

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15165 of 2008

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1. Ajay Kumar Srivastava Son of late Vishwanath Prasad R/o Mohalla- School Road Maripur P.S. Kazi Mohammadpur District Muzaffarpur.
2. Punita Shrivastava D/o late Vishwanath Pd. , Wife of Kaushal Kishore Prasad R/o Kunti Printing Press, Kabir Ashram Road, Near Railway Station P.S Town, District Samastipur.
3. Sanjay Kumar Shrivastava Son of late Vishwanath Prasad, R/o Mohalla-School Road, Maripur, P.S Kazimohammadpur, District Muzaffarpur.
4. Sunita Shrivastava D/o late Vishwanath Prasad, W/o Sri Amrendra Kumar R/o Mohalla Shivpuri Demuchak, P.S Kazi Mohammadpur, district Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary Cum Commissioner, Department of Rural Development Bihar Patna.
3. The Secretary Cum Commissioner Department of Finance , Bihar Patna.
4. The Director Cum Additional Secretary, Panchayati Raj Department of Rural Development Bihar Patna.
5. The Deputy Director, Panchayati Raj Muzaffarpur.
6. The Collector Sitamarhi.
7. The District Panchayati Raj Officer, Sitamarhi.
8. The Block Development Officer, Runnisaidpur, District Sitamarhi.
9. The Accountant General Bihar Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Sri Bishnudeo Narain, Sr. Advocate
Mr. Manoj Kumar (Manoj)

For the Respondent/s : AC to AAG No. 7

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 01-03-2017

Heard Sri Bishnudeo Narain, learned senior counsel, assisted



by Sri Manoj Kumar (Manoj), learned counsel for the petitioners and learned AC to A.A.G. No. 7.

The original petitioner had invoked writ jurisdiction of this Court under Article 226 of the Constitution of India, with a prayer to quash an order contained in Memo No. 986 dated 16.03.2006 issued by the respondent no. 4/ Director –cum- Additional Secretary, Panchayati Raj Department of Rural Development, Government of Bihar, whereby earlier provisional second time bound promotion which was granted to the petitioner was cancelled. The said order has been brought on record as Annexure -6 to the writ petition. During pendency of this writ petition the original writ petitioner left for heavenly abode and as such after expunging the name of original petitioner by order dated 12.12.2013 passed on I.A. No. 2119 of 2011 aforesaid four persons were substituted as petitioners.

The petitioner has pleaded that initially he was appointed as Social Education Organizer in the Directorate of Public Instruction, a Wing of the Government of Bihar in the pay- scale of Rs. 100-190+ other allowances and posted in Madhuban II NES block in Sadar Sub-Division of the District of Champaran vide Memo No. 1794 dated 13.06.1956 . While he was continuing in the said capacity, in the year 1963 vide Memo No. 10257 dated 24th August 1963 he was appointed and posted as Chief Instructor in Gram Raksha Dal in the same pay



scale i.e. Rs. 100-190 . While appointing as Chief Instructor, the Directorate Panchayati Raj vide Annexure -2 to the writ petition made it clear that the past services as Social Education Organizer shall be maintained for the purposes of seniority . After completion of the period for entitlement of time bound promotion the petitioner was granted 1st time bound promotion and finally he superannuated with effect from 30.6.1987. After his superannuation the case of petitioner was considered by the Directorate, Panchayati Raj for grant of second time bound promotion and provisionally second time bound promotion was extended to the petitioner, which was subject to final approval of the Finance Department. Even though provisional second time bound promotion was decided to be granted to the petitioner, same was not provided. Thereafter, the petitioner was constrained to approach this court by filing a writ petition vide CWJC No. 9696 of 1999 which was finally disposed of on 10.2.2005 vide Annexure -5 to the writ petition. It would be appropriate to quote the order dated 10.2.2005, which is as follows:-

“Heard learned counsel for the petitioner, learned counsel for the state and learned counsel for the Accountant General.

The petitioner seeks direction upon the respondents state authorities to re-fix his pension after giving him the benefits of second time bound promotion with effect from 1.4.1986 and also to pay dearness allowance



with effect from February, 1990 which has been withheld by the state authorities

It is submitted by learned counsel for the petitioner that the petitioner retired on 30.6.1987 but his claim that second time bond promotion was kept pending and his dearness allowance with effect from February, 1990 was also withheld.

In the counter affidavit filed on behalf of respondent,, the Collector, Sitamarhi it is stated that after retirement of the petitioner he has provisionally been granted second time bound promotion vide order issued in memo no. 5519 dated 6.10.1987 w.e.f. 1.4.1986 but the same is pending approval by the Finance Department. Mr. Bhagat, learned G.P. 4 submitted that no sooner concurrence of the Finance Department is obtained, the benefits of second time bound promotion will be given to the petitioner. At the same time, he also submitted that in case dearness allowance has been withheld, the same shall also be paid to the petitioner in accordance with law.

In view of the statements made in paragraphs 4 and 5 of the counter affidavit filed on behalf of respondent no. 4, the respondent state authorities are directed to obtain concurrence of the Finance Department forthwith and to grant benefit of second time bound promotion to the petitioner with effect from 1.4.1986 and at the same time they are further directed to release the dearness allowance which is said to have been withheld w.e.f. February, 1990 to the petitioner forthwith. This exercise , however, must be completed within a period not beyond three



months from today. In case any decision is taken by the state authorities in these regards, they will intimate the matter to the Accountant General for issuance of revised pension payment order which shall also be done by the Accountant General without any delay.

With this direction / observation, this application is disposed of”

Even after specific direction of this Court since the case of the petitioner was not finally decided for grant of second time bound promotion, the petitioner filed a contempt petition vide MJC No. 329 of 2006. However, in the contempt proceeding show-cause and supplementary show cause was filed on behalf of the respondents and a Division Bench of this Court after noticing the show cause wherein order which has been impugned in the present writ petition was brought to the notice regarding rejection of claim, the Division Bench while disposing of the contempt petition granted liberty to the petitioner to assail the order dated 16.3.2006 in appropriate proceeding and thereafter, the present writ petition was filed.

Learned senior counsel for the petitioners has argued that once at the very initial stage of his re-appointment as Chief Instructor, Gram Raksha Dal in the year 1963 there was specific note that seniority / past service of the petitioner shall be taken note of, there was no reason for the Finance Department to exclude the



service rendered by the petitioner as Social Education Organisor. He submits that if the past service of the petitioner rendered as Social Education Organizer is taken into account certainly the petitioner was entitled for getting second time bound promotion. This was the reason that initially provisionally petitioner was granted second time bound promotion by the Department, which has been unsettled vide Annexure -6 to the present writ petition. According to learned senior counsel for the petitioners the order impugned is liable to be set aside with direction to grant second time bound promotion as was recommended by the Administrative Department of the petitioner and grant of consequential benefits. During pendency of this petition the petitioner left for heavenly abode and as such by way of filing an interlocutory application vide I.A. No. 2119 of 2011 substitution was sought for and accordingly by order dated 12.12.2013 legal heirs were substituted.

In this case a counter affidavit has been filed on behalf of the respondent no. 4. Learned AC to AAG No. 7 by way of referring to facts disclosed in the counter affidavit submits that the impugned order has rightly been issued considering the fact that 25 years shall be treated to be complet after retirement of the petitioner since it was fresh appointment which was done in the year 1963. According to learned state counsel there is no error in the order and the writ



petition is liable to be rejected.

Besides hearing learned counsel for the parties I have perused the materials available on record. It is not in dispute that the petitioner was initially appointed as Social Education Organizer in the office of Director of Public Instruction, Bihar and while he was continuing in the same capacity vide Annexure- 2 he was appointed in the Gram Panchayat Directorate vide Annexure -2 to the writ petition. Along with the petitioner number of other persons were also appointed. In paragraph no. 2 of Annexure -2 it has specifically been mentioned that past services shall be taken into account for the purposes of seniority. Meaning thereby services rendered by the petitioner in earlier organization was directed to be counted for all other purposes including seniority. Once at the time of initial appointment vide Annexure -2 the past services was taken into account, there was no reason for excluding the said period for the purposes of granting second time bound promotion. In view of the facts and circumstances the court is of the considered opinion that order impugned is not sustainable in the eye of law. The petitioner is entitled to get his services counted rendered in earlier service for the purposes of grant of second time bound promotion. Accordingly, the order impugned is set aside and the provisional second time bound promotion which was granted to the petitioner is hereby restored with



further direction to grant all consequential benefits. All the formalities must be completed within a period of three months from the date of receipt / production of a copy of this order.

The writ petition is allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06-03-2017
Transmission Date	NA

