IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11478 of 2008

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Chhote Lal Rajak son of late Munu Lal Rajak, resident of Village-Bakhtiarpur Purani Bazar, Ward No. 4, Police Station Bakhtiarpur, District-Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary of the Public Works Department (Building Construction Department).
2. The Secretary of the Public Works Department (Building Construction), Govt. of Bihar, Patna.
3. The Superintending Engineer of Public Works Department (Building Construction) South Bihar Circle, Patna.
4. The Executive Engineer of Public Works Department (Building Construction) Central Division, (Land), Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. Shailendra Kumar Jha, Adv.

For the State : Mr. Anshuman Singh, A.C. to PAAG-1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 08-02-2017

Heard learned counsels for the petitioner and respondents.

The present writ application has been preferred by the petitioner for quashing the letter no. 3976 dated 21.08.2007 which was communicated by the Executive Engineer, Central Building Division, Patna to the Superintending Engineer, South Bihar Circle, Building Construction Department, Patna whereby in view of the Audit Department, appropriate guidelines were sought for adjustment of ₹14,414/-, the excess amount being paid to the petitioner due to irregular promotion. A draft of ₹28,550/- with regard to payment of financial benefit of the promotion was pending for payment in the

Division, which was not received by the petitioner in spite of intimation being given to him, as contained in Annexure-8.

The factual matrix would unveil that the petitioner was appointed as Correspondence Clerk in the Circle office of South Bihar Public Works Department. The petitioner was promoted to Junior Selection Grade vide letter no. 987 dated 22.03.1991, as contained in Annexure-2, issued by the Superintending Engineer, South Bihar, Public Works Department with effect from 05.04.1987. Consequently, during the audit, the Finance/Audit Department, Govt. of Bihar, Patna in its Audit Report no. 65/04-05 reported that the promotion to the petitioner has been granted without observing the requisite formalities mentioned in the relevant rules/resolution issued by the Personnel and Administrative Reforms Department dated 19.02.1986, according to which time bound promotion cannot be granted to an employee without having passed departmental examination and accordingly after adjusting excess amount of ₹14,414/- a draft of ₹28,550/- was issued.

It is submitted by the learned counsel for the petitioner that the alleged promotion in Junior Selection Grade was granted to the petitioner on 22.03.1991 with effect from 05.04.1987 by the authorities and it is not the case of the respondent that the petitioner misrepresented or concealed anything. The promotion was given by the competent authority and after sixteen years of providing financial benefit of Junior Selection Grade, it was sought to be adjusted without any intimation or giving opportunity to the petitioner of being heard.

It is submitted by learned counsel for respondent-State that the petitioner was granted Junior Selection grade vide Memo No. 987 dated 22.03.1991 issued by Superintending Engineer, South Bihar Circle of Public Works Department with a stipulation that *ad hoc* promotion is being given with condition that if Finance Department passes any adverse order then he will be reverted to initial post and payments made in pursuance to promotion will be recovered. Subsequently, the Finance/Audit Department, Govt. of Bihar, Patna in its Audit Report no. 65/04-05 reported that the promotion to the petitioner has been granted without observing the requisite formalities mentioned in the relevant rules/resolution issued by the Personnel and Administrative Reforms Department dated 19.02.1986, according to which time bound promotion cannot be granted to an employee without passing Departmental examination and accordingly after adjusting excess amount of ₹14,414/- petitioner was asked to receive a draft of ₹28,550/- vide letter dated 12.04.2007, as contained in Annexure-3.

After hearing the counsel for the parties, this Court is of the view that admittedly the petitioner was promoted to Junior

Selection Grade on 23.09.1991 with effect from 05.04.1981 with stipulation that *ad hoc* promotion is being given with condition that if Finance Department passes any adverse order then he will be reverted to the initial post and payments made in pursuance to promotion will be recovered but it appears from the record that in view of the audit objection, decision was taken to recover the amount, since the petitioner had admittedly, passed the department/accounts examination in the year 1998-99 vide Annexure-10 and 11 which was a pre-condition for providing promotion to Junior Selection Grade but promotional scale was provided to the petitioner for a substantially long period of sixteen years and after sixteen years, the order of recovery was passed without giving any opportunity of being heard to the petitioner, whereas the petitioner has now retired on 04.11.2004. The actual order of recovery or adjustment of the benefits for promotional scale is not on record. It is surprising that the same has neither been brought on record by the petitioner nor by the respondents. There is nothing on record to suggest that any order of recovery or adjustment was made prior to the retirement of the petitioner and once after retirement, when the relationship of the employee with the concerned department get severed, the only option for the respondents is to take action against the petitioner as per the Bihar Pension Rules.

Hence, in the circumstance as stated above, the petitioner is permitted to file detailed representation, upon which the authorities concerned will decide the claim by passing appropriate order within a period of four weeks of filing of such representation. It would absolutely not be proper to recover or adjust the amount of an employee who retired about thirteen years ago.

So far as payment of ₹28,550/- is concerned, the same is not in dispute, it is needless to say that the said amount should be paid to the petitioner forthwith, which the petitioner agrees to receive.

With the above observation, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08/05/2017
Transmission Date	N/A