

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16616 of 2008

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1. Smt. Sumitra Devi, W/o Late Tapeswar Sinha, R/o Village – Ghorauhan, P.S. - Masaurhi, District- Patna.
 2. Smt. Kanchan Kumari, (Married), D/o Late Tapeswar Sinha, W/o Shri Dhananjay Kumar, R/o – Village Mubarakpur, P.S. Shabpur, Patna
 3. Smt. Chanchala Kumari, (Married), D/o Late Tapeswar Sinha, W/o Sri Prakash, R/o – 19, M Type Old Adityapur, P.S. - Adityapur, Saraikela, Tola Nagar
 4. Sri Rajeshwar Prasad Singh, S/o – Late Tapeswar Sinha, R/o Village – Ghorauhan, P. S. Masaurhi, District Patna, at present living at R. L. Vatika, Flat No. 202 B, Dwarikanath Lane, Salimpur Ahra, Gali No.3, Patna.
 5. Shri Raju Kumar, S/o Late Tapeswar Sinha, R/o – Village – Ghorauhan, P. s. - Masaurhi, District Patna, at present living at R. L. Vatika, Flat No. 202 B, Dwarika Nath Lane, Salimpur Ahra, Gali No.3, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Commissioner Cum Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. Additional Secretary, Road Construction Department, Govt. of Bihar, Patna.
4. Chief Engineer, Central Disigne Organization, Road Construction Department, Bihar, Patna.
5. Under Secretary, Road Construction Department, Govt. of Bihar, Patna.
6. Deputy Secretary, Road Construction Department, Govt. of Bihar, Patna.
7. Secretary, Department of Finance, Govt. of Bihar, Patna.
8. Under Secretary Personal Claim Cell, Department of Finance, Govt. of Bihar, Patna.
9. Executive Engineer, Road Construction Division, Buxar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Deoeshwar Pd. Singh, Advocate Mr. Raman Kumar Singh, Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG-3 Mr. Suman Kumar Jha, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 28-01-2019

Heard learned counsel for the petitioners and the State.

In the present case, the original petitioner, namely, Tapeswar Sinha, who had died during the pendency of the present writ petition, has made a prayer for quashing the Notification



No.6104 (S) dated 16.05.2007 passed by the Commissioner-cum-Secretary, Road Construction Department, Bihar, Patna by which he has rejected the representation to grant exemption from appearing at the departmental examination. Further, he has rejected the claim of the original petitioner for granting monetary benefit from 28.05.1985 the retrospective date of promotion from the post of Assistant Research Officer to the post of Assistant Director vide Notification No. 1108 dated 23.12.1996 of Road Construction Department, Govt. of Bihar, Patna.

In the present case, this Court is not deciding the issue of granting exemption from passing of the departmental examination as this issue is no longer relevant for the purposes of this case as primarily in the present case, the claim has primarily been made for the monetary benefit from the retrospective date, the original petitioner has been granted promotion to the post of Assistant Director as the respondent has granted the benefit of promotion with retrospective date w.e.f. 28.05.1985 vide notification no.1108 dated 23.12.1996.

Learned counsel for the petitioners has submitted that when the original petitioner has been granted retrospective promotion it should not be the notional promotion but it should be a material promotion and he should be given the monetary benefit



from the date he has been granted the benefit of promotion i.e. 28.05.1985.

The short fact of this case is that the original petitioner was appointed as Temporary Research Assistant in the year 1962 working under the Executive Engineer, Testing and Control Division, World Bank Project Wing, P.W.D., Patna. The original petitioner while discharging the duty a criminal case was instituted against him that led to passing the order of suspension on account of custody which remained in force from 17.07.1984 to 05.02.1985. The original petitioner was granted bail but the Government in exercise of power under Rule 100 of Bihar Service Code again put the original petitioner under suspension from 3.06.1985. Later on, the petitioner vide judgment and order dated 23.12.1993 has been acquitted in the criminal case and he has been exonerated from all charges levelled against him in the departmental proceeding vide notification no.236 dated 27.05.1994, but the final order dated 16.05.2007 by which the claim of financial benefit has been rejected, as contained in Annexure-20, reflects that the original petitioner had remained under suspension for the period from 17.07.1984 to 5.02.1985 and 3.06.1985 to 11.11.1993 and the original petitioner has also been exonerated from all charges in the departmental proceeding. With



regard to early conclusion of the criminal case, the original petitioner had approached this Court vide CWJC No.1104 of 1988, which was disposed of vide order dated 24.11.1992 with a direction to conclude the trial court within six months from the date of production/receipt of a copy of this order. In case the trial is not concluded within the aforesaid period, the suspension order would stand revoked. As the trial was not concluded within the stipulated period, the Deputy Secretary, Road Construction Department vide letter dated 5.11.1993 revoked the suspension of the original petitioner and ultimately, the original petitioner has also been acquitted from the criminal case on 23.12.1993 and finally, the original petitioner was promoted to the post of Assistant Director vide letter no.1108 dated 23.12.1996 but the same was a notional promotion without granting any monetary benefit for the period from 28.05.1985 to the date of issuance of notification. When the original petitioner was not given such promotion, he has raised his grievance that he should not notionally be promoted but it should be material promotion to him making him entitled for the salary also. Thereafter, the original petitioner had approached this Court vide CWJC No.11325 of 1999 as his representation remained pending, on that account, the Court had directed for disposal of the representation and



ultimately, the impugned order vide notification no.6104 (s) dated 16.05.2007 (Annexure-20) has been passed refusing to grant the monetary benefit. The ground for denial is based on circular no.2074 dated 04.04.1985, which stipulates that the government servant will be entitled to the salary from the date of his joining and, as such, the petitioner cannot be granted the monetary benefit for the period as claimed.

Learned counsel for the petitioners submits that when the original petitioner has been exonerated in a departmental proceeding as well as having been acquitted in a criminal case, he should not only be allowed to the notional promotion from the retrospective period rather it should be the promotion with the material benefit in support of his submission based on judgment reported in *1999 (1) PLJR 243 (Shiva Narayan Lal Vs. The State of Bihar and Ors.)*, whereas the State has taken a plea that in terms of Rule 58 of the Bihar Service Code read the Circular No.2074 dated 04.04.1985, which makes it clear that government servant would be entitled to salary from the date of discharging the duty and admittedly, the original petitioner had not done the work of Assistant Director for the aforesaid period, so he cannot be allowed the salary for the period he has not discharged the duty. In support of this submission, he has placed reliance on the judgment



reported in *AIR 1996 SC 2936 (State of Haryana and Ors. Vs. O.P. Gupta)*.

This issue is no longer *res integra* as in the case of **Shiva Narayan Lal (supra)** the identical question was under consideration and in that case also, the petitioner Shiva Narayan Lal had faced departmental proceeding as well as criminal trial and he was exonerated in departmental enquiry and acquitted in the criminal trial but the Government though granted retrospective promotion but deprived him the monetary benefit for the retrospective period. The Court has considered the Rule 58 of Bihar Service Code *vis-a vis* the Rule 74 of Bihar Financial Rules and on consideration, it has been finally decided that Shiva Narayan Lal is entitled to the monetary benefit from the date he was granted promotion and there cannot be paper promotion but it should be the material promotion in actuality after placing reliance on the judgment of this Court in *Dr. Paras Nath Pd. Vs. State of Bihar [1990 (2) PLJR 248]*. The narration of wisdom is in paragraph 20 is as follows :-

“20. In so far as the claim for payment of salary, allowances and other benefits accruing from his promotions to the posts of Superintending Engineer and Chief Engineer are concerned, that also has to be allowed. It is well settled that a Government employee being granted promotion with a retrospective date cannot be denied material benefits



accruing from the promotion on the plea that he did not work on that post from the retrospective date. If any authority is needed one may see the decision in the case of Dr. Paras Nath Pd. Vs. State of Bihar, 1990 (2) PLJR 248. Relying upon the decision in the case of Dr. Paras Nath Prasad (supra) and other similar decisions, this court has repeatedly held that the denial of material benefits accruing from a retrospective promotion could not be justified on the basis of rule 58 of the Bihar Service Code or rule 74 of the Bihar Financial Rules. One such decision was recently given by this court in CWJC No.4141/1997; Ranjit Sahay Jamuar and another vs. State of Bihar; disposed of on 27.11.1998. It must, therefore, be held that the decision of the Government denying the petitioner the payment of salary, allowances and other benefits on the basis of his promotions to he posts of Superintending Engineer (w.e.f. 19.11.1984) and Chief Engineer (w.e.f. 1.8.1992) is bad and illegal and must be set aside”.

Learned counsel for the State has vehemently opposed the prayer and strongly placed reliance on the judgment of ***O.P. Gupta Case (supra)*** but in this case also while finally rejecting the claim of O.P. Gupta, the Court has considered the situation in which Union of India has denied the actual promotion but granted the notional promotion. This judgment in paragraph 7 has distinguished the earlier judgment of Hon’ble Surpeme Court in ***Union of India Vs. K.V. Jankiraman [AIR1991 SC 2010]*** where the person also deprived of the salary on account of pendency of a



criminal case as well as departmental proceeding and it appears that the petitioner of that case was granted the promotion along with arrears of salary. So, paragraph 7 of the judgment itself support the contention of the original petitioner of being entitled to the material benefit from the date the government employee having been granted promotion and so far as O.P. Gupta's case is concerned, it does not apply to the facts of the case as it was the case with regard to granting of promotion after fixation of seniority, so here is not the situation of fixation of seniority but the question remains here of the pendency of criminal case as well as departmental proceeding in which all were resulted in favour of the original petitioner and another judgment that has been placed reliance by the State is the case of ***Union of India Vs. Tarsem Lal & Ors (AIR 2007 Supreme Court 259)*** where the Court has refused to grant the monetary benefit on the principle of no work no pay. Here is not the situation and the fact of that case is quite different to the present case.

In view of the judgment passed by this Court, it is very much clear that deprivation of salary on account of pendency of the criminal case as well as departmental proceeding though granted retrospective promotion cannot be held to be proper.



In such view of the matter, this Court hold that the original petitioner, now substituted petitioners are entitled to monetary benefit from the date the original petitioner has been granted promotion.

Accordingly, Memo No.6104 (S) dated 16.05.2007 is quashed and this Court holds that the original petitioner, now substituted petitioners are entitled not the paper promotion but entitled to material promotion with effect from 28.05.1985.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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