

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6803 of 2018

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Awadh Kishore Son of Late Ramlakahn Chaudhary Resident of Village -
Kutubpur Dumari, P.O. Minapur Rai, P.S. - Hajipur Sadar, District - Vaishali
presently posted as Executive Engineer Design Circle One-Building
Construction Department, Bihar, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Building Construction Department, Bihar, Patna.
3. The Joint Secretary, Building Construction Department, Bihar, Patna.
4. The Upper Secretary, Building Construction Department, Bihar, Patna.
5. The Chief Engineer South, Building Construction Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Rai, Adv
For the Respondent/s : Mr. Mahendra Prasad Verma, AC to SC-20

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

7 18-07-2022 The writ application has been filed praying for
following relief: -

*“for issuance of writ in the nature of
mandamus or any other writ /Order / Direction,
commanding respondents authorities to grant
promotion to the petitioner on the post of
Superintendent Engineer, Building Construction
Department, Bihar, Patna with effect from the date on
which junior to petitioner and similarly situated person
have been granted promotion after setting aside the
order of punishment vide letter no. 9982 (Bha), dated*



7.10.2016 in facts and circumstances of the case and to drop the subsequent departmental proceeding vide letter dated 14.06.2017 and for grant of any other suitable relief / reliefs which petitioner found entitled in the eye of law.”

The brief facts, which are not in dispute, are that the Departmental Promotion Committee (DPC) for considering the grant of promotion to the post of Superintendent Engineer was convened on 22.09.2016.

The petitioner has been found fit for promotion by the DPC dated 22.09.2016 (Annexure-2). On 07.10.2016, the promotions as a result of the said DPC has been notified by notification bearing No. 10029.

On the same date, the petitioner has been awarded punishment of warning under notification dated 07.10.2016 bearing Memo. No. 9982. The petitioner has been left out from the notification and only ten out of eleven persons found fit for grant of promotion in question, have been granted promotion under the notification dated 07.10.2016.

The submission of petitioner's counsel is that on the date of DPC, the petitioner was found fit for promotion. The authorities have issued the consequential notification on



07.10.2016. More than a month later the petitioner has thus wrongly been excluded from the notification, as the punishment of “Warning” dated 07.10.2016 was subsequent to DPC and not relevant for the grant of the promotion in question. The relevant date for consideration would be the date of DPC and “Warning” subsequent thereto, which was not before the DPC, even if it is a fact which came into existence on the same date on which notification of promotion was issued, would not have any effect on the grant of promotion in question, to the petitioner.

The State counsel submits that since on 07.10.2016, the department has notified punishment of warning against the petitioner, he cannot claim to be a beneficiary in the promotion notification of the same date. It is also submitted that on 18.07.2018, the petitioner has been awarded the punishment of censure for year 2012-13 and has been placed in the minimum scale of pay.

Explanation (3) to Rule 14 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, is explicit, insofar as the effect of warning is concerned, the relevant extract reads as follows:

“If a Government Servant is awarded



'warning' after adopting the prescribed procedure of awarding penalty (i.e. after giving an opportunity to explain his conduct and keeping in view the explanation submitted by him) and which is entered into character roll, in that case it shall have the adverse effect for next one year on the confirmation and promotion of the Government Servant. If five 'warnings' are entered into the character roll of a Government Servant, he shall be deemed to be fit for promotion, if after expiry of the period of adverse effect of the fifth warning, during the next five years his work and conduct of at least three years is extra-ordinary and he has not been awarded any adverse remarks for the period of next five years."

The adverse effect of the warning in terms of the third explanation to the Bihar CCA Rules, 2005 makes it clear that the adverse effect on any confirmation or promotion is for next one year, meaning next one year after 07.10.2016 in the instant case, and cannot form the basis of petitioner's deprivation of the benefit of earlier DPC dated 22.09.2016.

Insofar as punishment order dated 18.07.2018 is concerned, the stand of the respondent in the supplementary



counter-affidavit is clearly unsustainable. In paragraph 8, statement has been made that he has been awarded punishment of censure for the year 2012-13. The punishment dated 18.07.2018 is an event subsequent to the DPC. It is admitted position that as on the date of DPC, the petitioner was eligible. On the date of notification of promotion also, there was nothing existing, other than warning, which as considered above only has an adverse effect on confirmation and promotion for next year. Petitioner, therefore, is entitled to grant of benefit of promotion as has been granted to others similarly situated or his juniors in terms of the notification dated 17.10.2016 bearing no. 10029.

The Court, having considered the rival submissions, would observe that the petitioner having been found eligible at the DPC could neither be made to suffer on account of punishment dated 07.10.2016, nor the punishment which has been inflicted upon the petitioner about two years later, i.e., on 18.07.2018. These two punishments could not be made the basis for depriving the petitioner from promotion in terms of the DPC dated 22.09.2016.

The authorities would be under obligation to grant the benefits arising out of such promotion to the petitioner, if



there is no other impediment, in accordance with law,
expeditiously and preferably within 8 weeks from
receipt/production of the copy of this order.

Writ application is allowed.

(Madhuresh Prasad, J)

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