

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9127 of 2017

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Satywan Kumar son of Rajendra Prasad, resident of village –Tineri Math,
PO-Nadaul, PS-Masauri, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Department, Government of Bihar, Patna.
2. The Principal Secretary, Labour Department, Government of Bihar, Patna.
3. The Labour Commissioner, Labour Department, Government of Bihar, Patna.
4. The Joint Labour Commissioner, Labour Department, Government of Bihar, Patna.
5. The Labour Officer, Bhojpur, Ara
6. The Labour Officer, Jamui.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nikhil Kumar Agrawal,
Ms. Aditi Hansaria and
Ms. Deepika Sharma, Advs.

For the Respondent/s : Mr. Raghwendra Kumar, SC-22
Mr. Ravi Ranjan, AC to SC-22

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 04-07-2017 Heard Sri Nikhil Kumar Agrawal, learned counsel for the petitioner and Sri Raghwendra Kumar, learned counsel representing the State.

In the nature of the order to be passed, the parties are in agreement that the writ application may be disposed of at this stage without inviting counter affidavit.

The petitioner is aggrieved by an order as contained in Memo No. 5232 dated 19.12.2016 (Annexure-17 to this writ application) issued under the signature of Labour Commissioner,



Bihar by which he has cancelled the promotion granted to the petitioner on the post of Labour Enforcement Officer, vide Office Order No. 10 dated 13.10.2016 read with Memo No. 4386 dated 13.10.2016 and further reverted the petitioner to the post of Lower Division Clerk in the pay scale of Rs. 5200-20200 with grade pay of Rs. 1900.

Learned counsel for the petitioner has primarily contended that the order, as contained in Annexure-17, is bad for a simple reason that the Labour Commissioner has failed to appreciate that the Notification dated 29.05.2011 issued by the General Administration Department, Government of Bihar as contained in Annexure-13/A to this writ application which prescribed for passing out the computer examination for the purposes of confirmation/increment, is only perspective in nature. In other words, his contention is that the requirement of passing out the computer examination has been brought in existence by virtue of the Notification as contained in Annexure-13/A and the same may be applied in respect of the employees whose confirmation or increment fell due on or after 29.05.2011. Learned counsel further submits that in his case although Office Order No. 98 dated 05.11.2012 (Annexure-6 to this writ application) confirming him on the post of Lower Division Clerk, was issued



after the Notification dated 29.05.2011, however it is not in dispute that he had become eligible for confirmation on 30.07.2010 and in fact, his confirmation on the post of Lower Division Clerk has been done with effect from 30.07.2010. When no such requirement of passing out the computer examination was there, learned counsel further submits that his case for promotion was taken by the Departmental Promotion Committee and he was granted promotion on the post of Labour Enforcement Officer, vide Office Order No. 10 dated 13.10.2016. He would submit that the Notification dated 29.05.2011 nowhere prescribes passing of computer proficiency examination for the purposes of next promotion. At last, he submits that in any case the petitioner has never misrepresented and has not done any act or deed either leading to his confirmation or promotion and the entitlements to the petitioner have been considered by the respondent authorities in accordance with the prevailing Rules applicable in case of the present petitioner. At this stage, the Court has been informed that the petitioner has now got the Certificate of passing out the computer proficiency examination, which has been brought on record in the writ application. It appears that the National Institute of Electronics and Information Technology, Patna Centre has issued the Certificate showing the petitioner



having successfully passed in Computer Application and Concepts Examination held in January 2017.

Learned counsel for the State submits that apparently the petitioner had not got Certificate of passing out the computer proficiency examination on the date his case for confirmation was being considered, however he would accept the factual position as appearing from Notification No. 1609 dated 29.05.2011 which nowhere states its applicability with retrospective effect. Admittedly this aspect of the matter has not been considered by the Labour Commissioner, Bihar while passing the order as contained in Annexure-17. The only reasons shown in Annexure-17 is that according to the Notification No. 1609 dated 29.05.2011, any confirmation could have taken place only upon passing out the computer proficiency examination.

The Labour Commissioner has not considered that the petitioner had already become eligible for confirmation on 30.07.2010 when the said Notification was not in existence.

Learned counsel for the State accepts that position on reading of Annexure-17, the applicability of Notification dated 29.05.2011 has not been considered and the same requires a fresh consideration.

In the facts and circumstances without recording any



opinion on the submissions advanced on behalf of the petitioner at this stage I find it just and proper to set aside the order as contained in Annexure-17 passed by the Labour Commissioner, Bihar on the ground of non-consideration of the materials available on record particularly the applicability aspect of the notification and remit the matter back for a fresh consideration.

The Labour Commissioner would specifically consider the scope and ambit of the Notification dated 29.05.2011 in the light of the submissions of the petitioner that the said Notification will have only a prospective effect, hence cannot be applied in his case. If the petitioner wants to take any other grounds, the same may be allowed to be taken and a final order be passed within a period of four months from the date of receipt/production of a copy of this order. In case the petitioner succeeds, the Labour Commissioner, Bihar will also give due consideration for all consequential relief as may be prayed for. In result Annexure-17 as well as all consequential orders pursuant to the Annexure-17, are hereby set aside.

The writ application is allowed with the observation and direction as above. No order as to cost.

(Rajeev Ranjan Prasad, J)

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