

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13028 of 2010

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Om Prakash Roy, son of Late Siyaram Rai, resident of village-Sukhara, P.S.-
Fulwariya, Dist.-Begusarai.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Animal Husbandry Department,
Govt. of Bihar, New Secretariat, Patna.
2. Director, Animal Husbandry Department, Govt. of Bihar, New Secretariat, Patna.
3. Regional Director, Animal Husbandry Department, Darbhanga.
4. Special Deputy Director, Animal Husbandry, Barauni.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shivendra Kishore, Sr. Adv.
Mr. Saroj Kumar
For the Respondent/s : Mr. Khurshid Alam, AAG-12

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 02-05-2017

Heard Sri Shivendra Kishore, learned Senior Counsel,

assisted by Sri Saroj Kumar, learned counsel for the petitioner and

Mr. Khurshid Alam, learned Addl. Advocate General no.12.

2. The petitioner has approached this Court, invoking

its writ jurisdiction under Article-226 of the Constitution of India, for

the following relief:

(I) For a direction on the respondents to pay

arrear of salary of the post of Assistant Fodder

Development Officer/Assistant Technical Officer with

effect from 19.03.2001 to 25.04.2007

(II) For a direction on the respondents to pay



arrear of salary of the post of Live Inspector with effect from 19.03.1996 to 18.03.2001.

(III) For quashing of Clause-5 of order bearing Memo No.1622 dated 26.04.2007 issued under the signature of Director, Animal Husbandry, Bihar, Patna by which it has been ordered that financial benefit of promotion shall be payable to the petitioner from the date of joining.

3. It has been pleaded that the petitioner was initially appointed in the erstwhile Dairy Development Corporation and his service was regularized in the year 1974. Subsequently, the said Corporation was dissolved and the State Government transferred its officers and staff to different departments. The petitioner and others were sent to Animal Husbandry Department for absorption and, thereafter, the petitioner joined on the post of Live Stock Assistant in the Animal Husbandry Department. It has been claimed that number of juniors were promoted to the higher post of Live Stock Supervisor with effect from 19.03.1991, Live Inspector with effect from 19.03.1996 and subsequent promotion to the post of Assistant Fodder Development Officer/ Assistant Technical Officer with effect from 19.03.2001 with financial benefits by different orders. Since the case of seniors was overlooked, number of writ petitions were



filed before this Court with a prayer to grant them similar promotion with same relief.

4. Learned counsel for the petitioner has referred to an order dated 03.08.2006 passed in C.W.J.C.No.4418 of 2004 (Annexure-3 to the writ petition) and also order dated 07.08.2006 passed in C.W.J.C.No.12243 of 2004. He submits that in both cases, this Court had considered that petitioners of those writ petitions were overlooked while granting promotion and, as such, writ petitions were allowed with a direction to grant promotion with retrospective effect with consequential benefit.

5. Sri Shivendra Kishore, learned Senior Counsel appearing on behalf of the petitioner, while referring to order dated 03.08.2006 passed in C.W.J.C.No.4418 of 2004 (Annexure-3 to the writ petition) has argued that even this Court, while allowing the writ petition for granting promotion with retrospective effect with all consequential benefits, had imposed cost of Rs.25,000/-on the State Government in favour of each of the petitioners. He submits that after noticing number of orders, particularly the order passed in C.W.J.C.No.2716 of 2005 passed by this Court, the Respondents voluntarily vide Annexure-1 to the writ petition, took a decision to grant promotion to the petitioner and two others with retrospective effect. However, in paragraph no.5, instead of granting promotion



with financial benefits, it was incorrectly indicated to grant promotion as notional basis. Sri Kishore, learned Senior Counsel appearing on behalf of the petitioner has also placed reliance on a Judgment of this Court, reported in **2005 (1) PLJR 297: Awadhesh Singh Vs. State of Bihar**. He has argued that once promotion is granted to an employee/officer with retrospective effect, such promotion should be given with all consequential benefits. He has referred to paragraph nos. 12,13 and 21 of the said Judgment, which are quoted herein below:

“12. Therefore, in normal circumstances the benefits of promotion to the public servant is to be given with effect from the date on which such public servant assumes the duties of the post on which he is promoted. This does not create any problem but the problem arises in a case in which a Government servant is deprived of assuming the duties of the higher grade or post for no fault on his part because of order of promotion being made effective from retrospective effect. Can the benefit of promotion be denied on the ground that the public servant had assumed the duties of the higher post later on? To me the answer seems to be very simple. It is well settled that a person cannot be allowed to suffer on account of inaction or failure on the part of the other persons. Here in the present case the petitioner has been granted the grade with



retrospective and he did not assume the duties of the higher grade as the order of promotion itself was issued on a date much after the date from which he was given the higher grade. In such circumstance I am of the opinion that all the benefits flowing from the grant of grade has to be given from the date it is granted. Hence on first principle I hold that a public servant promoted or granted scale with retrospective cannot be denied the benefits thereof only on the ground that such public servant has not assumed the duty of higher scale.

*13. It is unfortunate that the State Government still persists with its archaic theory of not giving benefits to an employee given promotion with retrospective date for no fault on his part, in spite of a large number of authorities on the question saying to the contrary. It is relevant here to state that this Court had the occasion to consider this question more than a decade ago in the case of **Man Mohan Prasad Vs. Nakuleshwar Prasad** (1987 PLJR 347) and in categorical term this Court held that once an employee is promoted with effect from retrospective date it cannot be deprived the benefits to which he was otherwise entitled on the ground that he did not perform the work of the higher posts. In the said case it has been observed as follows:--*

“In view of the affidavits filed on behalf of the Board, it has been conceded that the promotion was due to be given to the petitioner



and others with effect from 8.10.1970 and, therefore, notional promotion was accorded and given to the petitioner and others. Having done all that, could it now be reasonably said and will it now be justified in the interest of justice to ask them to open another round of litigation for demanding the consequential benefits which legally flows from the notional promotion given to the petitioner and others. It is in the interest of justice and also in the circumstances of this case to direct that the respondents concerned will decide the amount of salary which is due to be paid to them, with effect from 8.10.1970 and the same shall be expeditiously decided, preferably within one month from the date of the receipt of this order.”

21. Thus the conclusion reached by me on first principle that a Government employee cannot be deprived of monetary benefits in case of promotion with retrospective effect on the ground that such Government Servant did not perform the work of higher post and Rule 58 of the Bihar Service Code. Rule 74 of the Bihar Financial Rules and the letter of the Finance Department dated 4.4.1985 in no way affects that right also finds support from a long time of authority of the Supreme Court and decision of this Court.”

6. On the aforesaid ground, a prayer has been made for quashing of paragraph-5 of Annexure-1 of the writ petition to the



extent of expunging the words 'notional promotion' and in place of notional promotion, it may be substituted with financial benefits.

7. Mr. Khurshid Alam, learned Addl. Advocate General no.12 though has opposed the prayer of the petitioner, he fairly accepts that once Annexure-1 to the writ petition was issued in the light of the order dated 07.08.2006 passed in C.W.J.C.No.12243 of 2004(Hari Krishna Sahu & Ors Vs. The State of Bihar), there was no reason to pass a different order and instead of granting promotion with retrospective effect with financial benefits, it was incorrectly mentioned as notional promotion.

8. In view of facts and circumstances, particularly the fact that a fair stand has been taken by learned State Counsel as well as the fact that the order, basing on which Annexure-1 was issued itself speaks for financial benefit, there is no reason to refuse the prayer of the petitioner to grant promotion with retrospective effect with all consequential benefits and , as such, the order impugned to the extent in paragraph-5 is hereby set aside and it is directed to grant promotion to the petitioner with retrospective effect with all financial benefits and calculate the differential amount and pay to the petitioner within a period of four months from the date of receipt/production of a copy of this order.

The writ petition is allowed.



It goes without saying that all formalities must be completed within four months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.05.2017
Transmission Date	

