IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.73 of 2022
In
Civil Writ Jurisdiction Case No.5586 of 2015

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1. The State of Bihar
2. The Secretary, Regional Transport Authority, Patna Division, Patna.
3. The Commissioner, Patna Division Patna.
4. The Collector of District Bhojpur at Ara.
5. The Addl. Collector, Dist. Bhojpur at Ara.

... ... Appellant/s

Versus

Shailendra Kumar S/o Late Bindhayal Prasad R/o Mohalla-New Shital Tola, P.S. Ara, Nawada, District-Bhojpur.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Majid Mahboob Khan, Advocate
For the Respondent/s	:	Mr. Praveen Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 31-10-2023

Heard the parties.

2. The present appeal has been preferred by the State of Bihar against the order dated 19.02.2019 passed by the learned Single Judge in CWJC No. 5586 of 2015 by which the writ petition preferred by the respondent- petitioner was allowed and the orders passed by the appellants-respondents *(by which the promotion granted as Circle Inspector was withdrawn)* were quashed with further directions that he would be entitled to all consequential benefits.

3. The matrix of facts giving rise to the present appeal is/are as follows:-

4. On 25.1.72, the respondent-petitioner was appointed as a Revenue Clerk and was granted first time bound promotion vide office letter no. 1022 dated 1.5.87 w.e.f. 25.1.82.

5. Later, he was granted promotion on substantive post of Circle Inspector- Cum - Kanoongo vide memo no.1330 dated 1.12. 2004 and was posted at Karai Perswra circle in the district of Nalanda by the order of the Commissioner, Patna Division, Patna.

6. The respondent-petitioner rendered the service on the post of Circle Inspector for about 8 years when all on a sudden, the respondent authorities cancelled his promotion demoting him to his initial post vide letter no. 339 dated 14.5.2012. Soon thereafter, respondent-petitioner superannuated on 31.7.2012.

7. Later, the Additional Collector vide his office letter dated 03.09.12 and 02.01.13 sought guidelines from the respondent No.2 with regard to the posting of the respondent-petitioner in the light of letter dated 14.05.12. In turn, the respondent no.2 gave directions to adjust the amount paid to the respondent-petitioner on the promotional post from his retiral benefits.

8. Aggrieved by the said action, representation was preferred before the Collector, Bhojpur on 06.03.14 but he failed to get any response. This followed representation before the Commissioner, Patna Division on 09.03.14 and 09.04.14 which too failed to elicit any response.

9. Challenging the orders, the writ petition was filed. Grievance in the writ petition was that the respondent-petitioner suffered financially as huge amount was deducted from his retiral benefits and further his pension was fixed on the basis of salary as per his initial post.

10. The case of the respondent- petitioner is/was that on the verge of retirement, the solitary promotion that was granted to him on post of Circle Inspector Cum- Kanoongo by the Commissioner, Patna Division, Patna was cancelled by the respondents No.2 without showing any reason and/or any prior notice and as such the actions of the respondents is/was in teeth of principle of natural justice.

11. The State appeared and contested the matter and a counter affidavit was filed on behalf of the respondent nos. 4 and 5 duly put on affidavit by the Circle Officer, Piro, Bhojpur.

12. The stand of the State in the writ petition is/was that as per the Bihar Junior Revenue Service Rules, 2004 (henceforth for short ‘the 2004 Rules’), the promotion could have been granted to an employee only by a duly constituted Committee and as the said promotion was granted to the petitioner-respondent by the Commissioner, Patna Division, Patna, the same was in the teeth of ‘the 2004 Rules’. In that backdrop, the orders in question were passed with further direction to realize the excess amount so paid from the retiral benefits as he had subsequently retired.

13. The Writ Court took up the matter and after taking note of the fact that while the order of the Commissioner, Patna Division, Patna granting promotion to the respondent-petitioner was made vide memo no. 1330 is dated 01.12.2004; ‘the 2004 Rules’ came into force effective 08.04.2005 i.e. much after the promotion granted to him.

14. The learned Single Judge accordingly held that ‘the 2004 Rules’ cannot be made the basis for judging the validity of the promotion and in that backdrop, the order dated 14.05.2012 by which his promotion as Circle Inspector was withdrawn as also the consequential order dated 29.01.2013 by which direction was given for taking steps for recovery of the amount were quashed.

15. Aggrieved, the State of Bihar has preferred this appeal.

16. The State Counsel tried to impress the Court that in view of 'the 2004 Rules', the promotion was to be granted to an employee by a Committee duly constituted for the purpose and as such the Commissioner, Patna Division, Patna could not have granted him the promotion to the post of Circle Inspector and thus the learned Single Judge erred in overlooking this fact while allowing the writ petition.

17. However, upon query by the Court whether 'the 2004 Rules' came into force effective 08.04.2005 or not, the answer was in affirmative.

18. In that backdrop, when the promotion was granted to the thirteen employees including the respondent-petitioner serving as Revenue Clerks to the post of Circle Inspectors cum Kanoongos by the Commissioner, Patna Division, Patna vide memo no. 1330 dated 01.12.2014, i.e. much before 'the 2004 Rules' came into force on 08.04.2005, the State appellants were at fault in passing the orders.

19. Taking into account the aforesaid facts, the learned Single Judge rightly passed the order dated 19.02.2019 by quashing the orders passed by the appellants- respondents.

20. No other point has been put forward by the learned State Counsel.

21. The order in question needs no interference.

22. The appeal is misconceived and is accordingly dismissed.

23. The dues in the nature of pension, if any, to the writ petitioner shall be computed and paid within a period of four months from today failing which it will carry interest @ 9% from the date on which it was due, which interest liability will be paid by the State and then recovered from the Officers/Officials who was/were responsible in defaulting the payments directed herein above, within the stipulated time.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Neha/-

AFR/NAFR	NAFR
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