

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.19883 of 2013**

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Shive Balak Prasad Son Of Late Jagdish Prasad Resident Of L.I.G.- 112,  
Barari Bhagalpur, P.O.- Barari, District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Chief Engineer, Water Resources Department, Government Of Bihar, Bhagalpur
3. Superintending Engineer, Design Division, Water Resources Department, Bhagalpur
4. Executive Engineer, Design Division No. 1, Water Resources Department, Bhagalpur
5. District Account 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.Ajay, GA-V

Mr. Ashish Kr. Lal, AC to GA-V

Mr. Pratik Kr. Sinha, AC to GA-V

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL JUDGMENT**

**Date : 27-02-2019**

Learned counsel for the petitioner prays for and is allowed  
to make necessary correction in the cause title of the petitioner.

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the office  
order dated 10.9.2012 passed by the respondent no.2 vide Memo No.  
3127 dated 10.9.2012 (Annexure-2), whereby and whereunder, the  
time bound promotion granted to the petitioner two decades earlier  
i.e. w.e.f. 21.1.1990 has been readjusted/modified and given effect to  
w.e.f. 11.10.1993 on the ground that he was wrongly given the first



time bound promotion with effect from 21.1.1990 whereas he has passed the examination on 11.10.1993.

The short facts of this case is that the petitioner was appointed as Correspondence Clerk by the order of the Superintending Engineer, Design (Irrigation) Circle, Bhagalpur vide letter dated 17.8.1979 with effect from 24.1.1980 which was confirmed vide letter no. 1298 dated 17.4.1989. The Rajbhasha Department had conducted the examination on 15.3.1981 which he cleared. Accordingly, the increment in the pay was granted to the petitioner. The time bound promotion scheme was introduced prescribing the qualification of completion of 10 years of service for first time bound promotion, accordingly, was granted on 24.1.1990 by the Chief Engineer, Water Resources Department, Bhagalpur vide office order no. 516 dated 30.1.1990 in the pay-scale of Rs. 1400-2300. Accordingly, the pay was revised at Rs. 1680/-. The petitioner passed the Accounts Examination on 10.10.1993 but, he was granted the first time bound promotion with effect from 24.1.1990 and he continued to take the benefit of time bound promotion without any objection or restraint from any corner. He was also granted the benefit of 2<sup>nd</sup> A.C.P. and received the third M.A.C.P. as he superannuated from service in the year 2012. The impugned action has been taken by issuance of letter no. 3127 dated 10.9.2012 by which the date of grant of time bound promotion has been shifted



from 30.1.1990 to 11.10.1993 which compelled the petitioner to approach this Court.

Learned counsel for the petitioner submits that he was granted the benefit without any demur from any corner and he continued to receive the same but, just before superannuation, the impugned order has been passed. He has further submitted that the passing of accounts examination is not a condition precedent for grant of time bound promotion and he has further submitted that it would be applicable when the question of grant of substantive promotion in actuality will come into consideration. In support of his submission, he has placed reliance on different orders passed by different Benches which are C.W.J.C. No. 1084 of 2007, C.W.J.C. No. 14692 of 2008, C.W.J.C. No. 568 of 2011, C.W.J.C. No. 2425 of 2011 and last but not the least is the order passed in L.P.A. No. 86 of 2018. Learned counsel for the petitioner has also submitted that before passing the impugned order, he was not given any notice or asked for explanation which violates the principle of natural justice. In support of his submission, he has placed reliance in the judgment dated Ramadhar Thakur Vs. State of Bihar & Ors. passed in L.P.A. No. 599 of 2015. Learned counsel for the petitioner has submitted that once the issue has finally been settled cannot be permitted to be reopened at the instance of either party on any ground as the principle of res judicata will apply to the subsequent proceeding.



Per contra, learned counsel for the State has submitted that passing of the accounts examination is must before grant of any time bound promotion and the petitioner has passed the accounts examination in the year 1993, the administrative correction has been made to the grant of 1<sup>st</sup> A.C.P. by the Chief Engineer. Learned counsel for the State has submitted that there is no need to give any notice as the natural justice depends on its own facts, the natural justice cannot be treated to be unruly horse and cannot be put in a straight jacket formula and, in the present case, the authority was competent and was free to make necessary correction in the grant of time bound promotion, inasmuch as, no purpose would be served in granting notice as it would not change the situation, in support of his submission, he has placed reliance in the case of the State of Bihar & Ors. v. Kusheswar Nath Pandey & Anr. reported in 2013(1) PLJR 939 and the State of Bihar & Ors. Vs. Md. Nasiruddin reported in 2016(3) PLJR 861 but, the judgment passed in the case of Kusheswar Nath Pandey has been set aside by Hon'ble Supreme Court in the case of Kusheswar Nath Pandey Vs. State of Bihar & Ors. reported in 2013(12) SCC 580 on the point of natural justice, he has placed reliance in the judgment in the case of Badri Nath Jha Vs. The State of Bihar & Ors. reported in 2013(3) PLJR 415 and in the case of Haryana Financial Corporation & Anr. Vs. Kailash Chandra Ahuja reported in (2008) 9 SCC 31.



On consideration of submissions of both parties, this Court would examine the issue of natural justice as first issue. Of-course the natural justice cannot be put to straight jacket formula nor it is an unruly horse but, it depends on its own facts and circumstances. Two aspects are very much clear that when a right has been conferred or accrued to the parties, before an adverse order could be passed, certainly it requires the person concerned must be given a chance to offer an explanation before passing any order prejudiced to him. Reliance in this connection can be placed to different judgments right from the case of State of Orissa Vs. Dr (Miss) Binapani Dei & Ors. reported in AIR 1967 SC 1269 and in the case of A.K. Kraipak Vs. Union of India reported in AIR 1970 SC 150 and, later on, this principle of natural justice has taken a different dimension and its facets and, at later stage, theory of prejudice has been added to the natural justice. Theory of prejudice has been divided into two compartment, the first no notice before passing the impugned order and, second part is no sufficient grant of opportunity before passing the order. In the event of no notice, the theory of prejudice does not apply but, in the event of no sufficient granting of opportunity, in that event, the theory of prejudice would apply. Reliance in this connection may be made to the judgment in the case of State Bank of Patiala & Ors. Vs. S.K. Sharma reported in (1996) 3 SCC 364 where the concept of no notice and no sufficient opportunity has been



explained and the Court has divided the natural justice into two parts and theory of prejudice has been applied in the event when the person was not given sufficient opportunity.

Learned counsel for the State has placed reliance on the judgment in the case of Badri Nath Jha (supra), the Court has recorded as follows:-

*“It is next submitted on behalf of petitioner that before making the deduction, notice ought to have been issued to the petitioner. Petitioner is correct. However, petitioner himself was the Head Clerk and in service when the first deduction was made. He did not protest. He allowed the deduction. Thereafter, only after retirement when the balance deduction was made, he has chosen to file the writ petition.”*

In the present case, the fact is otherwise. There is no averment that before passing the impugned order, the petitioner was not served any notice or asking any explanation. So, in the present case, the non-service of notice or asking explanation, vitiate the entire action. Second, the issue of passing of departmental promotion is a condition precedent before grant of time bound promotion has been raised.

Two conflicting views are there. In the Kusheswar Nath Pandey (supra) and Md. Nasiruddin (supra) and the State of Bihar & Ors. Vs. Anjani Kumar reported in 2013 (2) PLJR 643. In the aforesaid judgments, the view has been given that the condition



precedent of passing the examination before grant of time bound promotion and the A.C.P. but, in contrary, a different view has been taken in LPA No. 599 of 2015 (Ramadhar Thakur Vs. State of Bihar & Ors.) and there the Court has taken a view of passing the examination is a condition precedent has not been accepted and he has explained the full bench and the division bench judgment.

In the present case, the petitioner has already passed the examination and the judgment passed in the case of Kusheswar Nath Pandey (supra) in which the Division Bench has taken a view that passing of accounts examination is a condition precedent, has been diluted by setting aside the order passed by the Hon'ble Apex Court in the case of Kusheswar Nath Pandey Vs. State of Bihar & Ors. reported in (2013) 12 SCC 580. There, the Hon'ble Apex Court has said that when the benefit was granted 10 years earlier then equity lies in favour of the government servant that whatever benefit has been accrued should not have been withdrawn. This court also relies on the judgment of Hon'ble Apex Court. In the present case also the petitioner has been granted time bound promotion in the year 1990 and the impugned order has been passed after 21 years in the year 2012. The present situation, akin to the situation of judgment of the Hon'ble Apex Court Kusheswar Nath Pandey (supra) where the petitioner has been granted the benefit on equity, applying same principle, the order impugned contained in Memo No. 3127



dated 10.09.2012 is quashed with a direction to the State, whatever amount has been recovered should be returned or not paid should be paid to the petitioner and his time bound promotion should be treated from 24.1.1990 in place of 11.10.1993. This court also directs the respondents to pay at all outstanding dues treating the date of time bound promotion as 24.01.1990.

In the result, this writ application stands allowed to the extent indicated above.

**(Shivaji Pandey, J)**

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 27.03.2019 |
| Transmission Date |            |

