IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1074 of 2018
In
Civil Writ Jurisdiction Case No.348 of 2016

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1. The State of Bihar through the Commissioner-cum-Secretary, Water Resources Department, Government of Bihar, Patna, Sinchi Bhawan, Patna.
2. The Deputy Secretary, Water Resources Department, Sinchai Bhawan Government of BIhar, Patna.
3. The Director Land acquisition and Rehabilitation Department, Water Resources Department, Sinchai Bhawan Government of Bihar, Patna
4. The Special Land Acquisition-Cum-Rehabilitation Officer, Koshi Project Saharsa, Bihar.

... ... Appellant/s

Versus

Amrendra Prasad Yadav Son of Late Deo Narayan Yadav, Resident of Village- And Post Office- Mohanpur Choumukh, Police Station- Bihariganj, District- Madhepura Bihar.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, (AAG-4) Mr. Deepak Sahay Jamuar, AC to AAG-4 Mr. Utkarsh Bhushan, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar, Advocate Mr. Ashok Kumar No.6, Advocate Mr. Akhilesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-12-2022

Heard learned counsels for the parties.

2. The instant L.P.A. is filed by the State of Bihar in questioning the order of the learned Single Judge dated 22.03.2018 passed in C.W.J.C. No. 348 of 2016.

3. Respondent Amrendra Prasad Yadav had filed C.W.J.C. No. 348 of 2016 and had prayed for following reliefs

in the writ petition:-

> **"(i) For quashing the order dated 03.04.2014 issued under Memo No. 649 dated 04.04.2013 passed by the Director, Land Acquisition and Rehabilitation, Water Resources Department, Government of Bihar, Patna.**
>
> **(ii) For direction to the respondents to regularize his service till his retirement i.e. 31.12.2013, and to pay all consequential benefits for which he is entitled in accordance with law.**
>
> **(iii) For any other relief."**

4. The learned Single Judge allowed the writ application.

5. Earlier Respondent- Amrendra Prasad Yadav had filed C.W.J.C. No. 7766 of 2003 before this Court questioning his termination which was disposed of on 30th March, 2010 in favour of the respondent. Thereafter L.P.A. No. 1046 of 2011 was preferred by the State-appellant (The State of Bihar & another Vs. Amrendra Prasad Yadav) against the order dated 30th March, 2010 passed in C.W.J.C. No. 7766 of 2003 and it was allowed on 13.09.2011 (Annexure-13 of writ petition).

6. Respondent- Amarendra Prasad Yadav was initially appointed as a Peon on 09.12.1980. He was promoted to the post of Junior Accounts Clerk and Senior Accounts Clerk on 06.09.1982 and 20th December, 1988 respectively. He was

continued to hold the post as on 31.12.2013, the date on which he has attained age of superannuation and retired from service. In the meanwhile, appellant-State opened their eyes that there were certain illegalities in the initial appointment to the post of Peon and further promotion to the post of Junior Accounts Clerk and Senior Accounts Clerk in the year 1980, 1982 and 1988 respectively. On the alleged allegations relating to illegalities in appointment and promotion his services were displaced. Feeling aggrieved and dissatisfied with the appellants' action, he invoke remedy before this Court. Initially he had benefit of interim prayer. Writ Court while deciding respondent's writ petition, remanded the matter to the appellant. Thereafter, show cause notice was issued on 14.02.2013 for which respondent had filed his reply on 15.03.2013. In the result, dismissal order was passed on 04.04.2013. Thus, respondent has invoke the remedy in filing C.W.J.C. No. 348 of 2016 in questioning dismissal order dated 04.04.2013. The learned Single Judge allowed C.W.J.C. No. 348 of 2016 on 22.03.2018. State-appellant feeling aggrieved and dissatisfied with the order of the learned Single Judge presented this appeal.

7. Learned counsel for the appellant-State vehemently contended that from the inception, namely, date of

appointment to the post of Peon till promotion to the post of Senior Accounts Clerk were illegal. In this regard, disciplinary action has been initiated and it was concluded against such of those officers who were alleged to have involved in the process of appointment and promotion of the respondent herein. Therefore, there is no infirmity in the order of dismissal and the learned Single Judge has committed error in not appreciating the factual aspect of the matter that the initial appointment and further promotion of the respondent are contrary to material information. It is further submitted that promotion granted in the year 1982 and 1988 is contrary to Government Policy decision dated 11.06.1986. Hence, the impugned order is liable to be set aside while affirming the order of dismissal dated 04.04.2013.

8. Per contra, learned counsel for the respondent resisted the aforesaid contentions and submitted that there is inordinate delay in raking up the issue relating to initial appointment and promotion orders passed in the year 1980, 1982 and 1988 and it has attained finality in the year 1988. It is submitted that if there are any irregularities in respect of appointment to the post of Peon and the same is doubted by the appellant-State in that event they were required to follow due process of law in the year 1980 with reference to his date of initial appointment in the year 1980. In the year 2003, status of the respondent, like a regular appointee and he had extended all service and monetary benefits time to time including two promotions. Therefore, if illegal appointment had been noticed and if the respondent was involved in the process of illegal appointment and promotion in that event State-appellant should have initiated disciplinary proceedings while invoking various provisions of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (Hereinafter referred to as "Bihar CCA Rules, 2005"). On the other hand, they have resorted to only issuing show cause notice and obtaining reply and proceeded to pass order of dismissal. It is further submitted that before passing order of dismissal it was the bounden duty of the disciplinary authority to first revert him from the post of Senior Accounts Clerk to that of Junior Accounts Clerk and further to the post of Peon for which post he was initially appointed. The disciplinary authority/appointing authority failed to resort the aforesaid statutory provision of law. It is also submitted that State-appellant have not taken any action to withdraw or cancel the promotion. On the other hand, they resorted to imposing penalty of dismissal from service. Dismissal order could be passed only after resorting or adhering to the Bihar C.C.A. Rules, 2005. Therefore, there is no infirmity in the order of the learned Single Judge dated 22.03.2018 passed in C.W.J.C. No. 348 of 2016.

9. Heard learned counsels for the respective parties.

10. Respondent- Amarendra Prasad Yadav was initially appointed as a Peon on 09.12.1980 and he earned promotion to the post of Junior Accounts Clerk and Senior Accounts Clerk on 06.09.1982 and 20th December, 1988. The State – appellant noticed certain irregularities stated to have been committed by the officers of the department while appointing petitioner to the post of Peon in the year 1980 and further promoting him to the post of Junior Accounts Clerk and Senior Accounts Clerk in the year 1982 and 1988 respectively. Such alleged irregularities have been noticed only in the year 2003. Appellants-State had issued notice on 17.01.2003 and 12.07.2003. Respondent had filed his reply/objection and the same was not appreciated by the State-appellants and appellants proceeded to dismiss Respondent's services. Respondent invoke remedy under Article 226 of the Constitution in filing C.W.J.C. No. 348 of 2016 before this Court and got favourable order, however matter was remanded to the appellants to re-visit the entire matter and proceed to pass order in accordance with law.

11. Thus, appellants had issued show cause notice on 14.02.2013 and on receipt of reply on 15.03.2013 proceeded to impose penalty of dismissal from service on 04.04.2013.

12. Appellants have failed to apprise this Court what are the irregularities committed by the concerned officials in appointing petitioner to the post of Peon and further promotion to the post of Junior Accounts Clerk and Senior Accounts Clerk and it is stated that appointment and promotions were illegal and contrary to relevant provisions/ executive order. The same is not supported by material information. No doubt there is a serious lapses on the part of the State in promoting respondent to the post of Junior Accounts Clerk and Senior Accounts Clerk in the year 1982 and 1988 respectively for the reasons that in the absence of creation of post of Junior Accounts Clerk and Senior Accounts Clerk how promotions have been made from the post of Peon. When we posed question to the State, they were unable to answer and apprise this Court on what date the post of Junior Accounts Clerk and Senior Accounts Clerk were created and what is the mode of promotion. On the other hand, respondent's counsel relied on Annexure-J to the supplementary affidavit, method of promotion issued on 28th February, 1989.

13. On/from perusal of Annexure-J to the supplementary affidavit, it is evident that it is general in nature. In other words, it is not relating to promotion to the post of Junior Accounts Clerk or Senior Accounts Clerk. They were unable to apprise this Court existence of Junior Accounts Clerk and Senior Accounts Clerk in a particular department. For the purpose of promotion to any post the minimum requirement is existence of a particular promotional post and further what is the mode of recruitment to such a promotional post whether is it by promoting from the feeder cadre. If it is from feeder cadre, further question would be final seniority list of the feeder cadre. All these materials is required to be taken note of for the purpose of promotion. It is astonished to know that the State of Bihar -appellants have rake up the issue about irregularities after more than a decade. In the present case, finality in respect of taking action is attained only on 04.04.2013 with reference to the alleged incident in the year 1980, 1982 and 1988. In other words, departmental officials and superior are sleeping over the matters for years together which is deprecated, for the reasons that ultimately tax payers money is being spent on the illegalities committed by the State-department.

14. Irregularities in appointment to the post of Peon,

further promotion to the post of Junior Accounts Clerk and Senior Accounts Clerk with reference to the order passed in the year 1980, 1982 and 1988 cannot be interfered in the year 2022 for the reasons that respondent has attained age of superannuation and retired from service on 31.12.2013.

15. Time and again Courts have taken note of belated action on behalf of authorities and in not interfering with the action taken by the State. Recently, in the case of Yogendra Prasad in C.W.J.C. No. 4737 of 2017 (para 6) we have noticed that irregularities in promotion in the year 1997 was noticed and concerned authority proceeded to rectify the same after lapse of more than a decade and during the pendency of the litigation such employee has already attained age of superannuation and retired from service.

Para 6 of C.W.J.C. No. 4737 of 2017 reads as under:-

> "6. Having regard to the fact that petitioner had rendered service in the post of Sr. Section Engineer for more than one decade, one has to draw inference that he is a regular holder of the post of Sr. Section Engineer. Therefore, revisit of eligibility to promotion at this distance of time would be a daunting exercise for the Respondent-Department. Retrieving correct data to rework seniority commencing from the year 1997 or earlier would be extremely difficult, resulting further litigation among

> retired persons. The matter, in our view, must rest there so that the pensioner is not left in a stake of uncertainly at this stage of his life after rendering decades of service to the Respondent-Department."

If the promotion is to be undone rights accrued in favour of several persons would be affected including retired persons. These issues have been taken note of while granting relief to the concerned person/ employee. In the present case also respondent was initially appointed to the post of Class-IV and promoted to the post of Junior Accounts Clerk and Senior Accounts Clerk in the year 1982 and 1988 respectively and he has attained age of superannuation on 31.12.2013.

Dismissing him from service would be too harsh when he has rendered service from the year 1980 to 31.12.2013. Dismissal is not on account of any misappropriation of government fund or money. Moreover, department have not pointed out whether respondent was involved in alleged irregularities in appointment and promotion and what is the role played by him so as to punish him in the absence of alleged allegations against the respondent, imposition of penalty of dismissal from service that too without resorting to Bihar CCA Rules, 2005. To some extent, learned Single Judge has taken note of how the order of dismissal dated 04.04.2013 is bad.

16. In the light of these facts and circumstances, appellant- State have not made out a case so as to interfere with the order of the learned Single Judge dated 22.03.2018 passed in C.W.J.C. No. 348 of 2016.

17. Accordingly, present L.P.A. stands dismissed with exemplary cost of Rs. 1,00000/-. The cost shall be remitted in the Prime Minister Relief Fund within six months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

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