2010 itself was until regular appointments/promotion or in case the Departmental Promotion Committee finds the petitioners ineligible for promotion, the subsequent posting orders reverting the petitioners as Kanungo is contrary to the stipulations present in the order of interim arrangement.

The argument advanced by Mr. Singh is supplemented by Mr. S.D. Sanjay learned Senior counsel representing the petitioner in C.W.J.C.No.16269 of 2016 who while reiterating the contention that the petitioners had a right to hold the post of Circle Officer until regular appointments were made to the post, has referred to a



judgment of the Supreme Court reported in **2016(4) PLJR SC238 (Raminder Singh Vs. State of Punjab)**. Learned counsel has adopted the arguments of Mr. Singh to submit that while no less than 235 persons had been posted as Circle Officer by way of interim arrangement but only a handful have been reverted by the orders impugned dated 16.9.2016 and the reason is not explained. According to learned counsel, the respondents cannot have a selected discretion.

Mr. Vijay Kumar Singh learned counsel for the petitioners in C.W.J.C.No.16751 of 2016 has referred to the **Bihar Revenue Service Rules, 2009** as well as the amendment incorporated in 2010 vide notification no. 95 (3) dated 25. 3.2010 present at page 211 of C.W.J.C. No. 13209 of 2016, to submit that the interim arrangement by way of posting of the petitioners as Circle Officer was in tune with rule 3(ग) of the amendment which inter alia provides for such interim arrangement until regular promotion/ appointments are made on the post and which situation has not changed inasmuch as neither regular promotion nor regular appointment has been made to the post of Circle Officer nor the petitioners have been disqualified on eligibility by the Departmental Promotion Committee. It is submitted that of the 376 odd Circle Inspectors posted as Incharge Circle Officers as manifest from Annexure-F to the counter affidavit filed in C.W.J.C.No.16751 of 2016, it is the posting orders of only 14



persons, inclusive of these petitioners, which have been interfered with vide notification dated 16.9.2016 and the reasons are missing. Learned counsel appearing in other writ petitions have adopted the arguments advanced by learned counsel for the petitioners as discussed above.

Mr. Anjani Kumar learned AAG 4 has led the arguments for the State and has relied upon a comprehensive counter affidavit filed in C.W.J.C.No.13209 of 2016 to submit that the stand taken therein would cover all the cases, having been filed on behalf of the Principal Secretary Revenue and Land Reforms Department.

Mr. Kumar learned Additional Advocate General has referred to the specific instances made in paragraph 5 of the counter affidavit filed on behalf of the Principal Secretary in C.W.J.C.No.13209 of 2016 to submit that the cases of each of the petitioners have been dealt with and a plain reading of the individual facts so given, would confirm that none of these petitioners had completed the statutory period (Kalawadhi) on the post of Revenue Karamchari/Draftsman for promotion as a Circle Inspector/Kanungo. He next refers to paragraph 7 of the counter affidavit to submit that these petitioners are governed by the 'Service Rules' together with the amendments introduced from time to time and thus any promotion so granted to them has to be in tune with the 'Service Rules'. It is submitted in



reference to paragraph 8 of the counter affidavit that due to reorganization of the Bihar Administrative Service Cadre, the Deputy Collectors were withdrawn from Block and Anchal offices and supervisory staff in the various Department inclusive of Circle Inspectors were posted as Incharge Circle Officers by interim arrangement. It is submitted that the order of posting of the petitioners as Kanungo which is their basic grade, is not an order of demotion nor the basic scale has been altered. It is submitted that the post of Circle Officer is a promotional post from the cadre of Circle Inspector or equivalent subject to fulfillment of the conditions present in 'the Service Rules'. Learned counsel has referred to 'the Service Rules', a copy of which is placed at Annexure-A to the counter affidavit and in reference to Rules 7 to 9 he submits that the 'Kalawadhi' determined by the State Government in its Personnel and Administrative Department has been made an essential condition for any promotion. In support of his submission regarding fulfillment of the 'Kalawadhi' period as envisaged in 'the Service Rules', learned counsel has referred to the counter affidavit of the Joint Director, Revenue and Land Reforms and in reference to the Circular of the Department of Personnel and Administrative Reforms dated 8.8.1986 he submits that even for the purpose of grant of Junior and Senior Selection grade admissible to a Revenue Karamchari, he is



required to complete a 'Kalawadhi' of 8 years and 3 years respectively but which has not been attained by these petitioners. He next makes reference to the another Circular of the Department of Personnel and Administrative Reforms dated 11.7.1985 as present at Annexure-B to submit that the 'Kalawadhi' for promotion of an Amin is 8 years and that for a Draftsman, the 'Kalawadhi' required for promotion to the post of Circle Inspector/Kanungo is 5 years. He submits that while a Revenue Karamchari in his Senior Selection Grade draws salary in the scale of 690-765, as manifest from Annexure-A, the payscale of Circle Inspector cum Kanungo is in the scale of 850 -1360. It is thus submitted that since undisputedly these petitioners have not completed the 'Kalawadhi' for promotion to the post of Circle Inspector, that they have put on notice on their promotion to the post of Circle Inspector cum Kanungo.

Mr. Anjani Kumar learned Additional Advocate General has next referred to the judgment of the High Court so strongly relied upon by Mr. Singh learned Senior counsel for the petitioner and other counsel representing the petitioners as contained in Annexure-2 to C.W.J.C.No.16269 of 2016 to submit that the validity of promotion was not put to test in the judgment rather it is the inter party contest which was subject matter of consideration. It is in reference to the show cause notice issued to the petitioners as against



their promotion to the post of Circle Inspector cum Kanungo granted as back as in 1991, a copy of which is present at Annexure-3 to the C.W.J.C.No.13209 of 2016 submitted that it was issued following the directions of this Court passed in C.W.J.C.No.10596 of 2005 (Birendra Prasad Verma Vs. State of Bihar) and M.J.C.No.4494 of 2013. He submits that since during the course of compliance of direction passed by this Court it transpired that all these petitioners had been granted promotion without completing their 'Kalawadhi' that show cause notice was issued against promotion to the post of Circle Inspector/Karamchari to the petitioners and a copy of which is placed at Annexure-3 to that C.W.J.C.No.13209 of 2016.

Learned Additional Advocate General next adverting to the reversion order dated 16.9.2016 impugned at Annexure-4 to C.W.J.C. No. 13209 of 2016 submits that it was in administrative exigencies that these petitioners had been posted against the post of Circle Officer on Incharge basis and it is in administrative interest that they have been posted back on their substantive post of Kanungo. He submits that there is no enforceable right in these petitioners to continue on their officiating post which was purely in administrative exigencies.

Summarizing his arguments it was submitted by Mr. Anjani Kumar that the entire exercise has been carried out in compliance of



the directions issued by this Court on the writ petition and on the contempt application as referred above and since it is in the course of enquiry that the irregularities transpired that the Commissioner, Saran Division, Chapra vide his letter dated 15.7.2015 addressed to the Principal Secretary, Revenue and Land Reforms Department informed him regarding the irregularities as also advised him for taking corrective steps as manifest from the letter contained in Annexure-C to the counter affidavit filed on behalf of the Joint Director in C.W.J.C.No.13209 of 2016. He submits that it is on receipt of such information that the Principal Secretary, Revenue and Land Reforms Department requested the Principal Secretary, Vigilance Department to carry out enquiry vide his letter dated 7.4.2016 at Annexure-D but in the mean time, posting orders to the post of Circle Officer was issued after withdrawing officers vide Annexure-E. It is in reference to Annexure-F of the said counter affidavit submitted that 'the Service Rules' were amended vide notification dated 1.4.2015 whereby the Circle Inspectors were classified as Revenue Officers. It is stated that it in view of such development that the petitioners who were occupying the post as Incharge Circle Officers in Administrative exigencies were posted back on their substantive post of Karamchari vide order bearing memo no. 423 dated 16.9.2016 present at Annexure-G which is



impugned in the writ petition along therewith and show cause against the promotion to the post of Circle Inspector /Kanungo granted to the petitioners in 1990/1991 was also issued, a copy of which is enclosed in the writ petitions as well as Annexure-I to the said counter affidavit with similar notice issued to all the petitioners. According to Mr. Anjani Kumar there is neither any infirmity in the orders of posting the petitioners as Circle Inspector cum Kanungo nor the show cause notice issued to the petitioners against their promotion to the post of Circle Inspector/Kanungo would require any interference.

The arguments advanced by Mr. Anjani Kumar learned Additional Advocate General on the issue raised and contested has been adopted by other learned counsel representing the State in other writ petitions.

The argument of learned State counsel has been responded to by way of rejoinder by learned counsel representing the petitioners who in reference to the order of officiation dated 3.4.2010 have submitted that Clause 3 of the posting order is very eloquent and which clearly stipulates that it is only if the Departmental Promotion Committee finds the petitioners ineligible for promotion that they can be reverted to their basic grade but not in any other circumstances nor at the whims of the respondents. While submitting



that these petitioners have a right to occupy the post of Circle Inspector until regular promotion, it is further submitted that these petitioners have continued on the post of Circle Officer albeit on Incharge basis since 1991 i.e a period of almost 15 years and thus they have a vested right to be considered for regular promotion. Attacking the reversion order it is submitted that it has been done on a pick and choose basis inasmuch as only a few of the Circle Inspector/Karamchari posted on officiating post as Incharge Circle Officer, have been reverted.

I have heard learned counsel for the parties and I have perused the records.

Although exhaustive arguments have been advanced by learned counsel for the petitioners and has been responded to in an equally exhaustive manner but in my opinion the contest lies in a very narrow compass.

While it is not in dispute that these petitioners were substantively Revenue Karamchari except the petitioner Wakil Singh who held the post of Draftsman, all these petitioners were promoted on the post of Circle Inspector-cum-Kanungo on the recommendation made by the Divisional Promotion Committee as manifest from the order bearing Memo No. 1198 dated 21.08.1991



enclosed at Annexure-2 to C.W.J.C. No. 12518 of 2016. It is on the basis of such recommendation by the Divisional Promotion Committee Chaired by the Divisional Commissioner that individual promotion order were issued to the petitioners and which is again manifest from Annexure-1/A to the C.W.J.C. No. 16269 of 2016.

These facts are not in dispute. It is again not in dispute that the committee headed by the Divisional Commissioner was competent to recommend such promotion which is confirmed from the circular of the Revenue Department dated 22.10.1952 enclosed at Annexure-4 to C.W.J.C. No. 12518 of 2016. The circular while not prescribing for any 'Kalawadhi' for promotion on post of Circle Inspector, merely requires a Revenue Karamchari to be a matriculate for his promotion as a Circle Inspector with enabling powers vested in the Divisional Commissioner to grant such promotion.

It is by virtue to such powers vested in the Commissioner that promotional orders were issued in respect of the petitioners and others to the post of Circle Inspector-cum-Kanungo and which was put to challenge before this Court in C.W.J.C.No.7676 of 1991 by the Employees' Union inter alia on grounds that the promoted persons were not the eligible for promotion and that by virtue of these promotions, the right of others had been prejudiced. The challenge was negated by a coordinate bench of this Court vide



judgment and order passed on 30.8.2000. However, liberty was given to the members of the petitioners union to approach the authority in case, any person junior to them had been given promotion.

The judgment and order of this Court upholding the promotion of these petitioner and others to the post of Circle Inspector cum Kanungo passed on 30.8.2000 was neither questioned by any individual nor the State bothered to challenge the same before the superior forum on grounds of ineligibility of these petitioners for promotion as Circle Inspector cum Kanungo. The judgment is inter party and binds the State in its Revenue and Land Reforms Department. While the coordinate bench of this Court refused to interfere with the orders of promotion of these petitioners and others vide paragraph 10 of the judgment enclosed at Annexure-2 to C.W.J.C.No.16269 of 2016 and Annexure-3 to C.W.J.C. No. 12518 of 2016, it is sought to be interfered with by the respondents after a lapse of 16 years in purported compliance of the order(s) passed by this Court in C.W.J.C.No.10596 of 2005 and M.J.C. No. 4494 of 2013, enclosed at Annexure- 5 and 6 respectively to C.W.J.C. No. 12518 of 2016. It is thus to be seen whether in view of the binding nature of the judgment passed by this court in C.W.J.C. No. 7676 of 1991, the respondents have any jurisdiction to reopen a concluded issue by ignoring the judgment earlier passed upholding the



promotion of these petitioners.

Although Mr. Anjani Kumar learned Additional Advocate General has tried to support the impugned action of the respondents in issuing a show cause notice to this petitioners on their promotion to the post of a Circle Inspector cum Kanungo dated 20.7.2016, a copy of which is enclosed at Annexure-1 to C.W.J.C.No.12518 of 2016 with similar notices being issued to other petitioners, inter alia on grounds that the eligibility of these petitioners to hold the post of Circle Inspector cum Kanungo was never put to test in the earlier round of proceedings but in my opinion the argument of learned State counsel in defence of the impugned action is absolutely misplaced rather a clear attempt has been made by the respondents in the Revenue and Land Reforms Department, to overreach a judgment of this Court.

Paragraph 1 of the judgment passed in C.W.J.C. No.7676 of 1991 read alongside paragraph 5 leaves no room for confusion that the eligibility of these petitioners for promotion to the post of Circle Inspector cum Kanungo was much in debate before this Court in the previous round of litigation and when the coordinate bench of this court while refusing to interfere with the promotion of these petitioners and others vide conclusion drawn in paragraphs 9 and 10 of the judgment simply gave liberty to an aggrieved person to



represent before the appropriate authority, in case anyone junior to him had been promoted.

Paragraphs 1,5,9 and 10 of the judgment is reproduced hereinbelow for ready reference:

“1. In the present case, the first petitioners is the Union of employees whereas the second petition is the Joint Secretary of the Union. They preferred the writ petition and challenged the orders dated 21st August, 1991; 13th September, 1990 and 14th January, 1991, as contained in Annexures 1,2 and 3, whereby and whereunder the respondents 6 to 43 were promoted to the post of Circle Inspector-cum-Kanungo. Further prayer was made for direction on the respondents to consider the cases of petitioners and others for promotion to the post of Circle Inspector-cum-Kanungo on the basis of gradation list prepared by District Authorities.

.....
5. According to the petitioners, the persons who have been promoted vide orders contained in Annexures 1,2 and 3 were not entitled for promotion, being not in the cadre of Revenue Karamchari. They were in the grade of Amin and Draftsman.

.....
9. It appears that the promotion of contesting respondents were made on the recommendation of Establishment/ Promotion Committee, which held its meeting on 5th January, 1991. It is further appearing that the Karamcharies holding post of (1) Rajaswa Karamchari, (2) Surveyor-cum-Draftman, (3) Draftman, (4) Amin and (5) Revenue Clerks, all are eligible for promotion to the post of Circle Inspector-cum-Kanungo, which is not a direct promotional cadre post of any one or other cadre, including Rajaswa Karamchari. In this connection, one or other orders and decision of the State while annexed, the respondents have also enclosed a decision of Bihar Service Tribunal, Patna in the case of Ful Mohammad (Service Case No. 93/1984) and analogous case, as contained in Annexure-C. In the said case, the Tribunal held that the post of Circle Inspector-cum-Kanungo is selection post to be filled up amongst members of Karamcharies/Amins



Cadres etc.

10. In the facts and circumstances, while I am not inclined to interfere with the order of promotion as contained in Annexures 1, 2 and 3, give liberty to individual members of the petitioners Union to move the authorities, if any person junior to one of the other member have been promoted to higher post, without consideration of the case of senior.”

Much has been argued by Mr. Anjani Kumar learned Additional Advocate General on the ‘Kalawadhi’ required by a Revenue Karamchari/Draftsman for promotion to the post of Circle Inspector/Kanungo in reference to the circulars enclosed at Annexure-A and B to the counter affidavit of the Joint Director filed in C.W.J.C.No.13209 of 2016 but in my opinion these objections have become academic and do pale into insignificance, in view of the judgment passed by this Court in C.W.J.C.No.7676 of 1991. The promotion of these petitioners and others to the post of Circle Inspector cum Kanungo having been upheld by a bench of this Court and not appealed against by anyone, it does not lie in the mouth of the respondents to wake up from slumber after lapse of 25 years of promotion and 16 years from the judgment to question the promotion on the issue of ‘Kalawadhi’ when no such objections were taken by them when the very promotion was put to challenge before this court in C.W.J.C.No.7676 of 1991. Reference in this regard is made to a judgment of the Supreme Court reported in **AIR 1961 SC 1457**



(Daryao & Ors. Vs. State of U.P.) when the Constitution Bench while considering similar issue at paragraph 11, has held as follows:

“11.....If a judgment has been pronounced by a Court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law. Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had no fundamental right as pleaded by him or there has been no contravention of the right provided or the contravention is justified by the constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis.....”

The Constitution Bench taking note of an earlier judgment of another Constitution Bench reported in **AIR 1960 SC 1186 (M.S.M. Sharma Vs. Dr. Shree Krishna Sinha & Ors.)** in paragraph 12 of the judgment has while reiterating that the principle of res judicata applies equally to writ proceedings, has observed that an issue determined by the previous decision of a Court, cannot be reopened and must govern the rights and obligations of the parties so finally determined. This legal position was reiterated in a subsequent judgment of the Supreme Court since reported in **AIR 1990 SC 334 (Supreme Court Employees Union Vs. Union of India)** when the court at paragraph 28 held as follows:



“28. The doctrine of resjudicata is a universal doctrine laying down the finality of the litigation of the parties. When a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violative of Art. 14 of the Constitution. So far as the parties are concerned, they will always be bound by the said decision. In other words, either of the parties will not be permitted to reopen the issue decided by such decision on the ground that such decision violates the equality clause under the Constitution.....”

In view of the legal position explained in the judgments of the Supreme Court referred to above, the show cause issued to these petitioners as against their promotion to the post of Circle Inspector cum Kanungo after a lapse of 25 years of the promotion and 16 years since judgment was pronounced on the issue by this Court, is a blatant attempt to overreach a conclusive pronouncement.

In fact the overreach attempted by the respondents by issuing a show cause notice against the promotion to the post of Circle Inspector cum Kanungo in purported compliance of the judgment and order passed in C.W.J.C. No.10596 of 2005 and M.J.C. No.4494 of 2013 is again a reflection of a mechanical application. The two judgments referred to in the show cause notice, a copy of which is impugned at Annexure-1 to C.W.J.C No.12518 of 2016 with similar notices issued to the petitioners of other writ petitions impugned in their respective writ petitions, is enclosed at Annexure- 5 and 6 respectively to C.W.J.C. No.12518 of 2016 and a plain reading of the



judgment would manifestly confirm that these petitioners were not even a party to the said writ petition nor any direction was issued in their context. In fact paragraph 4 of the order passed in C.W.J.C. No.10596 of 2005 would show that it is in tune with the earlier direction given by this Court in C.W.J.C No.7676 of 1991 whereby this court while refusing to interfere with the promotion granted to the petitioners and others, had granted liberty to the aggrieved to move the appropriate authority in case any junior was granted promotion earlier to them. It is on similar lines that when the petitioner Birendra Prasad Verma came before this Court in C.W.J.C. No.10596 of 2015 with the complaint that respondent nos. 6 to 8 of the said writ petition (not these petitioners) though junior, had been granted promotion, that the bench while disposing of the writ petition required the Commissioner to consider the grievance and pass appropriate orders. The order on the contempt petition at Annexure-6 in M.J.C.No.4494 of 2013 again makes no deviation from such inter party adjudication.

In view of the position discussed above in so far as the court cases referred to in the show cause notices is concerned, it is wholly an unwarranted act of the respondents to have reopened a concluded issue to unsettle a settled promotional order passed a quarter of century ago more particularly where the issue stood concluded under



the judgment of this court passed more than 16 years ago.

This would bring this court to the 2nd issue raised and contested i.e the impugned order of reversion as contained in the order No. 423 dated 16.9.2016 impugned at Annexure-9 to C.W.J.C. No. 16269 of 2016 and Annexure-8 to I.A.No.7676 of 2016 in C.W.J.C. No. 12518 of 2016 as also impugned in the other writ petitions.

A cursory glance of the posting order dated 16.9.2016 whereby these petitioners holding the post of Circle Officer on Incharge basis, have been posted as Kanungo, would give a rather innocuous expression. In fact considering the order on its own value, prima facie no enforceable right of the petitioners would appear prejudiced. It is only when this order is tested in the background of the terms and conditions of the officiation order dated 3.4.2010, the Amendment Rules of 2010 incorporated vide notification no. 95 dated 25.3.2010 together with the discriminatory plea advanced by the learned counsel for the petitioners and not rebutted, that the issue gains importance for consideration.

The posting orders of these petitioners on the post of Circle Officer on Incharge basis dated 3.4.2010 is enclosed at Annexure-3 to C.W.J.C. No. 16269 of 2010 and other writ petitions whereby 235 Circle Inspectors as well as officials holding equivalent posts were



posted as Circle Officer by way of interim/ working arrangement. Clause 3 of the posting orders stipulates that the Incharge Circle officers would be reverted to their basic grade in case the Departmental Promotion Committee does not find them eligible for regular promotion. Clause 4 of the posting notification dated 3.4.2010 further stipulates that none of these officials holding the post on officiating basis would lay a claim for regular promotion.

A plain reading of the order dated 3.4.2010 would confirm that the posting of Circle Inspector and other officers of Revenue Department holding equivalent post, to discharge the duties of a Circle Officer, on Incharge basis, was not an executive decision rather this posting orders were issued following the amendment in the service rules vide notification no.95 dated 25.3.2010 present at running page 211 of C.W.J.C.no.13209 of 2016 which while incorporating Sub rule (ए) in Rule 3, provided that until such time that regular appointment/promotion is made in the revenue service cadre, all the posts would be filled up by way of interim arrangement and no sooner regular appointment/promotion is made, this interim arrangement would come to an end. It is thus on account of amendment so incorporated in 'the Service Rules' that the Circle Inspectors and other officers holding equivalent post, were posted as Circle Officer albeit on Incharge basis by way of interim



arrangement with clear stipulation that if the Departmental Promotion Committee finds them ineligible for regular promotion that they would be reverted to their basic grade. It is certainly not the case of the respondents that these petitioners have been found ineligible for promotion by the Departmental Promotion Committee nor it is their case that the posts have been filled up by appointment/promotion.

The other issue raised by learned counsel appearing on behalf of the petitioners to question the order of reversion on the post of Kanungo dated 16.9.2016 is, that it is discriminatory because it has been passed on pick and choose basis. According to learned counsel while others posted in a similar manner, have been allowed to continue, these petitioners alongwith some others have been reverted to their basic grade in a discriminatory manner. This argument again goes uncontested.

Although counter affidavits have been filed in the writ petitions and according to Mr. Anjani Kumar, learned AAG 4 the affidavit filed in C.W.J.C. No.13209 of 2016 would govern all the cases but the stand so taken in the counter affidavit for defending the impugned action, is that the postings were earlier made in exigencies of service and thus these petitioners have no enforceable right to continue on the officiating post. The legal proposition so advanced



by learned State counsel is very sound on principle but there is no answer to specific issues so raised by the petitioners in drawing strength from the stipulation present at Clause 3 of the posting order dated 3.4.2010, the amended rules 3(अ) as well as on the issue of discrimination. There is absolutely no answer in either of the counter affidavit(s) filed in the proceedings as to why only these 14 were hand picked for reversion amongst the 300 or more posted as Circle Officer by way of interim arrangement. Conformingly while rule 3(अ) of the amended rules enclosed vide Annexure- A series to the counter affidavit of the Principal Secretary filed in CWJC No.13209 of 2016 at running page 211, in no uncertain terms stipulates that interim arrangement should be made to fill up the post of Circle Officer in the Bihar Revenue Service Cadre until regular appointment/promotions are made, the posting order of these petitioners following such amendment dated 3.4.2010 present at Annexure-3 in C.W.J.C.No.16269 of 2016 contains identical stipulations and allows interference with the posting order only upon a finding of unsuitability by the Departmental Promotion Committee as to the eligibility of these petitioners to hold the post. The petitioners contend and not contested that there is no change in circumstances as neither promotions have been made on the post of Circle Officer nor these petitioners have been tested on their



eligibility by a Departmental Promotion Committee.

For the reasons and discussions aforementioned, it is only a completion of formality to hold that the order bearing memo no.423 dated 16.9.2016 impugned at Annexure 9 to CWJC no. 16269 of 2016 as also similarly impugned in the other writ petition whereby these petitioners have been posted against the post of Kanungo in administrative interest, is passed in contravention of the statutory rules as well as the posting order itself and consequently the order bearing memo no. 423 dated 16.9.2016 together with the show cause notice issued to the petitioners against their promotion to the post of Circle Inspector-cum-Kanungo:

bearing Memo No.370 dated 12.8.2016 and Memo No.294 dated 20.7.2016 impugned at Annexures-7 and 7/A respectively to C.W.J.C.No.16269 of 2016;

bearing memo No.307 dated 20.7.2016 impugned at Annexure-3 to C.W.J.C.No.13209 of 2016;

bearing memo No.296 dated 20.7.2016 impugned at Annexure-P6 to I.A.No.3843 of 2017 filed in C.W.J.C.No.16751 of 2016;

bearing memo No.297 dated 20.7.2016 impugned at Annexure-1 to C.W.J.C. No. 12518 of 2016; and bearing memo No.298 dated 20.7.2016 present at Annexure-1 to C.W.J.C.No.12556



of 2016, cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed with much restraint on imposition of cost on the respondents, for generating an unwarranted litigation.

(Jyoti Saran, J.)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.09.2017
Transmission Date	NA

