IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7761 of 1997

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1. Parashuram Singh, Son of late Nagina Singh, R/o vill.-Rasulpur Tola Kedar Parsa, P.S.-Rasulpur, District-Saran, at present working as Cashier-Cum-Assistant Accountant, Zila Parisad, Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Zila Parisad, Siwan through its Chief Executive Officer.
3. Zila Parisadiya Establishment Committee, Siwan through its Chairman.
4. The Collector-Cum-Deputy Development Commissioner-Cum-Chief Executive Officer-Cum-Chairman of Establishment Committee, Zila Parisad, Siwan.
5. Director-Cum-Joint Secretary, Panchayat Raj Directorate, Bihar, Patna.
6. Commissioner-Cum-Secretary, Rural Development, Panchayat Raj, Bihar, Patna.
7. Saral Baitha, Son of Dukhharan Baitha, R/o Vill.-Kailgarh, P.S.-Baraharia, District-Siwan, at present posted as Accountant, Zila Parisad, Siwan.
8. Secretary, Zila Parisad, Siwan, P.S.-Siwan, District-Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Janardan Pd. Singh, Sr. Adv.
Mr. Arbind Kr. Singh, Adv.
Mr. Shailendra Kr. Singh, Adv.
For the Zila Parisad : Mr. Dhananjay Kumar, Adv.
For the State : Mr. Md. Kamil Akhtar, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date : 28-06-2017

The petitioner was appointed as an Assistant in Zila Parisad, Siwan, on 03.06.1982. He appeared for the departmental accounts examination, which he claims to have passed in the year 1984. One Krishna Bahadur Singh was holding the post of Assistant Accountant, which carried higher status and pay-scale than the post of Assistant. Said Krishna Bahadur Singh retired on 28.02.1986 and, thus, the post of Assistant Accountant in Zila Parisad, Siwan, became vacant.

2. It is the petitioner's case that from the very next date, *i.e.*, 01.03.1986, he started discharging the duties of an Assistant Accountant, since he was the only person who was having the requisite qualification of having passed departmental accounts examination. He was given promotion on the post of Assistant Accountant by the Zila Parisad, Siwan, on 12.04.1989. The decision to grant him promotion to the said post was subsequently stayed by an order, dated 03.06.1989, after appointing respondent No. 7 as Assistant Accountant, with effect from 02.12.1988.

3. This is not in dispute that the promotion which was given to the petitioner on the post of Assistant Accountant, by an order, dated 12.04.1989, was on the basis of a decision taken by an improperly constituted committee. Respondent No. 7 was Steno-Typist and he was given promotion to the post of Assistant

Accountant by giving him benefit of reservation, as he belonged to Scheduled Caste category.

4. Against grant of promotion in favour of respondent No. 7 and stay of promotion granted in his favour, the petitioner initially filed a representation before his superiors and since his grievance could not be redressed, through representation, he approached this Court, under Article 226 of the Constitution of India, by filing a writ application, giving rise to CWJC No. 7634 of 1991. The said writ application came to be disposed of by an order, dated 14.01.1993, by a Division Bench of this Court, with a direction to the Deputy Development Commissioner-Cum-Chief Executive Officer, Siwan, to dispose of the representation filed by the petitioner. Complying with the said order, dated 14.01.1993, the Zila Parisad, Siwan, disposed of the petitioner's representation with issuance of an order, *vide* Memo No. 3, dated 15.04.1993 (Annexure-2 to this writ application), whereby, the petitioner was given promotion to the post of Assistant Accountant, with effect from 03.06.1990.

5. The petitioner had yet the grievance against the promotion, having not been granted to him, with effect from due date. He claimed his promotion with effect from 01.03.1986, with effect from which the earlier incumbent, Krishna Bahadur Singh, had

retired and not with effect from 03.06.1990. He, accordingly, filed representation before the Deputy Development Commissioner-Cum-Chief Executive Officer, Siwan, on 26.04.1993.

6. It also appears that the promotion of respondent No. 7 was cancelled. However, the order of cancellation was subsequently revoked and he was promoted to the post of Accountant, on the basis of a decision taken by the Zila Parisad, Siwan, in its meeting held on 30.07.1997.

7. The petitioner has grievance in the present writ application that he should have been given promotion with effect from the date when said Krishna Bahadur Singh retired as an Assistant Accountant, *i.e.*, 01.03.1986, since on the date of his retirement, he was the only person qualified to be promoted to that post. It is his further plea that promotion of respondent No. 7 on the post of Accountant, with effect from 05.08.1998, granted during the pendency of this application, is also bad, since the promotion of respondent No. 7 to the post of Assistant Accountant itself was bad.

8. On the point of the petitioner's claim as of right, for promotion to the post of Assistant Accountant, with effect from 01.03.1986, *i.e.*, the date on which said Krishna Bahadur Singh was retired as Assistant Accountant, a plea has been taken on

behalf of the Zila Parisad, Siwan, that eight year is '*Kalawadhi'* for grant of such promotion and since the petitioner had not completed eight years of service, he could not have been granted promotion with effect from the date when the post fill vacant on 01.03.1986. On the plea that respondent No. 7 did not have the requisite qualification to be appointed as Assistant Accountant and since he belonged to a different Cadre of Stenographer, he could not have been granted promotion to the post of Assistant Accountant, a plea has been taken that respondent No. 7 had also passed accounts examination in the year 1985 and it could not be said that he was not qualified for such promotion. Further, it is the plea of the Zila Parisad that promotion to the post of Assistant Accountant from the Cadre of Stenographer is not impermissible.

9. The first and foremost question which has arisen in the present case is as to whether the petitioner had valid claim of being appointed with effect from 01.03.1986 or not. As has been noticed, it is the specific stand of Zila Parisad, Siwan, that without completing eight years of service, such promotion could not be granted to the petitioner. The plea to this effect, which has been taken in the counter affidavit, has been replied by the petitioner in his rejoinder to the said counter affidavit, paragraph 6 of which is relevant and is being reproduced hereinbelow :-

> *“**6.** That in this connection it is further replied that period of 8 years of service for promotion from post of lower division clerk to upper division is required according to Annexure B of counter Affidavit but for accountant, passing of examination in account is requirement and it is not available to those who have not passed accounts examination irrespective of service period of 8 years and there is no other assistant accountant senior to this petitioner from cadre of Assistant.”*

10. The petitioner evidently, thus, does not dispute the stand that eight years of completion of service was a pre-condition for promotion to the post of Assistant Accountant. Without completing eight years of service, thus, he could not have been granted promotion in the light of the decision of the State Government of Bihar, under Letter No. 3/92-111/71, dated 22.02.1997, and Letter No. 15488, dated 19.08.1975. As has been noted above, the petitioner has been given promotion, with effect

from 03.06.1990, to the post of Assistant Accountant, the day he completed eight years of service.

11. It is the further settled principal in service jurisprudence that a promotion takes effect from the date it is granted and not from the date of occurrence of vacancy or creation of the post. This view finds support from the Hon’ble Supreme Court’s decisions, in cases of ***K.V. Subba Rao & Ors. Vs. Government of Andhra Pradesh & Ors.,*** reported in ***(1988) 2 SCC 201, Union of India & Ors. Vs. K.K. Vadera & Ors.,*** reported in ***1989 Supp. (2) SCC 625, Sanjay K. Sinha-II & Ors. Vs. State of Bihar & Ors.,*** reported in ***(2004) 10 SCC 734, State of Uttaranchal & Anr. Vs. Dinesh Kumar Sharma,*** reported in ***(2007) 1 SCC 683,*** and ***Nirmal Chandra Sinha Vs. Union of India & Ors.,*** reported in ***(2008) 14 SCC 29***.

12. In view of the discussion as above, the plea that the petitioner ought to have been given promotion with effect from the approval of vacancy, *i.e.*, 01.03.1986, is not at all tenable.

13. Since the petitioner was ineligible to be considered for promotion to the post of Assistant Accountant, he did not have the *locus standi* to question promotion of respondent No. 7 against the said post of Assistant Accountant. Further, as has been noted above, it is the stand of the petitioner that respondent No. 7 did not

have the requisite qualification for promotion to the post of Assistant Accountant, as he had not passed the departmental accounts examination. In the counter affidavit filed on behalf of the Zila Parisad, Siwan, it has been stated that respondent No. 7 had passed an accounts examination on 19.07.1985 itself. He was appointed on the post of Stenographer on 15.09.1975 and considering his period of service and the fact that he belonged to Scheduled Caste category, he had been given promotion to the post of Assistant Accountant.

14. This is also an admitted fact that both, the petitioner as well as respondent No. 7, have retired after attaining the age of superannuation long back. Thus, other questions, which have been raised in the present proceeding, have now become academic.

15. No relief, as sought for in the present writ application, can be granted.

16. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.09.2017
Transmission Date	N/A