

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7245 of 2017

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Shankar Bhagwan Prasad, son of Late Moti Ram, Resident of Village- Chandi,
Post- Chandi, P.S.- Garhani, District- Bhojpur (Ara).

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
4. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Flood Control and Water Drainage, Water Resource Department, Government of Bihar, Sinchai Bhawan, Patna.
5. Engineer-in-Chief, Headquarter, Water Resource Department, Bihar, Sinchai Bhawan, Patna.
6. The Joint Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
7. The Joint Secretary (Management), Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
8. The Deputy Secretary (Management), Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
9. The Under Secretary (Management), Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
10. The Principal Secretary, Finance Department, Government of Bihar, Old Secretariat, Patna.
11. The Secretary (Expenditure), Finance Department, Government of Bihar, Old Secretariat, Patna.
12. Accountant General (A & E), Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ratnesh Kumar Singh
Mr. Pratyush Pratap Singh
For State : Mr. Kunal Tiwary AC to GA 2
For Respondent No.12 : Mr. Jitender Kumar Roy, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-07-2018

Heard the parties.

In the present case, the petitioner is challenging the notification
vide memo no. 490 dated 27.03.2017 (Annexure-18) issued under the



signature of the Under Secretary, (Management), Water Resources, Department, Government of Bihar, Patna where by and where under the Water Resources Department, Government of Bihar, Patna deleted the due date of promotion mentioned in column 4 of the notification no. 2525 dated 17.08.2005 in order to debar the petitioner from getting retrospective promotion alongwith financial benefit from the due date i.e. 01.01.1998, whereas Suresh Paswan has been given promotion with effect from 01.01.1998 along with financial benefit.

The petitioner was appointed as Junior Engineer in the Water Resources Department on 22.07.1989 vide Government notification no. 6579. As per the policy of the State Government the due date of promotion of the petitioner as Assistant Engineer was/is from 01.01.1998. Though similarly situated persons were given promotion to the post of Assistant Engineer but petitioner was not given the promotion to the next grade of Assistant Engineer. As the State was not giving promotion to the Junior Engineer to the post of Assistant Engineer, the Subordinate Engineering Association approached this Court vide CWJC No. 2803 of 1999 in which the prayer was made to issue necessary order declaring the number of posts available for quota of Junior Engineer for their promotion to the next higher post of Assistant Engineer in the Bihar Engineering Service Class-II. The State filed the counter affidavit, wherein it has been stated that such



posts were identified for promotion as well as concurrence was obtained from Bihar Public Service Commission as far back as on 21.06.2003 and matter was sent to Personnel and Administrative Department for roster clearance. The Court directed to complete the process for grant of promotion against the post available for promotion to the Junior Engineer.

Number of orders have been attached with the petition in which question was raised about granting the promotion with retrospective effect along with the financial benefits. Every time the Court has taken a view, if there is no laches on the part of employee but the State Government failed to grant promotion and later on the same was given with retrospective effect, the employee cannot be denied the financial benefit for the period from the retrospective effect.

The petitioner along with others were granted the promotion on 17.06.2005 in the scale of Rs. 6500-200-10,500 with effect from 01.01.1998. But in the said notification the financial benefits for the earlier period was made subject to the approval of the Finance Department.

This generated the litigation, one Suresh Paswan approached this Court vide CWJC No. 5823 of 2009 for grant of financial benefit from the date he was granted promotion and this Court vide order dated 10.08.2009 allowed the writ petition with a direction to pay the



arrear of salary which was challenged before the Division Bench in LPA No.613 of 2010 unsuccessfully and the Court held that the person who has been granted promotion from earlier date will not be deprived from the arrear of salary and has not assigned any reason why the employees would not be granted the benefit from 01.01.1998 when the vacancies were available for their promotion and out rightly rejected the contention of the State and same was approved by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 9965 of 2011 inasmuch as the order passed in the case of Suresh Paswan has been implemented and granted the monetary benefits for the earlier period whereafter the petitioner filed representation to grant the financial benefit in terms of Suresh Paswan case and when nothing happened, he approached this Court in contempt application vide MJC No. 993 of 2016 (Annexure -16) and the same is pending for consideration. During pendency, the department has come with the impugned order dated 27.03.2017 and thereby the column No. 4 which was providing the entitlement of the promotion from 01.01.1998 has been deleted.

Learned counsel for the petitioner submits that once post was identified and he was granted promotion from 01.01.1998 and later on as because petitioner and others were pursuing the financial benefits, the retrospective date of promotion has been deleted. The action of



department to delete the date of his entitlement is completely illegal and arbitrary exercise of the power. When he was granted benefit from earlier period, without giving any notice or assigning any reason has taken away the benefit of retrospective operation deprived the civil right of promotion from the earlier date, when Suresh Paswan who approached this Court and has been granted the benefit of promotion from 01.01.1998 alongwith arrear of salary has been carried out.

Learned counsel for the State has submitted that action has been taken there by decided to grant promotion from the date, he would join the post.

It does not stand to reason once post was identified and was granted the promotion from 01.01.1998, no reason has been assigned how they can deprive the petitioner from promotion from 01.09.1998. So far financial benefits is concerned issue is no longer in *res integra* as this Court in several judgments reported in Awadhesh Singh Vs. The State of Bihar and others, reported in 2005 (1) PLJR 297 and in the case of Madhu Sudan Prasad Vs. The State of Bihar and others, 2012 (3) PLJR 55, in both the judgments Rule 54 of the Bihar Service Code alongwith Rule 74 of the Bihar Finance Rules has been considered and it has been held that if the Service Code and Finance Rule is not in terms of the judgments, the Government will have to



modify the rules and the monetary benefits cannot be deprived of the employees. In the case of Awadhesh Singh (supra) the Court has adverted principle of no work no pay, does not apply in situation when the employee is ready to work and employer has refused to take work from the employee, the principle of no work no pay will apply when the employee refused to do work in such circumstances, the Court can consider whether he will be entitled to monetary benefit for earlier period but in the present case earlier petitioner was granted promotion from 01.01.1998 when the petitioner insisted for financial benefit, in turn, the State has come forward with the impugned notification thereby changed the date of his promotion with the date of joining not from the date of availability of post.

In such view of the matter, the impugned notification vide memo no. 490 dated 27.03.2017 (Annexure 18) is set aside and the petitioner will be treated to have been promoted from 01.01.1998. As this Court has already taken a view that in the event the person is granted promotion from earlier date he can not be deprived of salary from the date was granted promotion.

In such view of the matter, this Court directs the respondents to pay the arrears of salary from 01.01.1998 to the date of joinign. If the petitioner is so sanguine about entitlement for other benefits he will be at liberty to approach appropriate authority.



Accordingly this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

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

