

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4187 of 2001

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Jagdish Yadav, son of late Chhathu Lal Yadav, resident of Village Belahi
Bhawanipur, P.S. Laukhi, District Madhubani

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Water Resources Department, Sinchai Bhawan, Patna
2. The Additional Secretary-cum-Additional Commissioner, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna
3. The Engineer-in-Chief, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna
4. The Chief Engineer (Mechanical), Water Resources Department, Old Secretariat, Barrack, Patna]
5. The Executive Engineer (Mechanical), Mechanical Division No.II, Water Resources Department, Birpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. KISHORE KUMAR THAKUR

For the State : Mr.Ashutosh Ranjan pandey, AAG 15

Mr. Priyadarshi Matri Sharan, AC to AAG 15

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 20-02-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present writ petition, the petitioner is challenging
the order dated 30.8.2000 whereby and whereunder the Gratuity
and General and Group Insurance amount has been prepared on
the basis of his basic pay of Phone Clerk both vide letter dated
30.8.2000 (Annexures 1 and 2). The petitioner has further
challenged Memo No.1379 dated 27.8.1996, the respondent,
placing reliance on the orders passed in C.W.J.C, No.8511 of
1995 and C.W.J. C. No. 8874 of 1995 has withdrawn all the



previous promotions and enhancement of the scale time to time granted in favour of the petitioner and thereby he has been brought to the post of Phone Clerk i.e. initial post and also decided to recover the excess amount paid in past.

The learned counsel for the petitioner submits that no recovery has been affected of purported excess amount paid to him but certainly payment of other retiral dues have been reduced which the petitioner is entitled too.

The short facts of the case is that the petitionier was appointed as Phone Clerk on 1.2.1960 which is a Class III post but was directed to do the duty of work of Steam-man which was Class IV employee which the petitioner protested that he was appointed in Class III post how he could he asked to discharge the duty of Class IV employee, whereafter he was adjusted and posted on the post of Welder Grade II with effect from 1.4.1961 in the pay scale of Rs.120- 150 and later on the petitioner was promoted to the next higher grade of Welder Grade I in the scale of pay of Rs.120-200 with effect from 29.3.1966. While he was discharging the duty of Welder Grade I some of the employees alike petitioner, appointed along with the petitioner, were transferred to Tenughat Project, were promoted to the post of Supervisor Grade II. When the petitioner could know his counter part at Tenughat Project having been made as



Supervisor Grade II, the petitioner raised protest to the respondent and in pursuance thereof the petitioner was also extended the same relief, thereby he was promoted to the post of Supervisor Grade II with effect from 3.3.1981 (Annexure-4) but it has been made conditional that the benefit of the promoted post of Supervisor Grade II would be extended provided adjustment of five advance increments extended to him. Accordingly the petitioner was promoted to the up-graded post of Supervisor Grade II as well as the petitioner was brought to the regular establishment vide letter dated 5.9.1981 and 20.8.1985 (Annexures 5 and 6).

While discharging the duty of Supervisor, the respondent authority cancelled the said benefit granted to the petitioner which compelled him to challenge the same in C.W.J.C. No.3452 of 1984. While writ petition was pending, the Additional Secretary, Irrigation Department vide letter dated 30.3. 1982(Annexure-7) withdrawn the letters dated 27.5.1981 and 7.9.1981 by which the promotion to the post of Supervisor Grade to the petitioner was withdrawn and his position to the post of Supervisor Grade II was restored.

In that view of the matter, the petitioner was allowed to withdraw the writ petition which the petitioner has ultimately withdrawn.



While he was discharging the duty of Supervisor Grade II other similarly situated co-employee who were transferred to Tenughat Project but none were relieved on account of their necessity at the original place, later on, the petitioner along with other co-employees, similarly situated, were granted promotion from the post of Supervisor Grade II to Supervisor Grade I but the petitioner was not extended the same benefit of promotion to the post of Supervisor Grade I. When the petitioner was deprived of the said promotion of Supervisor Grade I, he approached to the Administrative Tribunal in Service Case No.42 of 1983 which was dismissed vide order dated 4.9.1986 which the petitioner challenged before this Court in C.W.J.C. N.5230 of 1986. While writ petition was pending respondent granted the benefit of promotion to the post of Supervisor Grade I vide order dated 15.3.1990 (Annexure 9/10) subject to the condition of withdrawal of writ petition, accordingly, the filing of the writ petition had served its purposes, accordingly the writ petition was withdrawn. Even the petitioner was granted the first and second time bound promotion in the scale of Supervisor Grade I and ultimately petitioner superannuated from service on 21.7.2000, but while in service on account of direction issued in C.W.J.C. No.8511 of 1995 and C.W.J.C. No.8874 of 1995 a show cause notice was served to the



petitioner why benefit granted to him should not be withdrawn as was wrongly given, as has been held by this Court in the aforesaid writ petitions that no promotional benefit can be extended while discharging the duty in the work charge establishment. The petitioner filed his objection which the Chief Engineer with his comment vide memo no., 2788 dated 22.8.2000 (Annexure-13) referred the matter to the Deputy Secretary, Water Resources Department for taking appropriate decision, ultimately vide memo no.1379 order dated 27.8.1996 (Annexure-D)) the Chief Engineer, Water Resources Department has recorded that promotion granted to the petitioner while discharging the duty of work charge establishment is completely not sustainable in law and all promotions which was granted to petitioner having been cancelled led to consequential result of wrong fixation of retrial dues (Annexures 1 and 2 of writ petition) which are under challenge before this Court.

Learned counsel for the petitioner submits that the petitioner had discharged the duty at different stages, was granted promotion when the same was withdrawn which the petitioner had challenged, the Government itself had withdrawn the cancellation of promotion of Supervisor Grade II and reinstated to the post of Supervisor Grade II and further



submitted that when other similarly situated persons were granted the benefit of Supervisor Grade I on refusal to extend the same benefit the petitioner approached to the Tribunal and lastly to this Court, but during pendency of the writ petition, the benefit of Supervisor Grade I was extended to him. So no stage the petitioner has played any fraud or misrepresentation but has been granted benefit of promotion as other similarly situated persons were granted the benefit. So withdrawal of entire benefit of promotion granted to the petitioner is not sustainable in law, inasmuch as the petitioner further submitted that basis for passing impugned orders are outcome of decision of C.W.J.C. No.8515 of 1995 and C.W.J.C. No.8874 of 1995 wherein this Court has held that during sustenance in the work charge establishment employee cannot be extended the benefit of promotion as no concept of promotion has been envisaged in the work charge establishment.

Identical issue came for consideration before this Court in L.P.A. 836 of 1997 (Koshi Project Worker Association V. State of Bihar) and L.P.A. No.710 of 2004 (State of Bihar v. Sangam Lal Yadav). In both the cases identical issue was raised of granting promotion to the petitioner while discharging duty as work charge establishment the Division Bench placed reliance on the provision of PWD Code and held that if a person has



remained in work charge establishment for more than one year the fiction will be that the persons have been made permanent. In such circumstances, the ground for withdrawal of promotion to the next higher grade does not survive as it will be treated that person continued in service for one year would attend the status of permanent employee and promotion granted will be treated to be legal and proper promotion and that order of LPA Bench was challenged before Hon'ble Supreme Court in Civil Appeal 783 of 2011 and the same has been dismissed accordingly.

The State has tried to justify impugned orders, it has been submitted that the action has been taken in pursuance of the order passed by the Single Judge where this Court has opined that no promotion can be granted while discharging the duty as in work charge establishment. Any order passed by the Division Bench at the later stage cannot be the basis declared action of the State wrong.

Having considered the rival contentions of the parties, it is an admitted fact that the petitioner had entered into the service as Phone Clerk in the work charge establishment and he remained quite long period discharging the duty in the work charge establishment and later on he was regularized in service



and made permanent employee of the State and later on he was granted the promotion to the next higher grade by the department, manner the orders of promotion granted to the petitioner have been cancelled itself gives clear picture that it was not on the basis of any fraud, misrepresentation or any malady but it was conscious decision of the State and its Officers in granting promotion from time to time. The view taken in judgment is the basis for passing the impugned order having been turned turtle in different cases in which an identical issue was raised .

In such view of the matter, this Court is of the view that when the petitioner was granted promotion from time to time on the basis of others were given the same, and the view taken in the order which was the cause for withdrawal of the benefit is no longer in existence as the order passed by this Court in C.W.J.C. No.5230 of 1986 and other cases have been now overruled by the Division Bench.

In such view of the matter, the impugned order dated 27.8.1996 (Annexure-3) passed by the authority is quashed to the extent that the petitioner is entitled to the retrial dues in terms of scale of pay of Supervisor Grade I and it will not be treated that any time benefit which was granted by way of



promotion was ever withdrawn and all previous orders dated 30.8.2000 (Annexures 1 and 2) are quashed and position of the petitioner is reinstated.

Accordingly, this Court directs the concerned authority to grant arrear of all retrial dues within a period of three months from the date of receipt/production of a copy of this order.

With the aforesaid observation and direction this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.3.2018
Transmission Date	NA

