

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6516 of 2015

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Parwati Srivastava (retired upper Division Clerk), wife of Late Nil Mani Prasad,
resident of Dewashram, Shivaji Path, Yarpur, P.S.-Gardanibagh, District-Patna-1.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources (Irrigation) Department, New Secretariat, Patna.
2. The Deputy Secretary, Water Resources (Irrigation) Department, New Secretariat, Patna.
3. The Chief Engineer, Water Resources Department, Now Planning and Monitoring Cell, 3rd Secretariat, Patna.
4. The Superintending Engineer, P.P. Cell, Water Resources Department, 3rd Secretariat, Patna.
5. The Executive Engineer, Samagra Yojana and Rupankan Pramandal, No. 13, Patna.
6. The Deputy Director, P.P. Cell, Water Resources Department, 3rd Secretariat, Patna.
7. The Accountant General (A & E) - II, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pancham lal Jaiswal, Advocate
For the Accountant General : Mr. R.K.Priyadarshi, Advocate
For the State : Mr. Ravi Bhardwaj, A.C. to G.A.-13

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 15-02-2017

Heard learned counsel for the petitioner, learned counsel for
the State and learned counsel for the Accountant General.

2. In the present writ application the petitioner has prayed



for quashing letter no.240 dated 05.05.2014, letter no.594 dated 07.09.2007 and letter no.582 dated 31.08.2007 whereby monetary benefits of first time bound promotion to the petitioner has been allowed with effect from 01.04.1997 instead of 24.09.1984. The petitioner has further prayed to direct the respondents to allow her benefit of first and second time bound promotion with effect from the due date.

3. By filing an interlocutory application vide I.A. No.9036 of 2016, the petitioner has made prayer for quashing letter no.3235 dated 30.05.1997 issued by the Under Secretary, Water Resource Department, Bihar, Patna and letter no.572 dated 22.11.2011 issued by the Chief Engineer, Planning and Monitoring, Water Resource Department, Bihar, Patna.

4. Learned counsel for the petitioner submitted that the petitioner was appointed in the Water Resource Department, Bihar, Patna on compassionate ground on the post of Lower Division Clerk. On attaining the age of superannuation, she retired on 31st July, 1997. Soon before her retirement, she was allowed first time bound promotion with effect from 24.09.1984 by order of the Chief Engineer, P.P.Cell, Patna as contained in letter no.345 dated 06.03.1997, but proposal for confirmation of first time bound promotion was rejected by the Department vide impugned letter



no.3235 dated 30.05.1997 holding the same as irregular in the light of Finance Department's Circular as contained in letter no.5899 dated 22.11.1990 as the petitioner had already been granted promotion to the higher post of Upper Division Clerk. He submitted that vide letter no.789 dated 11.06.1997, an order for recovery was made, as according to the respondents, the petitioner had received excess payment. He contended that since the petitioner was given time bound promotion vide letter no.345 dated 06.03.1997 with effect from 24.09.1984, the amount paid to her was illegally recovered from her gratuity payment. He submitted that some other employees, who were junior to the petitioner were also given time bound promotion, but the amount paid to them was not recovered. He contended that all the objections raised by the petitioner in this regard went unheeded. Thereafter, the petitioner filed CWJC No. 5622 of 2007 before this Court and during the pendency of the said writ application the respondent authority paid retiral dues and amount of first time bound promotion of only four months and not with effect from 20.09.1984.

5. Learned counsel for the petitioner further submitted that the said writ application bearing CWJC No.5622 of 2007 was disposed of with certain directions along with other 262 cases on 26.09.2008. The writ court had directed the respondents to pay the admitted dues of the petitioner with interest. When some of the retiral



dues of the petitioner were not paid, the petitioner filed contempt petition bearing MJC No.3559 of 2010 before this Court, which was disposed of vide order dated 06.07.2011 giving liberty to the petitioner to file specific representation before the competent authority in respect of his remaining claims giving specific details of the same. The petitioner once again filed another contempt petition no.2127 of 2012 alleging non-compliance of the order passed by the writ court in CWJC No.3559 of 2010. The second contempt petition was also dismissed by this Court vide order dated 25.06.2014 granting liberty to the petitioner to challenge the order dated 05.05.2014 passed by the Principal Secretary, Water Resources Department, Government of Bihar whereby the claim of the petitioner in respect of non-payment of monetary benefit of time bound promotion with effect from 24.9.1984 was rejected.

6. Learned counsel for the petitioner submitted that though the time bound promotion of the petitioner was granted since 24.09.1984, the payment has not been made and the subsequent payment made by the respondents immediately before her retirement has been recovered from her gratuity amount which is wholly illegal, arbitrary and unjust.

7. In reply, learned counsel for the State submitted that the two contempt petitions bearing MJC No. No.3559 of 2010 and MJC



No.2127 of 2012 filed by the petitioner did not find favour from the Court. He submitted that another round of litigation is on a highly misconceived ground. He submitted that there is no error in letter nos.240 dated 05.05.2014, 594 dated 07.09.2007 and 582 dated 31.08.2007 whereby monetary benefits of first time bound promotion was allowed to the petitioner with effect from 01.04.1997 instead of 24.09.1984, as the petitioner was appointed on compassionate ground on 24.09.1974 against the post of Lower Division Clerk and promoted to the post of Upper Division Clerk on 30.09.1978. She was allowed first time bound promotion with effect from 24.09.1984, but the monetary benefits were granted to her of first time bound promotion only after passing the departmental Accounts Examination in the year 1996. He submitted that as the petitioner had already been promoted on the post of Upper Division Clerk, she had received merely 2,094/- as excess payment and, hence, it was directed to recover the same vide letter no.393 dated 25.06.1997 from the salary of the petitioner. He submitted that no amount has been recovered either from the retiral benefits or from gratuity of the petitioner.

8. He submitted that according to Rule 157(3)(J)(Kha) of the Bihar Board's Miscellaneous Rules, 1958, a clerk who does not pass Final Accounts Examination is not entitled to be promoted to the higher class. The Board of Revenue, Bihar directed all concerned vide



letter no.2132 dated 01.04.1980 strict compliance of the aforesaid provision of the Bihar Board's Miscellaneous Rules. He submitted that time bound promotion granted to the petitioner with effect from 24.09.1984 vide letter no.582 dated 31.08.2007 and amended letter no.604 dated 12.09.2007 issued by the Irrigation Monitoring Circle, Water Resources Department would not entitle the petitioner to receive the monetary benefits of time bound scale without passing the Final Accounts Examination in the light of the aforesaid resolution of Finance Department, Government of Bihar. He contended that the petitioner was not entitled to receive second time bound promotion, as she had not completed twenty five years of regular service and, as such, the impugned letter no.572 dated 22.11.2011 does not suffer from any infirmity.

9. I have heard learned counsel for the parties and perused the record.

10. In the opinion of this Court the grievances of the petitioner in the present writ application are fit to be rejected apart from others on the ground of delay and laches.

11. Since the petitioner retired on attaining the age of superannuation on 31st July, 1997, the cause of action in respect of grant of time bound promotion or monetary benefits of promotion or recovery from salary or retiral benefits of the petitioner arose in the



year 1997. However, the petitioner approached this Court for the first time by filing CWJC No.5622 of 2007 after ten years of the cause of action.

12. Even in the year 2007, no positive order was passed by this Court in favour of the petitioner. It would be evident from perusal of the order passed in CWJC No.5622 of 2007 that as many as 262 cases were disposed of by a common order in which individual claims of the parties were not examined by the Court.

13. Pursuant to the order passed by this Court when the petitioner was not satisfied she filed two M.J.C. applications for initiating contempt proceeding against the respondents, but those contempt applications were also dismissed and lastly the petitioner has filed the present writ application in April, 2015 raising the same grievances, which were in the writ application filed in the year 2007. The subsequent letters, which are under challenge before this Court, are nothing but reiteration of earlier orders passed by the respondent whereby the claim of the petitioner in respect of first time bound promotion with effect from 24.09.1984 was rejected.

14. Furthermore, I find substance in the arguments advanced by the learned counsel for the State that the Bihar Board's Miscellaneous Rules, 1958 is applicable to all the subordinate officers under the State Government to the extent that they are not inconsistent



with any instruction specially issued by the Department concerned in relation to any particular office. The Rule 157 of the said Rules mandates that passing of the Accounts Examination is a condition precedent for promotion.

15. Clause (J) of Sub-Rule (3) of the said Rules 157 reads as under:

“(J)(a) Any clerk, who has not passed the preliminary examination in Accounts, will be neither confirmed nor be allowed to cross the efficiency bar;

(b) A clerk, who has not passed the final examination, will not be promoted to the Selection grade;

(c) In case of non-availability of senior clerk, finally passed in Accounts Examination, any junior clerk, having passed the final Accounts Examination may be temporarily promoted to the Selection Grade:

Provided that the junior clerk temporarily promoted to the Selection grade shall be reverted to the post of clerk if the clerk senior to him passes the final Accounts examination within two years from the date of his first supersession and is promoted with effect from any date within the said two years, otherwise the senior clerk would be treated junior to all the clerks promoted to the Selection grade prior to him.”



Explanation.- Under proviso to (c), the date of passing the examination of Accounts would be the date on which the examination was held and the post of selection grade held by the junior clerk shall be deemed to be vacant from that very date for the purpose of promoting senior clerk. But, for the fixation of pay etc. the junior clerk shall be deemed to have been reverted from the date with effect from which the senior clerk will be promoted. The seniority of the reverted junior clerk shall be effective from the date of which he will again be promoted as permanent to the Selection grade.”

15. Thus, it would be evident from reading of the aforesaid Rule that without passing the preliminary examination in Accounts a clerk would be neither confirmed nor allowed to cross efficiency bar. Further, a clerk, who has not passed the Final Examination in Accounts, cannot be promoted to the Selection Grade.

16. The issue involved in the present case is also no more *res integra*. A Division Bench of this Court in *State of Bihar vs. Kusheswar Nath Pandey* since reported in **2013(1) PLJR 939** after considering the provisions prescribed under Rule 157 of the Bihar Board's Miscellaneous Rules held that passing of the Accounts Examination is a condition precedent for promotion to a higher post or promotion to a higher grade under time bound scheme.



17. The same view has been reiterated by a Division Bench of this Court in the matter of *State of Bihar & Ors. vs. Anjani Kumar* since reported in **2013(2) PLJR 643**. In the said case, the Division Bench held that statutory rules cannot be improved or modified or altered by an executive order. It held that statutory rules shall prevail over the executive orders.

18. Admittedly, the petitioner of the present case passed the Departmental Examination some time in the year 1996 and thereafter the monetary benefits were given to the petitioner of the first time bound promotion.

19. In view of the binding precedent of this Court and in view of the provisions prescribed under the Bihar Board's Miscellaneous Rules, in my considered opinion the petitioner cannot be given monetary benefits of promotion with effect from 24.09.1984, as she had not passed the Departmental Accounts Examination.

20. I further find that the respondents have categorically denied in their counter affidavit that no recovery has been made from the gratuity of the writ petitioner. The respondents have also stated in their counter affidavit that only Rs.2,094/- was recovered from the salary of the petitioner which was paid in excess to what she was entitled to. In the opinion of this Court, the petitioner cannot be allowed to re-open the issue of recovery of Rs.2,094/-, which was



made in the year 1997 by filing the present writ application. I further find that the aforesaid statements of the respondents made in the counter affidavit have not been controverted by the petitioner by filing any rejoinder application. At this stage, it would also be pertinent to note here that admittedly the petitioner has not completed 25 years of active service. In that view of the matter, she cannot make any claim for grant of second time bound promotion.

21. For the reasons recorded, hereinabove, this writ application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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