

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9333 of 2012

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Arun Kumar Son Of Sri Phul Singh Presently Posted As Assistant, Civil Court, Hilsa Nalanda

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Law Department, Bihar, Patna.
2. The District And Sessions Judge, Nalanda At Biharsharif
3. The Addl. District Judge, Sdr. Hilsa Civil Court, Hilsa
4. The Judge Incharge, Administration, Biharsharif, Nalanda
5. The Judge Incharge Accounts Biharsharif, Nalanda
6. The Registrar, Civil Court, Biharsharif, Nalanda
7. The Accountant , Civil Court Biharsharif Nalanda
8. The District Accounts Officer, Nalanda

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shailendra Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Raghwanand, GA 11
		Mr. Sanjay Kumar Tiwari, AC to GA 11

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 08-12-2023

Heard Mr. Shailendra Kumar Sinha, learned counsel for the petitioner and Mr. Raghwanand, learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for quashing the order dated 17.11.2011 (Annexure 11) passed by District & Sessions Judge, Nalanda at Biharsharif (Respondent No. 1) by which the respondent no. 1 has erroneously recalled the order of monetary benefits of ACP and need based post allowed to the petitioner on the sole ground that as per the report of the



Accountant, Civil Court Biharsharif, entry of result of Departmental examination was not done in the service book of the petitioner.

3. Learned counsel for the petitioner submits that the petitioner was working as Assistant in the Civil Court, Hilsa (Nalanda) since 06.05.1978 was given promotion against the need based post and was allowed the increased pay scale of the said post vide order dated 08.05.2022 contained in letter no. 70 of 2022 issued by the Judge Incharge (Accounts) Biharsharif after receipt of attestation from the District Accounts Officer, Nalanda. Since thereafter, the petitioner was functioning on the upgraded scale and was allowed to work as Accountant, Civil Court, Hilsa Nalanda.

4. Learned counsel for the petitioner submits that the petitioner was granted upgraded pay scale against the need based post after due verification by the District Accounts Officer, Nalanda but suddenly he has received a letter contained in memo no. 3242 dated 10.12.2010 issued by the Judge Incharge, Administration, Biharsharif directing the petitioner to submit a report with regard to passing of Departmental examination within two days as it does not appear from perusal of the service book of the petitioner. Pursuant to the aforesaid



letter, the petitioner has replied vide letter dated 18.12.2010 stating therein that prior to 1978, he was posted at Gaya where he passed the Hindi exam, but was unable to give details of the same as the documents were at Gaya.

5. Again the respondent no. 3 again sent a notice vide memo no. 350 dated 11.12.2011 asked the petitioner as to whether he has passed the departmental examination part 1 & 2 as per the Civil Court Rules which does not appear from the reply submitted by the petitioner and as to why the promotion and ACP already granted to the petitioner be not withdrawn. The petitioner has replied to the same vide his letter dated 19.02.2011 stating therein that he has already passed the requisite departmental examinations part 1 & 2 but by mistake had mentioned only about passing of Hindi Examination in his earlier reply. Again the petitioner had received a notice dated 25.02.2011 issued by respondent no. 3 to submit certificate of passing of the departmental examinations within 15 days. Respondent no. 3 has given one week more time by way of last indulgence to the petitioner to produce/submit his certificate with regard to the passing of departmental examination, otherwise steps shall be taken for recovery of the amount which was given to the petitioner by way of promotion. The petitioner



has further received notice dated 19.10.2011 issued by respondent no. 3 directing the petitioner to submit the requisite certificates otherwise steps shall be taken for withdrawal of the promotion and recovery of the access amount. Pursuant to the aforesaid letter of the respondent no. 3, the petitioner has filed reply dated 03.11.2011 requested the respondent no. 1 to call for a report from the concerned authority where the petitioner has deposited all his certificate and after verification thereof he was allowed promotion. But the respondent no. 1 without calling a report from the concerned authority and even the District Accounts Officer, Nalanda on whose approval the petitioner was allowed promotion against the need based post on the upgrade scale has recalled the order of the promotion of ACP and need based post by order dated 17.11.2011 (Annexure 11) on the sole ground that since there is no entry made in the service book of the petitioner with regard to passing of departmental examination.

6. Learned counsel for the petitioner further submits that after verifying the genuineness of the claim of the petitioner that he has passed the requisite examination and due verification the concerned respondent has given the promotion to the petitioner and as per the request of the petitioner that same may



be verified from the concerned authority and without verifying the same from the concerned authority, the annexure has been passed by the respondent no. 1.

7. Learned counsel for the State submits that due to non passing of the requisite examination, the promotion of the petitioner was cancelled by the competent authority and it is requisite qualification that without passing the requisite examination the petitioner has wrongly given promotion and it is fact that of non passing of departmental examination part 1 & 2 which are condition precedent for promotion under need based policy came in light during the inspection of the service book of the senior-most staffs of this Judgeship in the year 2010 and thereafter, a notice was served upon the petitioner to submit the requisite certificate of passing the departmental examination of part 1 & 2 but he has not submitted the same, so the authority has rightly cancelled the promotion of the petitioner.

8. In view of the aforesaid it appears that respondents after due verification has allowed the petitioner to the promotion and the respondents have organized the examination in question and without verifying / call for a report from the concerned authority whether the petitioner has passed the examination in question and passed the aforesaid order and the petitioner has



already requested to the authority to call for report from the concerned authority to check whether the petitioner has deposited the certificates or not but the respondent authority without verifying the same has passed the impugned order.

9. Accordingly, the order dated 17.11.2011 (Annexure 11) is set aside and the respondent is directed to pay all the consequential benefits to the petitioner within period of 3 months from the date of production of this order.

10. This writ petition stands disposed of.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.12.2023.
Transmission Date	N/A

