

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14567 of 2007

=====

Ram Krishna Rai, son of late Gariba Rai, resident of village- Suremanpur,
P.O.-Lachhutola, P.S.-Shahpur, District- Bhojpur.

... .. Petitioner

Versus

1. The State of Bihar, through the Secretary to the Government of Bihar in the Department of Water Resources, Sinchai Bhawan, Patna.
2. The Joint Secretary to the Government of Bihar in the Department of Water Resources, Sinchai Bhawan, Bihar, Patna.
3. The Finance Commissioner, Government of Bihar, Patna.
4. The Chief Engineer, Central Design Jal Sansadhan Bhawan, Anishabad, Patna.
5. The Superintending Engineer, Dam and Gate Design Circle, Water Resources Department, Jal Sansadhan Bhawan, Anisabad, Patna.
6. The Executive Engineer, Dam and Gate Design Division No.2, Water Resources Department, Jal Sansadhan Bhawan, Anisabad, Patna.
7. The Accountant General, Bihar, Patna.

... .. Respondents

=====

Appearance :

For the Petitioner/s	:	In person
For the State	:	Mr. Rishi Raj Sinha, S.C.-19
		Mr. Saurabh Kumar, A.C. to S.C.-19
For Accountant General	:	Mr. Raghwanand, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 20-03-2018

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

2. This writ petition has been filed for issuance of a writ of *certiorari* or any other appropriate writ or order or direction to quash the order containing memo no.1762 dated 17.08.2007 issued by respondent no.2 under the signature of the



Joint Secretary, Water Resources Department, and also for issuance of a writ of *mandamus* or any other appropriate writ or order or direction to command the respondents to grant first time bound promotion with effect from 20.02.1983 in the pay scale of Rs.680-965/-, which was revised from time to time and ultimately the pay scale has been arrived at Rs.4500-7000/-. The petitioner also made a prayer to grant the relief of A.C.P. in view of the fact that he has already completed 24 years' of service as on 20.02.1997 and he should be given the pay scale of Rs.5000-8000/- and consequential benefits.

3. The short facts of this case are that the petitioner was appointed on muster roll basis in the work charge establishment of River Valley Project as Gauge Reader in the year 1973 and subsequently, he became Compilation Clerk on 26.12.1974 and vide order no.2506 dated 24.05.1980 the petitioner started getting salary in the pay scale of Rs.220-315/-. Further, the petitioner was brought to regular establishment on 10.06.1981 as Clerk in the revised scale of Rs.580-860/- and time to time his pay scale was revised and was given the normal annual increments. The post of Gauge Reader and Compilation Clerk are class-III posts. In view of acceptance of 4th Pay Revision Committee Report the pay scale of that post



was made at Rs.580-860/- with effect from 01.04.1981. The petitioner had completed his 10 years' of service on 20.02.1983 as work charge establishment was followed by his regularization in 1983, the entire period inclusive of the work charge establishment will be taken into consideration for the purposes of granting the time bound promotion. The petitioner had passed the accounts examination on 01.11.1993 and has claimed that he is entitled to A.C.P. also. As the petitioner was aspiring to join the legal profession he opted for voluntary retirement, subsequently, he had taken voluntary retirement with effect from 31.01.1998.

4. It appears that after passing the accounts examination, the respondents were considering to grant the benefit of time bound promotion and as such, the Chief Engineer vide letter containing memo no.2078 dated 12.12.2006 sought opinion about the grant of time bound promotion to the petitioner on account of passing the accounts examination. In the said letter, it has been mentioned that the office vide letter no.363 dated 03.03.1998 has proposed to grant first time bound promotion with effect from 27.03.1987 and financial benefit from 01.11.1993. In the said letter, the Chief Engineer has mentioned that in terms of the Finance Department's



Notification dated 01.09.1983 made it mandatory for employees to pass the accounts examination, makes him eligible for grant of promotion and those who have received the promotion before 01.09.1993 they will be granted the said benefit. As the petitioner was not granted any benefit of promotion before 01.09.1983, as he has passed the accounts examination on 01.11.1993 and as such, granting of time bound promotion before passing the accounts examination does not make eligible for grant of time bound promotion. In pursuance thereof, the Joint Secretary, Water Resources Department, issued letter dated 17.08.2007 (Annexure-1), wherein it has been mentioned that the petitioner had passed the accounts examination on 01.11.1993 and as such, he will be entitled for first time bound promotion and granted the said benefit from the said date and revised his pay scale for Rs.4000-6000/- from 01.01.1996.

5. The petitioner submits that as he was earlier a Gauge Reader from 1973 in the work charge establishment and later on, he was regularized in service on 10.06.1981 and he completed 10 years' of service on 20.02.1983 and on that date there was no condition precedent that person who would pass examination of accounts will only be entitled to the time bound promotion as the condition of passing accounts examination has



been introduced by the Finance Department from 01.09.1983 and before the said Notification of Finance Department his claim matured for time bound promotion and as such subsequent introduction of the condition will not take away his matured right of time bound promotion, only to those persons who could not completed 10 years' of service before due date will only be granted the benefit subject to passing of accounts examination. It has further been submitted that the entire period of work charge establishment as well as the period he has worked in the regular establishment is to be reckoned for the purposes of granting the time bound promotion as has been held by this Court in the case of ***Vishwa Nath Singh vs. State of Bihar and Ors.*** reported in ***2012(1) PLJR, page 148***, wherein the Court has decided that person in work charge establishment and later on, brought to the regular establishment, the entire period spent in the work charge establishment will also be counted for the purposes of granting the time bound promotion. It will be relevant to quote paragraph no.6 of the said judgment, wherein the Court has specifically has dealt with the issue the period of work charge establishment will be taken in those cases wherein it has been followed by regularization of service.

“6. Bare perusal of Annexure-6 shows that the petitioner initially joined Work Charge



Establishment on 28.02.1967 and became regular on 5.9.1982. It has not been shown on behalf of learned counsel for the State that any promotion/upgradation in the Work Charge Establishment are to be taken into account for the purpose of consideration of the cases for grant of first time bound or second time bound promotions. According to the Government decision, contained in Annexure-5 as already noticed above, the period of service in the Work Charge Establishment is to be counted for the purpose of grant of selection grade and time bound promotions, provided it does not affect the seniority of the regular employees except that a person getting the said benefit will not be entitled for arrear prior to the date of the said notification i.e. 27.03.1987.”

6. Whereas, learned counsel for the State submits that as per the Notification of the Finance Department the person will only be entitled to the benefit of time bound promotion after he crosses the level of passing the accounts examination as the petitioner has passed the accounts examination on 01.11.1993 so he cannot claim time bound promotion before that date.

7. Having given anxious consideration to the argument of both the sides, it is an admitted fact that the petitioner has entered into the service in work charge establishment as Gauge Reader in the year 1973 and later on, regularized in service, taking entire period the period of 10



years' of service has matured before the enforcement of the Notification prescribing for passing the accounts examination is essential qualification for time bound promotion and as such, his entitlement to the first time bound promotion matured before the enforcement of the Notification of the State Government and at the relevant time it was not dependent on passing of the accounts examination, but simply it was there that the person who completes 10 years' of service will be entitled to the time bound promotion.

8. In view of the aforesaid discussion, this Court is of the view that the entitlement of the petitioner for time bound promotion matures before enforcement of Notification and as such, he is entitled to the time bound promotion from the due date. But, as the petitioner has remained under slumber for long period so he cannot get the monetary benefit for the period he has been deprived of. In such view of the matter, the petitioner will be granted the notional promotion and the consequential benefit but he will only be entitled to the monetary benefits from before 01.11.1993.

9. So far the claim of the petitioner regarding benefit of A.C.P. is concerned, admittedly, the petitioner has taken voluntary retirement on 31.01.1998 and admittedly, the A.C.P.



scheme of 2003 has been enforced with effect from 09.08.1999 i.e. after the voluntary retirement of the petitioner, and as such, this Court is of the view that the petitioner has superannuated before the enforcement of A.C.P. scheme and as such, the petitioner cannot claim the benefit arising from the A.C.P. and this part of the claim of the petitioner is hereby rejected.

10. In the result, this Court holds that the petitioner is entitled to notional promotion with effect from 20.02.1983 along with consequential benefits, but the claim of A.C.P. is rejected.

11. Accordingly, this writ petition is partly allowed and partly dismissed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	29.03.2018
Transmission Date	N/A.

