

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2758 of 2020

=====

Arun Kumar Srivastava Son of Shyam Narayan Srivastava Resident of Flat No. 303, Vishal Ganga Apartment, Anandpuri, West Boring Canal Road, P.S.- S.K. Puri, P.O.- G.P.O., District- Patna, Pin Code- 800001 (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary Education Department, Government of Bihar, Patna.
4. The Bihar Public Service Commission Bailey Road, Patna through its Secretary.
5. The Director (Administration) Cum Additional Secretary Education Department, Government of Bihar, Patna.
6. The Director Primary Education Education Department, Government of Bihar, Patna.
7. The Director Research and Training Education Department, Government of Bihar, Patna.
8. The Regional Deputy Director of Education Patna Division, Patna.
9. The District Education Officer Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Raju Giri, Adv. Mr.Harish Vardhan, Adv.
For the State	:	Mr.Jitendra Kumar Royl (Sc13)
For the B.P.S.C.	:	Mr.Sanjay Pandey, Adv. Mr.Nishant Kumar Jha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :16-05-2024

Heard learned counsel for the petitioner and learned counsel for the State and learned counsel for the BPSC.

2. The present writ application has been filed for the following relief/s:-

“I. To issue an appropriate writ/ order/ direction, in the nature of certiorari



quashing the order dated 04.10.2019 passed by the Director (Administration) cum Additional Secretary, Education Department, Bihar, Patna by which promotion to the petitioner to Bihar Education Service (Group-2) has been denied on the ground that after superannuation, others have not been recommended for promotion, so in order to maintain parity the petitioner cannot be promoted ignoring the fact that the petitioner was recommended for promotion by the Departmental Promotion Committee. (As contained in Annexure-13).

II. To issue an appropriate writ/ order/ direction, in the nature of certiorari quashing the order dated 03.12.2019 passed by the Appellate Authority, Education Department by which the appeal preferred by the petitioner against the order dated 04.10.2019 passed by the Director (Administration) cum Additional Secretary. (As contained in Annexure-14).

III. To issue an appropriate writ/ order/ direction, in the nature of mandamus commanding the respondents to grant promotion to the petitioner from Subordinate Education Service (Primary Section) to Bihar Education Service (Group-2) with effect from 01.07.2017 with all consequential benefits.

IV. To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”



3. The brief facts of the case is that the petitioner joined service as Lecturer in Teachers Training College, Sukhasan Manhara (Madhepura) after passing the exam conducted by Bihar State Subordinate Commission and superannuated from his service on 31.01.2019. A Notification dated 04.03.1991 in this regard was issued by the Human Resources Development Department, Bihar, Patna (Annexure-1 to the writ application). By the order dated 30.03.1995 issued by the Director, Primary Education, Bihar, Patna inter-se Seniority list of Officers of Education Service (Primary Section) was issued. The petitioner's name is at serial no.1833 (Annexure-2 to the writ application).

4. In the meantime, vide order dated 30.06.2012 passed by the Director (Administration)-cum-Additional Secretary, Education Department, Bihar, Patna, the petitioner who was posted as Lecturer, Primary Teachers Education College, Mahendru, Patna was transferred and posted as Principal, Primary Teachers Training College, Dumrao, Buxar. Thereafter, the petitioner was transferred and posted as Principal, District Institute of Education and Training, Sheikhpura.

5. The Director (Administration) cum Additional Secretary, Education Department, Bihar, Patna vide letter dated



30.05.2018, annexing the list of eligible persons fit for promotion, informed the Secretary, Bihar Public Service Commission, Patna that the said persons have completed 8 years of service which is the minimum requirement and in regard to some persons the confidential service report and also report regarding character would be sent as soon as they are available. In the list sent, the petitioner's name figured at serial no.59 and on perusal of the details, it transpires that he is fit for promotion (Annexure-5 to the writ application).

6. The Director (Primary Education) vide order dated 28.01.2019 had requested all concerned District Education Officer and other persons to provide record of all such persons who were to be promoted. The name of the petitioner too finds mention in one of the list at serial no.55 (Annexure-6 to the writ application).

7. Thereafter, vide letter dated 04.02.2019, the Director (Administration) – cum- Additional Secretary, Education Department, Bihar; Patna sent the list of persons who were to be promoted along with the Confidential report. The letter dated 04.02.2019 sent to the Deputy Secretary, B.P.S.C. was then provided to Sri Arvind Kumar by way of R.T.I., from whom petitioner obtained the same. The letter was issued by the Public



Information Officer, Bihar Public Service Commission, Patna.

On perusal of the list, it transpires that the petitioner has been found fit for promotion and the availability of the vacancy was from 01.07.2017, meaning thereby that promotion to the petitioner should have been given from 01.07.2017 itself. It was also indicated that the petitioner would retire on 31.01.2019 (Annexure-7 to the writ application).

8. On 05.02.2019, meeting of Departmental Promotion Committee was held in the Office of the B.P.S.C. to consider the promotion of Officers of Subordinate Education Service to the Bihar Education Service (Group-2). The entire deliberation and recommendation was sent by the Deputy Secretary, B.P.S.C. to the Additional Chief Secretary, Education Department vide letter dated 06.02.2019. On perusal of the Minutes of the meeting, it transpires that the petitioner has been recommended for promotion with the noting that, 'fit for promotion'. In the list, his name is at serial no.58.

9. The said meeting was attended by Director (Administration)-cum-Additional Secretary, Education Department, Bihar, Patna and Additional Chief Secretary, Education Department, Bihar, Patna along with other members including Chairman cum Member of the B.P.S.C., Patna. The



letter dated 06.02.2019 along with the Minutes of the Meeting held on 05.02.2019 by the Departmental Promotion Committee was procured under Right to Information Act by the petitioner. The said information was given by the Public Information Officer, Bihar Public Service Commission, Patna vide letter dated 24.04.2019 (Annexure-8 to the writ application).

10. Many persons who were junior to the petitioner have been granted promotion vide order dated 15.02.2019 issued by the Director (Administration) cum Additional Secretary, Education Department, Bihar, Patna. All the persons who have been granted promotion through the said order after serial no.25 are juniors to the petitioner (Annexure-9 to the writ application). The petitioner vide representation dated 07.03.2019, 05.04.2019 and 03.05.2019 requested the Additional Chief Secretary, Education Department, Bihar, Patna to grant promotion (Annexures-10, 11 and 12 to the writ application).

11. When no action was taken, then the petitioner raised his grievance before the Bihar Government Servant Grievance Redressal Forum. The Service Grievance Redressal Officer, Education Department i.e. Director (Administration) cum Additional Secretary without appreciating the facts of the case and also overlooking the fact that he was part of the



Departmental Promotion Committee which recommended the petitioner to be promoted vide order dated 04.10.2019 rejected the plea of the petitioner of promotion. He rejected claim of the petitioner citing that after superannuation no other employee of Subordinate Education Service have been recommended for promotion, so in order to maintain parity, the petitioner too cannot be given promotion.

12. The said order dated 04.10.2019 is illegal. There is no provision in the Act/ Rule by which the due promotion of an employee cannot be granted after superannuation. Moreover, the act of the respondents amounts to reviewing his own decision. Also maintaining parity cannot be a ground to deny promotion to a person whose name has already been deliberated upon by the Departmental Promotion Committee and who has been found fit for promotion. He also failed to appreciate that juniors to the petitioners have been granted promotion (Annexure-13 to the writ application).

13. Learned counsel for the petitioner submits that the petitioner being aggrieved by the same, filed Appeal on 15.10.2019 before the Appellate Authority cum Additional Chief Secretary, Education Department. The Appeal of the petitioner has been rejected by the Appellate Authority, Education



Department vide order dated 03.12.2019 on nonest grounds. The reason which has been cited is that after promotion, the petitioner will not be able to give Departmental Examination for further promotion and for grant of ACP/MACP. Reference has also been made to the Bihar Education Service Rules, 2014 (hereinafter referred to as the Rules). The reason cited by the respondent is completely misplaced and not correct. In terms of the Rules 50% post of the Bihar Education Service is to be filled up by direct examination and rest 50% by way of promotion from the Subordinate Education Service on the recommendation of the Commission.

14. The Rules does not bar promotion to an Employee of Subordinate Education Service, whose promotion was due during service and who has retired. As far passing Departmental Examination is concerned, the same was waived by the General Administration Department vide Letter No.4674 dated 15.05.1992 and Letter No.4368 dated 28.08.2009 for persons who have completed 50 years of age. Since the Petitioner has retired, he may be given promotion in the Bihar Education Service (Group-2). His pay scale will also increase. Also the Appellate Authority who is the Additional Chief Secretary, Education Department was one of the Member of the



Departmental Promotion Committee which recommended the petitioner for promotion. The Order of the Appellate Authority is bad and illegal (Annexure-14 to the writ application).

15. Learned counsel for the petitioner filed a supplementary affidavit, in which, he stated that the main ground for not giving promotion to the Petitioner in Bihar Education Service is that the Petitioner has retired and according to the Respondents if an employee retires he cannot be given promotion even if his promotion is due. The grounds of the Respondents gets defeated from the fact that in the year 2007 large number of person who had retired have been given notional promotion in the Bihar Education Service by the Departmental Promotion Committee in its Meeting dated 09.04.2007. The Petitioner has procured the details of the Meeting and decision dated 30.05.2007 under Right to Information Act, 2005. Bihar Public Service Commission vide Letter dated 17.12.2019 has given the entire details of promotion granted to employees of Subordinate Education Service to Bihar Education Service, under Right to Information Act to the petitioner (Annexure-15 to writ petition).

16. It is submitted that the respondents have stated in their impugned Appellate order that the above ground of similar treatment cannot be extended to the petitioner as in between



Bihar Education Service Rules, 2014 has come into existence and in terms of the Rules, retired persons cannot be given promotion though their promotion is due from the service period. In this regard it is stated that nowhere in the Bihar Education Service Rules, 2014 it has been provided that promotion to a person, whose promotion is due from service period cannot be notionally given to him for monetary benefits.

17. It is further submitted that when the petitioner was superannuated, his pay scale was Level-8 i.e. Rs.47,6000/- to 1,51,100/-. If the due promotion of the petitioner is given by the respondents his pay scale would get enhanced to Level-9 i.e. Rs.53,100/- to Rs.1,67,800/-. It is lastly submitted that the respondents have failed to appreciate that when petitioner was in the service, his promotion became due from 01.07.2017 and the respondents have failed to appreciate that even the Bihar Public Service Commission in its meeting dated 05.02.2019 has recommended the petitioner for promotion after finding him fit and eligible.

18. The respondents have failed to appreciate that only because the other superannuated persons have not been recommended for promotion, the petitioner too for the sake of parity cannot be denied promotion. The respondents cannot



deny the promotion to the petitioner when already persons junior to him have been granted promotion to the Bihar Education Service (Group-2). It is submitted that the action of the respondents is not only bad in law but against the Principles of Natural Justice and violative of Article 14 of the Constitution of India.

19. A counter-affidavit is filed on behalf of the respondent no.5 stating therein that after retirement, the petitioner sought for his promotion from S.E.S Cadre to Bihar Education Service Cadre (Class-II) with the stating that the person who is junior to him was granted promotion from S.E.S. Cadre to the Bihar Education Service (Class-II), however, his request for promotion was denied. It is submitted by learned counsel for the respondent no.5 that no junior of petitioner was promoted from S.E.S. Cadre to B.E.S Cadre (Class-II) during the service tenure of petitioner. Junior whose name is being quoted by the petitioner got his promotion post retirement of the petitioner not during the service tenure of petitioner.

20. The department is not biased against the petitioner, if so, then, the petitioner's name was neither been included in the list of promotion nor sent his name at sl.59 in the list of eligible persons who were fit for promotion before the BPSC



(Departmental Promotion Committee) (Annexure-B to the counter-affidavit). The petitioner was not promoted from S.E.S. Cadre to Bihar Education Service Cadre (Class-II) simply because petitioner was not borne in the service at that time. Although, the criteria for promotion and its confirmation mentioned in pars-11 and 12 of Bihar Education Service manual notification no-698 dated 12-02-2014 was also not being fulfilled by the petitioner. The pars-11 and 12 of notification no-698 dated 12-02-2014 clearly states that the newly promoted officers should have qualify in the departmental examination. Thereafter, the confirmation can only be done after successfully qualifying in the departmental examination.

21. Moreover, for retired personnel, there is no provision to allow him to sit in departmental examination (Annexure-C to the counter-affidavit). The petitioner has already been granted benefit of A.C.P./M.A.C.P., however, he is already drawing more salary in existing cadre. Therefore, petitioner has no monetary loss due to non-promotion into the Bihar Education Service Cadre (Class-II). It is lastly submitted that the petitioner has filed a writ application for quashing the order dated 03.12.2019 of Appellate Authority, Education Department which is pending before this Hon'ble Court for adjudication. In view



of the aforesaid reason, petitioner is not entitled for any relief related to his claim for promotion.

22. Per contra, learned counsel for the petitioner submits that merely because the petitioner has got benefit under ACP/MACP, he cannot be dis-entitled from promotion to the higher post with better perks, salary and avenues, which would have bearing on the pensionary benefits and also on the status of the petitioner. It is submitted that there is no requirement of the petitioner to appear before the departmental examination and the notification no-698 dated 12-02-2014 has been wrongly interpreted by the respondents.

23. Learned counsel for the petitioner relied upon the judgment of this Court in ***Panchdeo Singh Vs. The State of Bihar & Ors.*** reported in ***2006(3) PLJR 456***, whereby it has been held that “*a person, who has been considered and found entitled to the benefits of promotion is bound to be given that benefit regardless of the fact whether he is in service or he is not in service-such benefit in the form of consequential financial benefits can be given after the retirement of the employee-direction issued to consider the case on merit and in case found fit to pay all the consequential monetary benefits.*” He emphasized on para-6, 7 and 8 of the said judgment.



24. Considering the argument of the parties and perusal of the record and also the judgment of this Court in *Panchdeo (supra)*, it is admitted fact that when the petitioner was in the service, he was also entitled for promotion in the year, 2017 itself but there is a delay on part of the department. The Departmental Promotion Committee was not held on time, therefore, promotion was not granted to the petitioner. It is also clear from the Rules, that there is no requirement for the petitioner to pass the departmental examination. Therefore, there is no fault on part of the petitioner. He is an eligible candidate. The Departmental Promotion Committee held in the Office of B.P.S.C. also found the petitioner fit for promotion but even then, promotion has not been granted to him on the ground of retirement.

25. In the aforesaid background, I am inclined to quash the order dated 04.10.2019 passed by the Director (Administration) cum-Additional Secretary, Education Department, Bihar, Patna by which promotion to the petitioner to Bihar Education Service (Group-2) has been denied. The order dated 03.12.2019 passed by the Appellate Authority, Education Department by which the appeal preferred by the petitioner against the order dated 04.10.2019 passed by the Director (Administration) cum



Additional Secretary has been rejected, is also hereby quashed.

26. The respondent concerned is directed to grant promotion to the petitioner from Subordinate Education Service (Primary Section) to Bihar Education Service (Group-2) with effect from 01.07.2017 with all consequential benefits.

27. With the aforesaid direction, this writ application is disposed of.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	07.05.2024
Uploading Date	16.05.2024
Transmission Date	N.A.

