

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9136 of 2008

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Choudhary Thakur, S/o Buchan Thakur, resident of village – Gangapur, P.O. Pandaul, P.S. Pandaul, District Madhubani at present residing at Kalhua Pagamberpur at Muzaffarpur, P.O. and P.S. Muzaffarpur District Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary to the Government in the Department of Science and Technology, Technology Bhawan, Bisheshwaraiya Bhawan, Campus Belly Road, Patna
2. The Joint Secretary to Government Science and Technology Department Government of Bihar, Technology Bhawan, Bisheshwaraiya Bhawan, Campus Bailey Road, Patna
3. The Director Science and Technology Bhawan, Bisheshwaraiya Bhawan, Campus, Bailey Road, Patna
4. The Principal Muzffarpur Institute of Technology Muzaffarpur at Muzaffarpur District Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh

For the Respondent/s : AC to AAG No. 12

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 06-04-2017

1. Heard Sri Lalan Kumar Singh, learned counsel for the petitioner and learned AC to AAG No. 12.

2. The petitioner has approached this court invoking its writ jurisdiction under Article 226 of the Constitution of India for the following reliefs:-

“(I) That the order of the Secretary to Government in the Science and Technology Department as communicated by its Joint Secretary by his Memo No. 1279 dt. 11.8.2004 be quashed.

(II) That the order contained in Memo No. 1863 dated 10.8.2002 whereby and whereunder the petitioner was directed to superannuate on attaining the age of 58 years from the post of



Foremen Instructor MIT Muzaffarpur and was directed to submit his papers and the order of the principal contained in Memo No. 2463 dated 30th November 2000 superannuating the petitioner from his service with effect from 30.11.2000 be also quashed.

(III) That an appropriate writ or direction be issued to respondent commanding them to make payment of full salary in the scale of pay of Workshop Superintendent consequent upon the promotion of the petitioner by order dated 26.6.2003 as contained in notification no. 995 be directed to be paid with effect from 1.2.97 to 30.11.2002 pursuant to the order of this Hon'ble Court passed in C.W.J.C. No. 9429 of 2000 disposed on 10.5.2004.

(IV) That the payment of the aforesaid salary from 1.2.1997 to 30.11.2000 be directed to be paid in the scale of pay of the Workshop Superintendent in M.I.T., Muzaffarpur against which post, the petitioner also worked on officiation till 30.11.2000 and all the salary be directed to be paid in revised pay scale with all admissible increment and allowances admissible in law after deducting the salary which was paid to the petitioner.

(V) That accordingly the respondents be directed to revise the pension of the petitioner and direct the respondent to pay him the difference of the gratuity amount in the revised scale of pay as well as the leave salary and other admissible payments within a time limit as the petitioner has suffered a lot."

3. This is the second writ petition filed by the petitioner.

Earlier the petitioner had filed a writ petition vide CWJC No. 9429 of 2000 with a prayer to consider his case for promotion from the post of Foreman to Workshop Superintendent. During pendency of the said writ petition interim order was passed and thereafter, the case of the



petitioner was considered. After considering case of the petitioner vide Annexure '4' to the writ petition i.e. Government Notification contained in memo no. 995 dated 26.6.2003 the petitioner was notionally granted promotion as Workshop Superintendent with effect from 1.2.1997 till the date of his superannuation i.e. 30.11.2000. Since the petitioner felt that order of notional promotion was in violation of the interim order passed by this court in CWJC No. 9429 of 2000 petitioner filed a contempt petition vide MJC No. 1921 of 2004. However the said contempt petition i.e. M.J.C. No. 1921 of 2004 was disposed of on 25.4.2008 granting liberty to the petitioner to assail the order which was passed in compliance with the interim order i.e. Annexure '4'. Finally the writ petition was disposed of on 10.5.2004 granting liberty to the petitioner to represent his case before the Secretary, Department of Science and Technology, Patna for redressal of his grievance. After the order of the writ court, the impugned order i.e. the order contained in memo no. 1279 dated 11.8.2004 (Annexure – 7) was passed.

4. Thereafter, the petitioner filed the present writ petition wherein he has assailed the order dated 11.8.2004 vide Annexure '7' to the writ petition. It has been claimed by the petitioner that in addition to his post as Foreman the petitioner was given charge of Workshop Superintendent since 1997. While he was continuing in the



same capacity the petitioner had filed writ petition earlier for directing the respondents to consider his case for granting regular promotion as Workshop Superintendent and in the said writ petition interim order was passed and thereafter vide Annexure '4' i.e. an order contained in memo no. 995 dated 26.6.2003 the petitioner, after his superannuation (date of superannuation is 30.11.2000), was granted notional promotion as Workshop Superintendent with effect from on 1.2.1997 till the date of his superannuation i.e. 30.11.2000 . It has been argued by learned counsel for the petitioner that petitioner was aggrieved with the notional promotion. Actually the petitioner wanted promotion with monetary benefit. Since the writ petition was already pending this point was raised before the writ court in CWJC No. 9429 of 2000. Learned counsel for the petitioner has drawn my attention to last but one paragraph of the order dated 10.5.2004 in CWJC No. 9429 of 2000 (Annexure '5' to the writ petition) and submits that even at that very time learned state counsel had made a submission that authority can be mandated for grant of benefit in accordance with law. However, it was disposed of granting liberty to the petitioner to file representation before the Secretary, Department of Science and Technology, Patna . Sri Singh, learned counsel for the petitioner by way of referring to Annexure '7' i.e. an order contained in memo no. 1279 dated 11.8.2004 submits that the Secretary in its



order has acted as if he was examining even the correctness of the notional promotion granted to the petitioner. He submits that once the petitioner was granted promotion as per recommendation of the B.P.S.C. vide Annexure '4' to the writ petition the respondent/ Secretary was not at all authorized to examine the correctness of the said order. At that very time the Secretary was only required to examine and grant monetary benefit which was earlier indicated as notional promotion but instead of doing the same, in an arbitrary manner the Secretary has passed the impugned order.

5. Learned counsel for the petitioner by way placing reliance on an unreported order dated 10.8.2005 passed in CWJC No. 11233 of 2004 Ramendra Pandey vs State of Bihar and Ors submits that in identical situation the petitioner of the said case was granted notional promotion and after approaching this court this court directed to grant promotion with all consequential monetary benefit. By way of referring to paragraph no. 4 of his rejoinder dated 26th June 2015 (running page no. 89) he submits that right from 1.2.1997 the petitioner was discharging the duties of Workshop Superintendent which was also noticed by the promotion committee. He has referred to running page no. 101 and submits that it was recognized by the Joint Secretary, Science and Technology Department that the petitioner was having experience of Workshop Superintendent from



25.1.1997. Of -course it was indicated that it was the additional charge. Meaning thereby, that the fact that petitioner was discharging the duty of Workshop Superintendent even in addition to the his own post as Foreman is not in dispute. It is undisputed fact that additionally he was discharging the duty of the Workshop Superintendent. It has been argued that once the petitioner was discharging the duty of promotional post and subsequently he was granted promotion with retrospective effect then in that event the petitioner was also entitled to get monetary and financial consequential benefits. He has placed reliance on a Division Bench judgment of this court reported in **2016 (2) PLJR 276 (The State of Bihar & Ors. vs. Dr. Shafique Azam)** . On aforesaid ground it has been prayed to quash the order contained in Annexure '7' to the writ petition and direct the respondents to pay monetary benefit of the post of Workshop Superintendent on which post he was already granted notional promotion vide Annexure '4' to the writ petition and that order indicates that he was granted promotion with effect from 1.2.1997 till the date of his superannuation. i.e. 30.11.2000. He submits that in view of law settled by this court the petitioner instead of notional benefit is entitled to get financial benefit. According to learned counsel for the petitioner after grant of financial benefit instead of notional promotion the petitioner shall be entitled to get all



consequential benefits and it may be considered for re-fixation of his retiral dues.

6. Learned State Counsel has vehemently opposed the prayer of petitioner. In this case counter affidavit and supplementary counter affidavits were earlier filed. Learned counsel for the state has tried to persuade the court to rely on Bihar State Universities (Amendment and Validation) Act , 2012. He submits that in the said Act teacher has been defined and for teaching work there were some minimum requisite qualifications. The court is afraid that such submission may not be entertained at this stage particularly in view of the fact that notionally the petitioner was granted promotion as Workshop Superintendent vide Annexure '4' to the writ petition. Of - course it was indicated that promotion was granted notionally. Accordingly the objection which has been raised in the counter affidavit is not sustainable. Moreover , reliance which has been placed i.e. on Annexure – 'A' was an Amendment Act, which was introduced in the year 2012. Obviously unless an Act is made applicable with retrospective effect with specific implication all the Acts or instructions are deemed to have prospective effect or it will be applicable from the date of notification. Moreover all these points are not at all required to be considered in this case since after the recommendation by the Committee the case of the petitioner was



examined by the B.P.S.C. and finally Annexure '4' was issued so that this question has got no relevance. So far ground of monetary benefit instead of notional promotion is concerned, keeping in view the fact that it has not been disputed that petitioner was discharging the duty of Workshop Superintendent in addition to his original post of Foreman since 1.2.1997 and finally he was promoted vide Annexure '4', the petitioner was entitled to get monetary benefit also instead of notional promotion. Learned counsel for the petitioner has rightly relied on a Division Bench judgment of this court i.e. 2016 (2) PLJR 276 (The State of Bihar & Ors. vs. Dr. Shafique Azam). In the said case also the original writ petitioner was granted only notional promotion despite the fact that he was discharging the duty of the promotional post. On approaching this court the single bench of this court allowed the writ petition and directed for granting monetary benefit for the said post. The said judgment was finally approved by a Division Bench. It would be appropriate to quote paragraph no. 4 of the Dr. Shafique Azam case (supra) which is follows:-

“4.We do not find any merit in the said argument. The fact is that the respondent stands promoted, though notionally, on the post of Reader with effect from 26th of July, 1996 and thereafter as Professor with effect from 26th of July, 2001. Therefore, the appellant admits the genuineness and entitlement of the claim of the writ petitioner for promotion as Reader and



Professor on the dates from which he was granted notional promotion. Once a candidate is entitled to be promoted and has been notionally promoted, the natural consequence will be that all financial benefits will accrue to him. The argument that he is not entitled to salary on the principle of 'no work no pay' is not applicable for the reason that it was the inaction of the State which prevented the writ petitioner from discharging higher duties and responsibilities. For such inaction of the State, an employee cannot be deprived of his right of promotion, more-so, when the same has been recognized "

7. In view of the aforesaid facts and circumstances as well as the law set at rest there is no reason to pass a different order. Accordingly the order impugned i.e. order contained in Memo No. 1279 , dated 11.8.2004 (Annexure 7) is hereby set aside with direction to the respondents to grant monetary benefit to the petitioner in place of notional promotion and thereafter the petitioner is entitled to get all consequential benefits in respect of his retiral dues. So far as prayer made in paragraph no. 2 (II) of the writ petition is concerned, the court is of the opinion that since the date of retirement i.e. 30.11.2000 has been admitted in the writ petition , there is no reason to consider the prayer for extending the date of superannuation of the petitioner. Accordingly, the relief prayed in paragraph no. 2 (II) stands rejected.



8. The writ petition stands partly allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08-04-2017
Transmission Date	NA

