

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24368 of 2013

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Ram Kumar Sharma, son of Sri Awadh Prasad Sharma, resident of Village Khaira Kalam, P.O. Kulia, P.S. Akbarpur, Dist. Nawada at present residing at Flat No. Janta-14, Housing Board Colony, Barari, P.O. Barari, Dist. Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Chief Engineer, Water Resources Department, Government of Bihar, Bhagalpur.
3. The Superintending Engineer, Design Division, Water Resources Department, Bhagalpur.
4. The Executive Engineer, Design Division-1, Water Resources Department, Bhagalpur.
5. The District Accounts Officer, Pay Fixation Section, Bhagalpur.
6. The Chairman, Grievance Redressal Committee, Water Resources Department, Sinchai Bhawan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kalika Nand Jha, Adv.
For the Respondent/s : Mr. J.K. Roy-1, SC-13

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 30-04-2019

Heard learned counsel for the parties.

In the present case, the petitioner is praying for quashing of the order issued by the Chief Engineer, Water Resources Department, Bhagalpur contained in Memo No. 4234 dated 13.10.2004 (Annexure-3), whereby and whereunder, the first time bound promotion given to the petitioner w.e.f. 8.6.1989 has been canceled with retrospective effect and also ordered for recovery of amount paid in consequence of the said promotion.

The petitioner was appointed as a Junior Assistant in the cadre of Lower Division Clerk in the pay-scale of Rs. 220-315 by



the Superintending Engineer, Design Circle Irrigation, Bhagalpur vide letter no. 6 dated 3.5.1979. Accordingly, he joined as a Junior Assistant on 8.6.1979 in the office of Design Circle Irrigation, Bhagalpur. Later on, he was confirmed vide Memo No. 1298 dated 17.4.1989 with effect from 8.6.1979 and, thereafter, he was transferred to the office of Design Circle Irrigation on the post of Storekeeper vide Superintending Engineer Design Circle Irrigation, Bhagalpur letter no. 59 dated 28.7.1980, he passed the examination of Hindi Noting and Drafting on 15.3.1981, accordingly, he was granted the increment in the pay. The Government thereafter introduced the time bound promotion scheme in view of stagnation in the service career of the employee, so, in the event of being not granted promotion, the employee used to be granted the higher pay-scale in the event of completion of ten years and twenty-five years of service by way of first time bound promotion and second time bound promotion respectively. In the light of the same, after completion of ten years, he was granted first time bound promotion with effect from 8.6.1989 and, whereafter, the petitioner also passed the Accounts examination on 30.7.1996 but, later on, the Chief Engineer vide Memo No. 3209 dated 5.9.1997, changed the effective date of grant of time bound promotion from 8.6.1989 to 30.7.1996.



The question has been raised by the petitioner that the change in the pay-scale has been effected without proper procedure having stated that the time bound promotion scheme, was introduced looking to the stagnancy of promotion in the service on account of non- availability of the promotional post. In order to help the government servant, the scheme was introduced with a condition that those who have not given promotion in the next higher grade, they would be entitled to enhancement of the pay-scale in the period of 10 years and 25 years. The petitioner was granted the time bound promotion. It is further said that the change of date of time bound promotion on account of the fact that he passed the Accounts Examination subsequently is not an essential requisite condition, it is only applicable in the event of promotion on substantive basis but, not in the case of time bound promotion, has also explained delay by filing supplementary affidavit, specially placed reliance on the judgment of the Division Bench passed by this Court in L.P.A. No. 86 of 2018 wherein the issue of delay was raised, placing reliance on different judgments of the Hon'ble Apex Court, has been held that deprivation of the higher salary, it is a continuing wrong, in such circumstances, the delay will not be a fetter to deprive the petitioner of the relief of time bound promotion and further placed reliance on different orders of this Court in C.W.J.C. No. 1084 of



2007 (Munishwar Pandey Vs. The State of Bihar & Ors.) wherein it has been stated that grant of time bound promotion is not to be linked with the passing of departmental examination because time bound promotion is not considered to be substantive promotion but, only the benefit of pay is given to the government servant in absence of promotion. In this case also, the petitioner was granted first time bound promotion with effect from 1989 on account of absence of grant of promotion to the petitioner and, that too, has been revised after a long delay and there is no case of the State that he had obtained the benefit on suppression or misrepresentation.

In that view of the matter, this writ application is allowed, as a consequence, the Memo No. 4234 dated 13.10.2004 is set aside, the pay scale of the petitioner is restored to the original place and, if any recovery has been made from the petitioner, the same will be returned by the State.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2019
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