

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4666 of 2012

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Rabindra Nath Ghosh Son Of Late Navin Chandra Ghosh Resident Of H/O
Late J.L. Tatak, Mashan Ghat Road, Gaya, P.S. + District - Gaya; (RETD.)
Assistant Professor, Department Of Mathematics, Government Polytechnic
College, Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Secretary, Department Of Science & Technology, Government Of Bihar, Patna
2. The Director, Department Of Finance, Government Of Bihar, Patna
3. The Principal, Government Polytechnic College, Gaya
4. The Accountant General, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra
For the Respondent/s : Mr. P.K. Verma (Aag5)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 17-09-2018

Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

2. Petitioner is aggrieved by the order contained in
Annexure-4 whereby the representation filed by the petitioner
for grant of promotion under Career Advancement Scheme has
been rejected.

3. Reason assigned for rejection of claim of
petitioner in the matter of grant of promotion under Career
Advancement Scheme is that only Lecturer appointed on the
regular basis can be considered and on that ground the claim of
the petitioner for grant of promotion was rejected. The petitioner



was initially appointed as Demonstrator. He was granted promotion as Lecturer/Assistant Professor (Mathematics) in Government Polytechnic College, Gaya.

4. The petitioner retired on 30.6.2000. He has earlier approached in this Court in C.W.J.C. No. 9266 of 2008 for grant of promotion under Career Advancement Scheme. The C.W.J.C. No. 9266 of 2008 was disposed of vide order dated 17.9.2010. The relevant part of the order of this Court dated 17.9.2010 is quoted hereinbelow:-

1. Petitioner must file a fresh copy of representation (annexed as Annexure-2 with the writ application) or a fresh representation before the concerned respondent within one month from today along with a copy of this order. The representation must contain all the claims of the petitioner distinctly and in separate paragraphs and must accompany documents connected with his service history and other documents/circulars/orders etc. on the basis of which petitioner asserts his right to get the claims.

2. The concerned respondent, upon receipt of the representation, with a copy of this order, shall immediately take it into consideration, and, if necessary, after hearing the petitioner in person or through representative, as he may feel proper, shall pass final orders within three



months of the receipt of the same. In case the concerned respondent is not the competent authority to pass final orders in the matter, he shall refer the matter within two months with his detailed consideration and definite opinion in respect of each claim to the competent authority for passing final orders in the matter, who, after hearing anyone and after examining any records as he may deem necessary, shall pass final orders in the matter within one month from the date of receipt of reference from the concerned respondent.

3. The final order of the concerned respondent or of competent authority or the reference order of the concerned respondent sent to the competent authority must show that (I) each and every claim of the petitioner has been noticed, (ii) each and every claim has been separately considered and a definite finding/opinion has been arrived at in respect of each and every claim with regard to its admissibility or inadmissibility and (iii) all the relevant laws/circulars/orders etc. in respect of each and every claim have been taken into consideration for its acceptance or rejection by the said final order.

4. All consequential orders, in respect of the admitted claims, must also be issued along with the passing of the final order, and payments of any consequential monetary benefits must be



ensured within one month of the passing of the said final order and issue of the said consequential orders.

5. The said final order must be served upon/communicated to the petitioner within the said three months and it must clearly mention the grounds and findings for rejecting any claim with reference to specific law/circular/order for coming to that finding.

It goes without saying that this Court has not gone into the claim of the petitioner on merits which shall be considered and decided by the respondents within the time fixed as above and strictly in accordance with law.

5. After the order of this Court in C.W.J.C. No. 9266 of 2008, the Joint Secretary, Science and Technology Department has passed reason order. Referring to the notification of the department, the Joint Secretary has noted that petitioner was initially appointed as Demonstrator. The Joint Secretary has referred to the AICTE norms which reads as follows:-

“Every Lecturer will be placed in a senior scale of Rs. 3000-5000 if he has completed eight years of service after regular appointment with relaxation in service as provided in para-11 above. Participation in two refresher courses or summer institutes each continuing education



programme approved by the All India Council for Technology Education, and consistently satisfactory performance appraisal reports. All Lecturers in the existing scale of Rs. 700-1600 who have completed 8 years of service on 01.01.1986, will be placed through a process of screening/selection in the scale of Rs. 3000-5000/-

6. Referring to the aforesaid norms the Joint Secretary held out that the promotion under Career Advancement Scheme is only available to the regularly appointed Lecturer and it is not available to those promoted as Lecturer from Demonstrator.

7. The petitioner was initially appointed as Demonstrator and subsequently he was granted personal promotion. The expression regular appointment used by the Joint Secretary to defeat the claim of the petitioner is totally misconceived. The expression regular appointment is only mean that the appointment should be made after following the procedure prescribed under the Rules. Once the respondents have granted promotion to the petitioner under personal promotion as Lecturer/Assistant Professor they cannot dispute the promotion and say the promotion irregular to defeat the claim of the petitioner for promotion under Career Advancement



Scheme.

8. It is to be seen here whether individual was appointed by way of direct recruitment or promotion on regular basis or not. Once, the appointment on promotion was made in accordance with Rules, the petitioner is entitled to grant of promotion under Career Advancement Scheme.

9. Considering the aforesaid, the Court does not approve the reason order contained in Annexure-4 dated 3.8.2011. The order contained in Annexure-4 is quashed.

10. The respondents are directed to consider afresh the case of the petitioner for grant of senior scale on completion of four years as Lecturer/Assistant Professor and work out the pensionary benefit including fixation of pension and post-retiral benefit after decision afresh for grant of promotion within a maximum period of four months from the date of receipt/production of a copy of this order.

11. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.09.2018
Transmission Date	

