

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16341 of 2017

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Ram Janam Paswan, Son of Shri Lotan Paswan, Resident of Village-
Kishanpur Madhuban, Police Station- Kurhani, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Additional Secretary, General Administration Department, Government of Bihar, Patna.
4. The Joint Secretary, General Administration Department, Government of Bihar, Patna.
5. The Deputy Secretary, General Administration Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Ashok Kumar Singh, Sr. Advocate
For the Respondents : Mr. P.K. Verma-AAG-3
Mr. Sanjay Kumar Ghosarwe, Ac to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 11-03-2019

Heard the learned counsel for the petitioner and
the State.

2. The petitioner, who was initially appointed as a
Deputy Collector in the 42nd batch of Bihar Administrative
Service and was kept on probation on 22.08.2001, has
not yet been confirmed in service.

3. This is the primary grievance of the petitioner.

4. After the induction of the petitioner in Bihar
Administrative Service, he was put on probation and was
posted as Deputy Collector (under probation in Siwan).



5. Without the completion of training and within one year of his appointment, the petitioner was posted as an Executive Magistrate, Tekari in the district of Gaya in the year 2002 as there was an acute shortage of officers in the department. It further appears that the petitioner successfully cleared all the departmental examination for the purposes of his confirmation in service but the letter of confirmation in favour of the petitioner was not issued whereas many other officers were confirmed after completion of two years of service. It further appears that because of an order passed in a writ petition bearing no. C.W.J.C. No. 7221 of 2003, an enquiry was initiated against the District Magistrate, Gaya and the petitioner but the enquiry as against the petitioner was conducted behind his back. Nonetheless, vide letter dated 06.02.2006, the services of the petitioner was confirmed with effect from 26.06.2005. However, within three months, the notification of the confirmation of the petitioner was cancelled by order dated 04.05.2006, contained in Memo No. 4011, issued under the signature of Deputy Secretary on the ground of pendency of a charge against the petitioner.

6. It further appears from the records that the way back in the year 2004, a show cause notice was issued to the petitioner by the Deputy Commissioner,



Magadh Division and the petitioner in response to the aforesaid show cause notice had demanded certain papers which were never made available to him. During the pendency of the aforesaid proceeding, the petitioner was posted as BDO, Tekari, Gaya between 17.05.2003 to 11.08.2003 when he was given some papers which he had demanded and on the basis of the aforesaid documents, he had replied to the show cause notice. The reply was not accepted by the General Administration Department and the petitioner was again asked to reply on the basis of papers which were made available to him.

7. It is relevant to mention that thereafter no correspondence was made with the petitioner even after his confirmation of his service for a brief period and its subsequent withdrawal.

8. The petitioner thereafter approached this Court vide C.W.J.C. No. 8414 of 2013 and a bench of this Court vide order dated 01.05.2014, after expressing its displeasure over the manner in which the counter affidavit in the aforesaid case was filed, directed the Principal Secretary, General Administration Department, Government of Bihar, Patna to examine the case of the petitioner and pass an appropriate order within three months of the passing of the order by the Court.



9. It further appears from the records that the representation of the petitioner, on the strength of the order passed by the High Court referred above, was rejected by the Principal Secretary, General Administration Department, Government of Bihar, Patna vide his order dated 15.01.2015 stating that the charges against the petitioner was found to be *prima facie* true and that in view of the Government order dated 16.12.1998 contained in Order No. 467, holding that a person can be confirmed in service if no *prima facie* charge is proved against him within the period of probation. Since the proceeding against the petitioner was pending, therefore, it was held that the notification regarding confirmation of the service of the petitioner was withdrawn. The sum and substance of the order of the Principal Secretary, therefore, was that the petitioner could not be confirmed because of the pendency of the departmental proceeding against him.

10. In the meantime, the enquiry report against the petitioner was submitted by the Divisional Enquiry Commissioner and the petitioner was asked for his second show cause to which he replied.

11. By order dated 31.10.2016, the petitioner has been subjected to a punishment of withholding of increment with cumulative effect and debarment of



promotion to him for four years from the date when it is due.

12. Apart from various other contentions raised on behalf of the petitioner regarding the faulty handling of the departmental proceeding against the petitioner, what has actually been stressed upon is that despite the punishment of stoppage of increment of pay and debarment of promotion for four years, the petitioner has a right to be confirmed and his confirmation cannot be kept pending for the period when the punishment given to him on 31.10.2016 loses its effect only after the passage of four years.

13. The submission of the learned counsel for the petitioner is that confirmation and promotion are two different things and one cannot be made dependent on the other.

14. It is necessary in this context to be aware of the reason for an employee to be kept under probation for a particular period. Probation refers to the period when an appointee to a service is on a trial for a particular period.

15. In ***Ajit Singh vs. State of Punjab AIR*** reported in ***1983 SC 494***, it was explained by the Supreme Court that the importance of probation lies in confirming the relationship of master and servant, the idea behind being that an employer cannot be thrust upon the



services of an employee who is not capable in the estimation of the employer. A probationer does not acquire any substantive right to the post during the period of probation and his services can be terminated any time during the probationary period and before his confirmation. Thus, the period of probation is a transitory period and right of an employee to continue in service would only accrue on his confirmation in service.

16. Normally the period of probation is for a particular period and a probationer is entitled to be considered for confirmation upon the successful completion of probation.

17. Confirmation in service actually means obtaining permanent status of a civil servant. Though it may depend upon the decision of the employer but it is too late in the day to say that any decision of the employer, even if arbitrary or irrational would be accepted. The initial view in the service jurisprudence of the complete autonomy of an employer in matters of confirming service of an inductee has now undergone a major change and it is no longer dependent upon the capricious will of an employer. Confirmation in service is required to be exposed by an order but there are instances of deemed confirmation also which has gained acceptance in the service jurisprudence.



18. In the case of the petitioner, the letter of confirmation was issued but the same was withdrawn on the sole premise of a departmental proceeding which was initiated during the probationary period, being pending. The proceeding continued for more than one and a half decades and the petitioner continued to render services. What is to be noted is that during the period of probation, if the services of the petitioner was not found to be satisfactory, he could have been terminated on grounds of unsuitability or of any charge having been proved against him. However, the confirmation of a civil servant cannot be kept pending for such a long period of time as if it is the punishment meted out to him. For an appointee to be punished, he is definitely required to be in substantive service. As long as the petitioner is under probation and his services are not found to be satisfactory, he can be terminated from service. But if he has been subjected to a departmental proceeding in which, as is in the case of the petitioner, he has been punished with the lowering of his pay scale and debarment of promotion, it presupposes that the service of the petitioner has been confirmed and the terms of the punishment is proscription of consideration for promotion for a considerable period.



19. This punishment cannot be a ground for withholding the confirmation of the petitioner which has a totally different connotation.

20. The supplementary counter affidavit filed on behalf of the State merely states that because of the punishment meted out to the petitioner on 31.10.2016, prohibiting promotion to him for a period of four years, to be counted from the date of the order of punishment, the services of the petitioner cannot be confirmed.

21. This, in the opinion of this Court, is a distorted impact of the punishment which has been given to the petitioner. The petitioner would have the liberty to challenge the aforesaid punishment but the same cannot be made the basis for withholding confirmation of his service. It appears rather strange that a person has been made to work since 2001, awaiting his confirmation in service.

22. While saying so, this Court has not expressed any opinion over the manner in which the departmental proceeding was conducted; the delay in concluding the aforesaid proceeding and the subjective merit of the decision of the authorities arrived at. What this Court has taken note of is that bar to promotion for a particular number of years is different from holding back the



confirmation of the petitioner after he has rendered his service for several years.

23. It would be a complete non-application of mind to allow the decision with respect to the confirmation of the service of the petitioner to be linked with the terms of punishment meted out to the petitioner on 31.10.2016.

24. Under the aforesaid circumstances, this Court directs the petitioner to make a representation before the Principal Secretary, General Administration Department within a period of four weeks from today along with a copy of this order, who shall, on receipt of such representation take a decision with respect to issuance of an order of confirmation of the petitioner in service.

25. This Court is conscious of the fact that confirmation is dependent on there being no charge pending during the probationary period but in the case of the petitioner, such condition cannot be imposed because of the passage of such long time in concluding the departmental proceeding and the petitioner having completed his probationary period with all the riders of the clearing the departmental examination.

26. The concerned respondent shall pass necessary orders in accordance with law within a period of six weeks thereafter.



27. With the aforesaid direction/observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.03.2019
Transmission Date	

