IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.337 of 2016

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Daya Nand Jha Son of Late Jagdish Jha Resident of village and P.O. Jagatpur (Baria Tola) , P.S. Rohika, District - Madhubani

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Government of Bihar, Patna
2. The Chief Engineer, Road Construction Department, Govt. of Bihar, Patna
3. The Superintending Engineer, Road Construction Department, Road Circle, Darbhanga
4. The Executive Engineer, Road Construction Department, Road Division, Madhubani
5. Inquiring Officer - Cum - Executive Engineer, Road Construction Department, Road Division, Darbhanga

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Adv.

For the Respondent/s : Mr. Sunil Kumar Mandal, SC-3
Mr. Bipin Kumar, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-02-2018

Heard Mr. Durga Nand Jha, learned counsel for the petitioner and Mr. Sunil Kumar Mandal, learned SC-3 for the State.

The case in hand is another example of litigation generated by the State and its authorities.

The petitioner is aggrieved by the order bearing Memo No. 300 dated 26.3.2014 of the Superintending Engineer, Road Construction Department, Road Circle, Darbhanga, impugned at Annexure 2, whereby the time bound promotion granted to the petitioner almost a quarter of century ago on 22.9.1990 is sought to be cancelled on grounds that he did not pass the Accounts Examination.

The order also directs for recovery of the amount drawn by the petitioner on grant of time bound promotion and is followed by the consequential order bearing Memo No. 1939 dated 11.12.2014 of the Executive Engineer, Road Construction Department, Road Division, Madhubani, whereby while sanctioning payment of the unutilized leave salary to the petitioner to the tune of Rs.4,07,800/-, he has deducted a sum of Rs.1,83,389/- stated to be the excess amount drawn by the petitioner by virtue of such promotion and the balance amount of Rs.2,24,411/- is directed to be paid to him. A copy of such order is impugned at Annexure 1.

The issue in hand is a classic example of a mechanical discharge by the respondent authority. The petitioner was appointed as an Accounts Clerk vide order bearing Memo No. 3283 dated 12.9.1980. He appeared in the Hindi Noting and Drafting Examination held on 22.8.1982 and passed the same. He also appeared in the Accounts Examination held on 8th and 9th August, 1982 and also was declared pass. The result of the Accounts Examination was communicated by the Member Secretary, Revenue Board, to the concerned authorities through letter dated 18.12.1982 enclosing the list of successful candidates and a copy of the same is Annexure 4 to the writ petition. The name of the petitioner appears at serial no.13 and it is clearly mentioned that while he passed the 1st

paper at the preliminary stage, he passed his second paper at the final stage. Such is noting made in his service book, the relevant extract of which is enclosed at Annexure 4/A to the writ petition.

Since the petitioner had not been granted any promotion in his career that the Superintending Engineer, Darbhanga vide order No. 474 dated 13.3.1999 allowed the first time bound promotion to the petitioner with effect from 22.9.1990 in the scale of Rs.1400-2600 and vide Memo No. 460 dated 25.5.1999 the pay of the petitioner was fixed at Rs.1950/- as on 22.9.1990. The petitioner superannuated with effect from 28.2.2014. It is on the date of his superannuation that the petitioner was served with a charge memo bearing Memo No. 211 dated 28.2.2014 charging him of misplacing the results of the Accounts Examination.

The said proceeding was converted in a proceeding under Rule 43(b) of the Bihar Pension Rules vide Annexure 11. The enquiry report is at Annexure 15 and the petitioner was exonerated of the charges. The final order is enclosed at Annexure 3 and the Superintending Engineer agreeing with the report of the Enquiry Officer exonerated the petitioner of the charges and dropped the proceedings regarding misplacing the results of the Accounts Examination but endorsed his earlier order bearing Memo No.300 dated 26.3.2014, whereby the petitioner was charged of securing time bound promotion without passing the Accounts Examination impugned herein at Annexure 2. Feeling aggrieved he is before this Court.

Mr. Jha, learned counsel for the petitioner, while arguing that an incumbent is not required to pass any examination to secure time bound promotion submits that the present case is at a worse footing, since the petitioner has not only passed the Hindi Noting and Drafting Examination but has also passed the Accounts Examination, the result of which is at Annexure 4 and the relevant entries are present in the service book as well, the extract of which is enclosed at Annexure 4/A. He thus submits that even though the service book clearly records that the petitioner has passed his Hindi Noting and Drafting Examination as well as the Accounts Examination, yet on a complete misconception and misreading of the requirement that the impugned orders have been passed.

The argument has been contested by Mr. Mandal, learned SC-3, and who relies upon Rule 157 of the Bihar Board Miscellaneous Rules as a mandatory precondition for grant of time bound promotion and since according to the respondents the petitioner had not cleared the said examination that the impugned order was passed. It is the submission of Mr. Mandal in reference to the counter affidavit that since the petitioner merely passed the 1st paper at preliminary level and 2nd paper at final level he should have appeared in the 1st paper at final level for grant of such promotion.

I have heard learned counsel for the parties and have perused the records.

The requirement of passing a departmental Hindi Noting and Drafting Examination or Accounts Examination for the purpose of grant of time bound promotion has been a subject matter of number of proceedings before this Court and the issue stands well settled. The case of the petitioner is on a worst footing for even after having passing the Hindi Noting and Drafting Examination as well as the Accounts Examination way back in the year 1982 as confirmed from Annexure 4 and Annexure 4/A to the writ petition that the respondents after almost a quarter of century are of a opinion that the time bound promotion was wrongly granted to the petitioner from 22.9.1990 vide order of the Superintending Engineer vide order bearing Memo No. 474 dated 13.3.1999.

As I have said the legal position on the issue stands well settled and for the purpose of grant of time bound promotion, there is no requirement of passing any examination for it is not a promotion in a strict sense rather is a grant of scale to an incumbent who has not been able to secure a promotion in his service career. The grant of time bound promotion thus is not a test of either eligibility or the ability to occupy a higher post rather it is in a situation where such avenue is not forthcoming that such a privilege has been granted under the Scheme enforced by the department themselves. But as I have observed, the situation is even worse here. The petitioner has passed the Hindi Noting and Drafting Examination as well as his Accounts Examination and yet he is visited with such an impugned action.

The reason for such impugned action is found in the opinion of the Superintending Engineer as present in the order dated 26.3.2014 impugned at Annexure 2, which is that the petitioner has allegedly failed to pass the Accounts Examination and which he was well aware above.

In the words of the respondents present at paragraph 10 of the counter affidavit, the petitioner passed his 1st paper of the Accounts Examination at the preliminary level and the 2nd paper at the final level. According to the respondents, he should pass both the papers at the final level. Although such a stand is taken but there is nothing on record of the counter affidavit or the Board Miscellaneous Rules to support such requirement that an incumbent had to pass both the papers in the Accounts Examination at final level. The distinction between passing an examination at preliminary level and final level has been explained at Rule 157 of the Bihar Board Miscellaneous

Rules and such of the examinees who obtain 40 to 60 percent marks in any paper are said to have passed the examination at the preliminary level and if he has secured more than 60% then he is said to have passed the examination at final level. However, in either situation the examinee passes the Accounts Examination.

Now neither the scheme of time bound promotion mandates that an incumbent has to pass the Accounts Examination at the final level for such grant nor does Rule 157 prescribes that those passing the Accounts Examination at preliminary level would not be entitled to the facility of time bound promotion. Clause (j) attached to Rule 157(3) makes the matter clear when it provides that such of the candidates who has not passed the preliminary level examination will neither be confirmed nor be able to cross the efficiency bar while whose who has not passed the final examination will not be permitted the selection grade. In other words, whereas for the purpose of confirmation and crossing the efficiency bar an incumbent has to pass the preliminary level, for the purpose of regular promotion or grant of selection grade, he is required to pass the final level examination. The scheme of time bound promotion falls in neither of the two categories for it neither amounts to crossing the efficiency bar nor is a grant of selection grade. Rule 157 thus clarifies the issue of passing the Accounts Examination at a preliminary level or at the final level and in so far as the issue of grant of time bound promotion is concerned, the rule nowhere stipulates that the Government employee concerned has to pass the papers at final level.

In such view of the matter, where according to the respondents themselves an incumbent is simply required to pass the accounts examination which admittedly the petitioner has passed even if at the preliminary level so far as paper 1st is concerned and at final level in so far as paper 2nd is concerned, as recorded in his service book, he qualifies for such benefits.

In my opinion, the premise drawn is dehors the materials on record. The entry in the service book of the petitioner is obviously not the work of the petitioner but by a superior Officer and thus, the respondents are well aware of the same.

In the undisputed circumstances which finds support from even the statutory provision I am satisfied that the petitioner has been unnecessarily dragged into a controversy after a lapse of more than 24 years and it is for this reason that I have observed that this is an unwarranted litigation generated by the State.

For the reasons aforementioned, the order bearing Memo No.300 dated 26.3.2014 of the Superintending Engineer, Road Construction Department, Road Circle, Darbhanga, impugned at Annexure 2, together with the order bearing Memo No. 1939 dated

11.12.2014 of the Executive Engineer, Road Construction Department, Road Division, Madhubani to the extent it orders for recovery of Rs.1,83,389/- from unutilized leave salary admissible to the petitioner are quashed and set aside. The respondents including the Superintending Engineer, Road Construction Department, Road Circle, Darbhanga as well as Executive Engineer, Road Construction Department, Road Division, Madhubani are accordingly directed to refund the recovered amount to the petitioner forthwith within a period of three months from the date of receipt/ production of a copy of this order, failing which the amount so recovered would carry interest at the rate of 7% per annum payable to the petitioner from the date of recovery i.e. 11.12.2014 till the same is paid.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.02.2018
Transmission Date	NA