

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1433 of 2008

Vijay Narayan Sao, Son of Late Tuk Narain Sao, posted as Administrative Officer, (Consumer Redressal Forum) Bihar State Electricity Board, Vidyut Bhawan Bailey Road Police Station- Kotwali, District- Patna.

... .. Petitioner/s

Versus

1. The Bihar State Electricity Board through its Secretary, Vidyut Bhawan, Bailey Road, Patna.
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anand K. Ojha
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Vijay Kumar Verma, Advocate Mr. Akhileshwar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 28-07-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has sought
for following reliefs:-

“1. That the Petitioner in the instant writ application craves leave to invoke the extraordinary and equitable writ jurisdiction for administration of justice EX DEBITO JUSTITIAE and for grant of following:

RELIEFS

(i) Issuance of writ in the nature of certiorari for quashing the letter no. 547 dated 03.07.07 and letter no. 1101 dated 19.11.07 whereby and whereunder the



Respondent No. 3 Joint Secretary of the Board had summarily rejected the applications of the Petitioner dated 04.06.07 and 03.10.07 respectively on the issue of granting regular promotion to the post of Section Officer by changing the date to 22.11.97 in place of 01.04.98 in view of the fact that the punishment by the Board to the Petitioner had already been reduced to "warning" without an entry in the ACR in place of Censure and the Petitioner was entitled for regular promotion to Section Officer w.e.f. 22.11.97 because there was no charges/ allegation / departmental proceeding pending on the date and the current charge is granted only when the incumbent is otherwise fit to promotion to the next senior level promotional post in terms of Standing Order No. 804 dated 27.08.98.

(ii) Issuance of writ of mandamus to the Respondent Board to grant Petitioner regular promotion to the post of Section Officer w.e.f. 22.11.97 by superceding / annulling the Notification No. 454 dated 04.05.06 being in teeth the resolution of the Board as contained in Memo No. 180 dated 21.02.06 by which the punishment awarded under the Board Resolution No. 1768 dated 26.12.01 was modified to only warning without mentioning its entry in the ACR and also the admitted seniority of the Petitioner over others who were granted regular promotion to Section Officer w.e.f. 22.11.97.

(iii) Issuance of further declaration that the order dated 06.09.05 contained in letter no. 974 dated 07.10.05 as well as Notification No. 454 dated 01.05.06 are illegal and without jurisdiction being of no legal validity in view of subsequent order of the Chairman as well as the decision of the Hon 'ble Court over



entitlement to promotion in the event of "warning" upon an employee and legal implication and validity of a punishment of "warning" without any entry in the ACR.

(iv) Issuance of declaration that the order of the Respondent no. 2 communicated under letter no 974 dated 07.10.05 has become in valid on account of the punishment having being reduced to only warning which is to be acted upon in accordance with the judgment of the Division Bench of this Hon'ble Court also bearing in mind that Petitioner was illegally superceded by his juniors because of Board's decision to promote on the basis of faulty illegal tentative Gradation list of Upper Division Assistants.

(v) Issuance of further declaration that as on 22.11.97 there was no proceeding because the memo of charges were served only later along with the decision of the Board to initiate a departmental proceeding as contained in Board Resolution No. 1385 dated 04.09.98.

(vi) Issuance of further declaration that warning is not a punishment hence by the decision of the Chairman of the Board on the mercy petition dated 16.11.05 filed by the Petitioners against the punishment awarded under Board Resolution No. 1768 dated 26.12.01 virtually made the Petitioners case as free from any punishment as under similar Circumstances this Hon'ble Court has already held in LPA No. 556/07 and the rejection of Petitioner's representation by unreasoned, cryptic and mechanical order shows complete non- application of mind.”

3. Short question for consideration in the present case is whether petitioner is entitled to promotion to



the post of Section Officer w.e.f. 22.11.1997 instead of 01.04.1998. The petitioner was promoted to the post of Section Officer on 04.05.2006 while assigning with retrospective effect from 01.04.1998 whereas petitioner has presented this petition in the year 2008 in seeking modification of date of promotion from 01.04.1998 to 22.11.1997. Petitioner was facing departmental enquiry and it was concluded in imposition of censure plus three increments with cumulative effect and restricted to subsistence allowance for the suspension period. Feeling aggrieved and dissatisfied with the order of the disciplinary authority, petitioner preferred appeal before the appellate authority. The appellate authority modified the penalty on 26.12.2001 to the extent that censure plus withholding of one increment and restricted subsistence allowance for the suspension period. Further he had submitted memorial/representation. It was considered as revision. The appellate authority's order was modified to that of warning without any entry in ACR. In this backdrop, it is to be seen that as on 22.11.1997, the date on which petitioner is seeking for promotion on the notional date to the post of Section Officer, he was facing departmental enquiry which was launched on 04.09.1998. In other words, as on



04.09.1998, he was facing disciplinary proceedings. It was concluded in imposition of penalty of warning in revision on 26.12.2006.

4. In the light of these facts and circumstances, what is required to be examined is warning is one of the penalty under the regulation or not?

5. Today, learned counsel for the respondent-Board furnished Bihar State Electricity Board Regulation, Patna under 29(B) relating to misconduct:

“Misconduct- Subject to the other provisions of this Standing Order. The following acts or omission by a workman shall be deemed to be misconduct for which he shall be liable to dismissal, distract, stoppage of promotion for prescribed period, censure or warning, withholding of increment for specified period or reduction in rank or transfer without T.A.”

Perusal of the aforesaid provision it is crystal clear that one of the penalty is warning. Therefore, the enquiry proceedings which was launched on 04.09.1998 concluded on 26.12.2006 in imposition of penalty of warning. Therefore, pendency of proceeding would be hurdle to the grievance of the petitioner.

6. In the light of these facts and circumstances,



the petitioner is not entitled to alter his date of promotion to the post of Section Officer from 01.04.1998 to 22.11.1997.

7. Accordingly, the present petition stands dismissed.

8. At this stage, learned counsel for the petitioner pointed out that in terms of Annexure-13, judicial pronouncement in which it is held that warning punishment is not one of the punishment. Such decision is not acceptable for the reasons that punishment of warning in the present case is governed by Bihar State Electricity Board, Patna- Standing Orders under the Industrial Employment (Standing Orders Act, 1946). Judicial pronouncement cannot be straightway accepted in the light of Apex Court's decision rendered in the case of *Nair Service Society Vs. Dr. T. Beermasthan & Ors.* reported in (2009) 5 SCC 545 at para 48 held as under:

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal



rotation has to be applied taking 20 vacancies as a block.”

9. In the light of the aforesaid Apex Court’s decision, the decision cited on behalf of the petitioner, Annexure-13 is not acceptable.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.08.2022
Transmission Date	

