

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6117 of 2011

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Vijay Krishna Prasad S/O Late Sheo Nandan Prasad R/O Mohalla -
Chitraguptapuri (MARIPUR), P.S. - Kazi - Mohammadpur, District -
Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Cum Commissioner, Road Construction
Department, Govt Of Bihar, Patna
3. The Commissioner, Darbhanga
4. The Engineer-In-Chief Cum Additional Commissioner Cum Special
Secretary, Road Construction Department, Govt Of Bihar, Patna
5. The Chief Engineer, North Bihar Wing, Road Construction Department,
Road Circle, Darbhanga
6. The Executive Engineer Cum Technical Adviser To The Sueprinting
Engineer, Road Construction Department Circle, Darbhanga
7. The Executive Engineer, Road Construction Department, Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Narayan
For the Respondent/s : Mr. Md. Nasarool Hoda Kha Sc1

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

13 27-11-2018 The petitioner is aggrieved by the order dated

20.11.2010, contained in Memo No. 1529, whereby the first

time-bound-promotion given to him w.e.f. 10.10.1990 in the

year 1999 has been cancelled on the ground that he did not

pass the departmental accounts examination, which was

necessary for securing first time-bound-promotion.

Learned counsel for the petitioner has submitted

that without any fault of the petitioner, the aforesaid order

was passed.



It has also been submitted that the petitioner, in the meantime, has passed the departmental accounts examination.

The prayer has been opposed by the learned counsel appearing on behalf of the respondents on the ground that in the light of Resolution No. 630, dated 21.01.2010, the pay of non-gazetted employees has to be fixed under the revised pay-scale and pay fixation along with the service-book of the concerned employee had to be sent to the District Accounts Officer, Darbhanga for verification. There was no confirmation of the records of the petitioner and that only later in the day, it was found that the petitioner had not passed the departmental accounts examination.

It has further been submitted on behalf of the State that the requirement of passing the departmental accounts examination is by virtue of Rule 157 of Bihar Boards Miscellaneous Rules. The scheme of time-bound promotion has now been withdrawn and has been replaced by the A.C.P. Scheme since 1999.



However, in the supplementary counter affidavit, the State has taken note of the judgement delivered by the Supreme Court in the case of ***Kusheshwar Nath Pandey Vrs. The State of Bihar, reported in (2013) 12 SCC 580***, in which one of the employees, who was granted time-bound promotion, was divested of the aforesaid benefit after about 20 years. The Supreme Court took note of the fact that there was no fault on the part of the employee and after such a long lapse of time, the benefits could not have been withdrawn and no recovery could have been effected.

Pursuant to the aforesaid judgement of the Supreme Court, several Benches of this Court have set aside such orders of the respondents, whereby the time-bound promotion once granted was withdrawn after a lapse of long time on technical ground of an employee not having passed the departmental accounts examination.

For the aforesaid reason, the order impugned dated 20.11.2010 is set aside.

The matter is remitted back to the concerned authority for passing a fresh order in accordance with law



after taking into account that the petitioner has passed the said departmental accounts examination in the meanwhile and that he has superannuated and would be put to unusual hardship with the continuance of the aforesaid order. The concerned authority, on receipt of a copy of this order, shall pass necessary direction rectifying the pensionary and all other consequential benefits of the petitioner within a period of six weeks.

The petition is disposed off with aforesaid observation/direction.

(Ashutosh Kumar, J)

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