IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17681 of 2012

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Amar Nath Jha, son of Late Gangadhar Jha, resident of village- Mansar Colony, Naka No. 2, Kadirabad, District- Darbhanga (Bihar).

... ... Petitioner

Versus

1. The State of Bihar
2. Principal Secretary, Finance Department, Government of Bihar, Patna.
3. Chief Comptroller of Account and Audit, Finance Department, Government of Bihar, Patna.
4. Comptroller of Accounts (Audit), Darbhanga Division, Darbhanga.
5. Finance and Audit Department, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	In person
For the Respondent/s	:	Mr. Wasi Ahmed Khan, A.C. to S.C.-25.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 07-05-2019

Heard the petitioner, in person, and learned counsel for the State.

2. In this case, the petitioner is challenging the office order no.263 dated 11.11.2005, whereby and whereunder the petitioner has been inflicted the following punishments for the misconduct:-

"(i) punishment of censure;

(ii) withdrawal of increment of pay including recovery of excess payment from the salary in single installment;

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(iii) As Mr. Jha has not passed Hindi noting and drafting examination as well as departmental examination, so the claim of his annual increment, confirmation, time bound promotion and other promotions will not be considered; and

(iv) the entry made in the service book of passing Hindi noting and drafting examination and the departmental examination will be treated to have been expunged.

3. Against the aforesaid order, the petitioner filed an appeal before the Appellate Authority, namely, Government of Bihar. The Joint Secretary-cum- Chief Accounts Controller vide memo no. 193 dated 23.02.2007, rejected the appeal, thereby affirmed the order of the Disciplinary Authority.

4. From the record, it appears that the petitioner was appointed and posted as Auditor on 03.12.1977 and with effect from 01.05.1980 he was made Senior Auditor, Class-II, as the Government has decided to merge the post of Auditor to the higher scale of Senior Auditor, Class-II with effect from 01.05.1980, at last, the petitioner has superannuated from the service on 31.12.2011 from the post of Senior Auditor, Class-II. As per the service condition, the annual increment of pay is

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dependent on passing of the Hindi noting and drafting examination, conducted by the Rajbhasha Department, Government of Bihar, and for confirmation and the promotion to the post of Senior Auditor he was required to pass the departmental examination, which is in four papers; first paper is Service Conditions and allied matters, second paper is Account and Financial Rules, third paper is Audit and Accounts, fourth paper is in two parts 4(a) is Budget and Constitution and 4(b) is Works Account. The confirmation and promotion are dependent on passing the examination for Auditor/Senior Auditor in all the fours papers with higher standard conducted by the Board of Revenue, Government of Bihar, Patna. As per the stand of the State, the petitioner was granted the annual increment of pay with connivance of the then Deputy Controller of Accounts, Darbhanga Division, Darbhanga, vide order no. 420 dated 23.07.1987 and the same was entered into his service book. At the relevant time, he was in the office of the Deputy Controller of Accounts, Darbhanga Division. When this fact of wrong entry came to the notice of the Chief Controller of Accounts, his service book was requisitioned for verification and his service book was dispatched through special messenger, but in the course of transit, his service book was stolen from the special

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messenger, for that an F.I.R. was lodged in Kotwali Police Station, Patna. In due course of time, the service book of the petitioner was reconstructed and the same was dispatched to the District Accounts Officer, Muzaffarpur for verification and fixation as at that time the petitioner was posted in the office of the Deputy Controller of Accounts, Tirhut Division, Muzaffarpur, who vide letter no.60 dated 14.02.2002 informed that as per the entry made in the service book issue register maintained in his office, the reconstructed service book has been received by the petitioner himself and as token had put the signature in the service book issue register. Whereafter, the petitioner was asked to submit the said service book, which he has taken, but he failed to submit the same. Ultimately, coercive method was adopted and when the annual increment of pay was stopped for want of service book, then the petitioner submitted his service book on 04.02.1990. So, the petitioner had kept his service book himself in unauthorized manner. On perusal of the service book, it transpired that fraudulent entry has been made in the reconstructed service book in the matter of passing of the departmental examination as well as Hindi noting and drafting examination. With regard to passing of the departmental examination, it has been recorded in the manner that "*by the*

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order of the Chief Controller of Account, I visited the Board of Revenue and verified the result of the Departmental examination of Accounts and Audit, checked and found that he has been declared passed in higher standard in all the papers of all the subject". It transpired that completely forged and fabricated entry made in the reconstructed service book as the Chief Controller of Accounts never ordered any officer of the department to visit and verify the result, at the same time, no entry has been made about petitioner's roll number, year of examination, name of examination centre and memo number of published result.

5. The department has made an inquiry and collected information regarding passing of the departmental examination of Auditor, Senior Auditor by the petitioner from the Deputy Secretary, Board of Revenue, Bihar, who vide his letter no. 431 dated 05.05.2011 informed that the petitioner has passed only one paper i.e. "Budget Constitution and Construction Account" with lower standard in the first half yearly examination held in the year 1980, itself depicts that the petitioner has not cleared all the four papers prescribed. In the reconstructed service book, the entry regarding passing of Hindi noting and drafting examination has been made in the manner that "*by the order of*

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Chief Controller of Account, I visited the Rajbhasha Vibhag and verified the result of Hindi Noting and Drafting and found that he has been declared passed in higher standard", but on inquiry, it transpired that false and forged entry has been made as the petitioner has not passed the Hindi noting and drafting examination, conducted by the Rajbhasha Department, Government of Bihar. This information was supplied by the Director, Rajbhasha vide letter no. 791 dated 14.09.2005. In several time, the petitioner was asked to give details about his roll number, year of passing of examination so that it can be verified about the genuineness of the statement made by him, but the petitioner never produced any material in this connection. Hence, a departmental proceeding was initiated and charges were found to have been proved, accordingly, punishment has been inflicted, as stated hereinabove, vide office order no.263 dated 11.11.2005. As the petitioner did not pass Hindi noting and drafting examination as well as departmental examination for the post of Auditor/ Senior Auditor in all four papers with higher standard, no annual increment of pay was granted to him after 1996 till his retirement as also he is not entitled for confirmation, hence, he has not been confirmed till his retirement. After completion of 50 years of age, the

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petitioner filed an application for grant of exemption from examination, which has also been rejected as the petitioner has not taken effort as per the guidelines of the State Government. It also appears that the amount which was paid to the petitioner by way of increment having been realized and that order has finally been affirmed by the Appellate Authority.

6. During the argument, the petitioner has confined his prayer that he should be granted the time bound promotion as well as annual increment, but in view of the order of punishment, in which it has been mentioned that he was proceeded departmental for the fraudulent entry in the service book in the matter of passing Hindi noting and drafting examination and departmental examination. It also appears that the petitioner had filed a complaint before the learned Lokayukt, Bihar, and the learned Lokayukt after full deliberation having found the truth stand with the State and did not grant any relief by way of confirmation of service, increment of pay or the promotion on the ground that the petitioner did not pass Hindi noting and drafting examination as well as departmental examination.

7. In such view of the matter, this Court does not find any merit in the claim of the petitioner for grant of first time

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bound promotion as well as second time bound promotion, which has been withdrawn as well as annual increment of pay, which has also been withdrawn in view of the stand taken by the State as well as the finding recorded by the learned Lokayukt. More over, the order of punishment has attained its finality as the same has been passed in the year 2005. Hence, this writ petition is dismissed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
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