

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4597 of 2022

Abhay Singh Son of Late Ram Nath Singh, resident of At- Bhadra Kali Nagar,
Janakpur, Anchal- Manpur, P.O. - Buniyadganj, P.S. Manpur (Muffasil),
District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Bihar, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education, Magadh Division, Gaya.
4. The District Magistrate, Gaya.
5. The District Education Officer, Gaya.
6. The District Programme Officer (Establishment), Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Adv. Mr. Pranav Kumar, Adv.
For the Respondent/s	:	Ms. Namrata Singh, AC to GA 12

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

- 4 11-01-2023 1. The petitioner has preferred this writ petition for quashing and setting aside the decision of the District Primary Teachers Promotion Committee dated 28.12.2016 whereby, decided not to consider the case of the petitioner for promotion on the post of Headmaster on account of pendency of suspension/departmental proceedings against him.
2. Learned counsel for the petitioner submits that the petitioner's case ought to have been considered and his right of consideration cannot be taken away merely because he is under suspension.



3. Learned counsel for the petitioner has further pointed out that the petitioner was reinstated and exonerated in the departmental inquiry vide order dated 26.05.2018.

4. Keeping in view thereto, learned counsel for the petitioner submits that his case was required to be reviewed by the Departmental Promotion Committee and considered afresh from the date his junior has been promoted.

5. Per contra, learned counsel appearing for the State submits that the action of not considering the case of petitioner while he was under suspension is in accordance with law and after the petitioner was exonerated of the charges his case would again be considered. However, on account of there being an embargo laid down by the General Administrative Department of not making promotions vide their memorandum dated 11.04.2019. The Department Promotion Committee cannot be convened. It is stated that as soon as the said embargo is lifted , the petitioner's case shall be considered for promotion.

6. I have considered the submission.

7. In **Union of India and others Vs. K.V. Jankiraman and Others**, as reported in (1991) 4 Supreme Court Cases 109, the Apex Court has considered the aspects where a person who is in clause that is whether he is under suspension or when



there is a departmental enquiry proceedings is pending, how his case is to be considered. Several different examples have been considered by the Apex Court and it has been held that a right of consideration for promotion exists with an employee, if he is under suspension or a departmental inquiry pending his case has to be considered but shall be kept in sealed cover which would be opened subject to the decision of the departmental inquiry.

8. It would be apposite to quote the relevant para of the Appex Court Judgment as under:

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt



the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the



employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)

“(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

*(2) ****

*(3) ****

(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;”

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and



that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

9. Keeping in view above, the action of the respondent in not considering the candidature of the petitioner for promotion while he was under suspension is found to be illegal and unjustified. At the same time, taking notice of the fact that the petitioner has been subsequently exonerated, case for review of D.P.C. is made out. The embargo laid down by the General Administrative Department, as pointed out by the respondent dated 11.04.2019, restraining the respondent from convening meeting of Department Promotion Committee has to be understood in the aforesaid circumstances. The said directions for not convening meeting of Departmental Promotion



Committee is for the future promotions and not for the purpose of review D.P.C.'s. A review D.P.C. is essentially a D.P.C. to be reconvened to take into consideration the case of a person who has been left out of consideration by earlier D.P.C. for unjustifiable reasons while his juniors have been promoted. Admittedly, the petitioner's case was not considered by the original D.P.C.

10. In view of above, directions are required to be issued accordingly. The writ petition is allowed accordingly. The respondents are directed to convene a review D.P.C. for making promotions for the post of Headmaster and consider the case of the petitioner from the date his juniors has been promoted. The exercise shall be conducted within period of 2 months henceforth.

9. The writ petition is allowed with no cost.

(Sanjeev Prakash Sharma, J)

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