

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3210 of 2017

Nazimuddin son of Late Gulam Moinuddin resident of vill. - Chatarghat, P.S.
Chandauti, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Additional Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief, Water Resources Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anand Kumar Ojha Ms. Roona
For the State	:	Mr. Anjani Kumar, AAG-4 Mr. Sanjay Kumar, A.C. to AAG-4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 18-05-2018

The challenge of the petitioner is to the order dated 01.09.2015 passed by the Water Resources Department, whereby and whereunder the petitioner has been found entitled to grant of 1st A.C.P. with effect from 02.02.2002 and as far as the 2nd A.C.P. is concerned, it has been stated that the scheme of A.C.P. has been cancelled and instead M.A.C.P. Scheme has been implemented, hence the petitioner is not entitled to the benefits of 2nd A.C.P. In the impugned order dated 01.09.2015, it has been indicated that since by an order dated 17.02.1999, punishment of withholding of two increments with non-cumulative effect has been inflicted on the petitioner herein, 1st A.C.P. is admissible to the petitioner only after the effect of the said punishment order comes to an end i.e. with effect from 02.02.2002.



The learned counsel for the petitioner, at the outset, has referred to an order dated 25.07.2014 passed in CWJC No. 8236 of 2013, i.e. in the case of the petitioner himself, relevant paragraphs whereof are reproduced hereinbelow:-

“The case of the petitioner, which has not been controverted by the respondent authorities in their counter affidavit, is that the petitioner became entitled to the grant of first benefit under A.C.P. on 09.08.1999 and the second benefit under A.C.P. on 02.02.2003. It also stands admitted that on these two dates there was no proceeding pending against the petitioner or he was in any manner disqualified to get the aforesaid benefits under the A.C.P. It further transpires from the records that it is by the order dated 23.10.2008 that the respondents decided to initiate departmental proceeding against the petitioner as well as one Assistant Engineer Sri Kumar Birendra and another being Executive Engineer Sri Jamaluddin. It further also transpires that by order dated 15.09.2008 the memo of charges was issued. However, the grievance of the petitioner is that although the Assistant Engineer Sri Kumar Birendra and the Executive Engineer Sri Jamaluddin have been granted promotion by order dated 09.06.2008 and 21.05.2009 respectively the case of the



petitioner has been treated differently in not allowing the grant of the two benefits under the A.C.P. due to pendency of the departmental proceeding.

After considering the facts and circumstances of the case and the submissions of the learned counsel for the parties, it is manifest that on the two dates i.e. 09.08.1999 and 02.02.2003 there was no proceeding pending against the petitioner and there was also no other disqualification disentitling him from getting the two benefits under the A.C.P. There is no reason assigned by the respondent authority as to why the petitioner was not granted the benefits of the two A.C.P. which should have been granted immediately after he became entitled to the same. After the order/direction of this Court on 16.03.2009 (Annexure-7) the respondent authority has come out with the impugned order deciding to defer the consideration of the case of the petitioner for grant of the two benefits under the A.C.P. on the ground of pendency of the departmental proceeding against him. In the counter affidavit, some explanations have been tried to be given by the respondent authorities with regard to the grant of promotion to the Assistant Engineer Sri Kumar Birendra and Executive Engineer Sri Jamaluddin against whom also the proceeding has been initiated



and is still pending but those explanations are not convincing and sufficient to distinguish the case of the petitioner and deny him the same.

It is, therefore, apparent that on the dates when the claim of the petitioner for grant of the benefits under the A.C.P. had matured there was admittedly no disqualification to deny him the same.

Therefore, in view of the admitted position that the petitioner was otherwise entitled to the grant of the two benefits under the A.C.P. on 09.08.1999 and 02.02.2003, the impugned decision by the respondent authority deciding to defer the same due to pendency of a departmental proceeding against the petitioner cannot be upheld. In addition, this Court does not find that the authorities have come out with sufficient ground to discriminate the case of the petitioner while granting the similar relief to the other two employees against whom also the departmental proceeding has been initiated along with the petitioner.

For the aforesaid reasons and discussions, this writ petition is allowed and the matter is remitted back to the respondent-Principal Secretary, Water Resources Department, Government of Bihar to pass fresh order in accordance with law with regard to the grant of the two benefits under the A.C.P. to the petitioner. If the respondent authority decides



to grant the aforesaid relief to the petitioner then it shall also consider entitlement of the petitioner for the consequential benefits. The consideration, as directed, must be bestowed within four months from the date of receipt/production of this order.”

Thus in nutshell, the contention of the learned counsel for the petitioner is that this Court by the aforesaid judgment dated 25.07.2014, had come to the finding that the petitioner was entitled to be granted the benefit of 1st A.C.P. with effect from 09.08.1999 and the second A.C.P. with effect from 02.02.2003 and the respondents had at that moment of time admitted before this Court that only one departmental proceeding had been initiated by an order dated 23.10.2008, as against the petitioner herein and other persons i.e. the Assistant Engineer and the Executive Engineer, however, the said two other persons have been granted promotion by an order dated 09.6.2008 and 21.05.2009 respectively but the case of the petitioner has been treated differently and moreover this Court has already come to a finding that as on the two dates i.e. 09.08.1999 and 02.02.2003, the dates on which the petitioner had become eligible for being granted the benefit of 1st A.C.P. and 2nd A.C.P., no proceeding was pending as against the petitioner herein, hence he was entitled to be granted the



benefits of 1st and 2nd A.C.P. Therefore, the case of the petitioner is that the impugned order dated 01.09.2015 has been passed in teeth of the judgment of this Court dated 25.07.2014 passed in CWJC No. 8236 of 2013, which amounts to overreaching the orders of this Court and calls for initiation of contempt proceedings against the official who has passed the impugned order dated 01.09.2015. It is further the submission of the learned counsel for the petitioner that the ground being now taken by the respondents in denying the benefits of the 1st A.C.P. and 2nd A.C.P., i.e. the order dated 17.02.1999 by which punishment of withholding of two increments with non-cumulative effect has been inflicted upon the petitioner herein, is nonest in the eyes of law inasmuch as firstly the said order has neither been issued to the petitioner herein nor communicated to the petitioner herein, much less having been made effective which is clear from the fact that no increment of the petitioner was ever withheld during his entire career. It is further submitted that even the respondents have failed to produce any proof of communicating the order of punishment dated 17.02.1999 to the petitioner herein and in fact upon the petitioner having sought information under the R.T.I. from the respondents, a letter dated 04.06.2014 was sent by the



Additional Secretary, Establishment (Management), Water Resources Department, Government of Bihar stating that the benefits of A.C.P. has not been granted on account of pendency of a departmental proceeding which was initiated on 15.09.2008. Lastly, it has been submitted that the law is very clear on the subject matter as has been held in a catena of cases, one of them being a landmark Judgment reported in **1963 AIR 395 (Bachhittar Singh vs. The State of Punjab) (SC)**, to contend that unless and until an order is communicated to a person who would be adversely affected by that order, neither the State nor the said person will be bound by such order. It is equally a trite law that non-communication of an adverse remark / punishment cannot be used against the incumbent to deny him the benefits to which he would have been entitled otherwise.

The other legal submission made on behalf of the petitioner is that the impugned order dated 01.09.2015 is barred by the principles of res judicata in as much as the High Court has already dealt with the said issue and the matter stands closed as far as the the respondents are concerned in light of the earlier proceeding i.e. the one pertaining to CWJC No. 8236 of 2013, wherein this Court had pronounced judgment on



25.07.2014 and the same was never challenged by the respondents. Reference in this connection be had to a judgment reported in (2013) 9 SCC 245 (*Ravindra Singh vs. Sukhbir Singh & Ors.*). Another judgment which has been relied upon is a judgment reported in (1997) 2 SCC 552 (*Gorie Gouri Naidu (Minor) & Anr. vs. Thandrothu Bodemma & Ors.*), wherein also the Hon'ble Apex Court has held that it is a well settled law that even if erroneous, an inter party judgment binds the party if the court of competent jurisdiction has decided the lis.

Per contra, the learned counsel for the respondents has submitted that the order dated 01.09.2015 does not suffer from any illegality inasmuch as punishment order dated 17.02.1999 had been passed whereby and whereunder it had been directed to withhold two increments of the petitioner with non-cumulative effect, hence after the effect of the said order had come to an end i.e. on 02.02.2002, the petitioner had become eligible for grant of the benefit of first A.C.P. However, the learned counsel for the respondents has failed to either show that the said order dated 17.02.1999 has been issued and served on the petitioner or even communicated to him. The said order dated 17.02.1999, itself clearly goes to demonstrate that the purported order of punishment dated 17.02.1999 has never seen



the light of the day, hence the same cannot be an impediment in granting the benefits of the 1st and 2nd A.C.P. to the petitioner herein. The learned counsel for the respondents has also failed to justify the order dated 01.09.2015, the same being in teeth of the judgment of this Court dated 25.07.2004 passed in the case of the petitioner herein i.e. in CWJC No. 8236 of 2013.

Having heard the learned counsel for the parties and gone through the materials on record, this Court is of the opinion that this Court has already decided, by a judgment dated 25.07.2014 passed in CWJC No. 8236 of 2013, that on the date of entitlement of the petitioner for 1st and 2nd A.C.P. as on 09.08.1999 and 02.02.2003, there was no proceeding pending against the petitioner herein, hence there is no impediment in grant of the benefits of 1st A.C.P. and 2nd A.C.P.

That being the position, the aforesaid judgment dated 25.07.2014, being an inter party judgment, fully binds the respondents and the petitioner herein, hence the respondents could not have passed the impugned order dated 01.09.2015 in the teeth of and in defiance of the judgment dated 25.07.2014. Another aspect of the matter is that the basis for issuance of the order dated 01.09.2015, whereby and whereunder the petitioner



has been denied the benefits of 1st A.C.P. with effect from 09.08.1999 and 2nd A.C.P. with effect from 02.02.2003, is the punishment order dated 17.02.1999 which, this Court finds is a non-existent order and has never seen the light of the day, as is apparent from the discussions made herein above in the preceding paragraphs. Yet another aspect of the matter is that the purported order of punishment dated 17.02.1999 was neither brought to the notice of this Court in the earlier round of litigation nor has been shown to have been issued to the petitioner herein nor has ever been served on the petitioner herein, hence the same is of no worth to the respondents and is fit to be ignored for all purposes. Lastly, this Court finds that the respondents themselves have admitted, in their reply made to the R.T.I. application of the petitioner herein, that the benefits of the A.C.P. has not been granted to the petitioner on account of a departmental proceeding initiated against the petitioner on 15.09.2008, hence it is clear that no order of punishment dated 17.02.1999 exists and the same has been in an illegal and deliberate manner made a front to deny the benefit to the petitioner herein which is nothing but a mischievous activity. One another aspect of the matter is that though it is an admitted fact that the purported order dated 17.02.1999 was never ever



served or communicated to the petitioner herein but the same was also not acted upon inasmuch as till date none of the increments of the petitioner herein has been withheld. Moreover, the persons similarly situated to the petitioners herein have already been granted the aforesaid benefits, as claimed by the petitioner herein.

For the reasons mentioned hereinabove, the order dated 01.09.2015, as contained in Memo No. 4237 (Annexure-3 to the writ petition), is quashed and the respondents are directed to grant the benefits of 1st and 2nd A.C.P. to the petitioner herein with effect from 09.08.1999 and 02.02.2003 as has also been conclusively adjudicated by this Court in its earlier judgment dated 25.07.2014 passed in CWJC No. 8236 of 2015. It is further directed that the consequential benefits be paid to the petitioner herein within a period of eight weeks from today, failing which penal consequences shall befall on the concerned respondent(s).

The writ petition is allowed.

S.Sb/-

(Mohit Kumar Shah, J)

AFR/NAFR	
CAV DATE	23.04.2018
Uploading Date	
Transmission Date	

