

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1214 of 2018

In
Civil Writ Jurisdiction Case No.17745 of 2016

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Devendra Prasad S/o Late Mannu Prasad Resident of Village Noora, P.S.
Masaurhi, District Patna.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Land Reform and Revenue Department, Government of Bihar, Patna.
2. The District Magistrate, Patna Collectorate, Patna.
3. The Collector, Patna.
4. The Deputy Collector, Patna.
5. The Circle Officer, Dhanarua, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Abhinav Ashok, Advocate
For the Respondent/s	:	Mr. Md.Khurshid Alam, AAG - 12
		Mr. Shailendra Kumar Dwivedi, A.C. to AAG - 12

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

8 31-01-2024 The appellant has assailed the order of the learned single Judge dated 01.08.2018 passed in CWJC No. 17745 of 2016.

2. Grievance of the appellant-Mannu Prasad is that he is entitled to second time bound advancement (TBA) promotion after completion of 25 years of service in the post of Revenue Karamchari or equivalent post held by him. The same has been rejected by learned Single Judge. In para 4 he has recorded as



under:

“Counter affidavit has been filed on behalf of respondents no. 2, 3 and 5, stating that all admissible retiral dues have been paid and with regard to second time bound promotion, in view of his service period being less than 25 years, the petitioner has been held ineligible for such benefits. It has further been stated that first time bound promotion has been granted under letter dated 27.08.2009 with effect from 01.01.1996.”

3. The aforementioned content of para 4 is incomplete with reference to service particulars of the appellant. Service particulars of the appellant are that he was initially appointed as a muster roll employee and that was converted into temporary appointment on 10.06.1969. Thereafter, appellant was extended the benefit of first time bound advancement on 08.04.1981. He has attained the age of superannuation and retired from service on 31.01.1999. For the purpose of claiming second time bound advancement employee has to complete 25 years of service before his retirement. The appellant submitted that 25 years of service is required to be counted from 10/11.06.1969, the date on which he was appointed temporarily with reference to his initial appointment as a muster roll employee. He has pointed out that though the word used in the office order dated 10.06.1969 that ‘appointment is temporary’ at the same time pay scale of Rs. 100-2-112-EB-2-130 has been extended. It is



submitted that pay scale would be extended by the department or State only in respect of regular holder of the post. Therefore, the learned Single Judge has committed error while rejecting the appellant's writ petition.

4. Per contra, learned counsel for the respondent resisted the aforementioned contentions and submitted that there is no infirmity in the order of the learned single Judge. It is submitted that 10.06.1969 office order reveals only appointment is temporary. Therefore, service is required to be counted only with effect from 07.09.1976 for the purpose of extending first time bound advancement. If 07.09.1976 cut-of date is taken into consideration for the purpose of extending service benefits to the appellant in that event appellant has not served 25 years as on 31.01.1999, the date on which he has attained the age of superannuation and retired from service.

5. Heard learned counsel for the respective parties.

6. Core issue in the present lis is whether appellant is entitled to have the benefit of second time bound advancement with reference to his service particulars or not. Initially, he was appointed as a muster roll employee and he was brought on temporary appointment with effect from 10.06.1969. We have noticed that while appointing him on temporary basis he has



been extended pay scale of Rs. 100-2-112EB-2- 130; such pay scale is extendable only to such of those regular employee and not to the ad hoc employee. Assuming that appellant was an ad hoc employee in that event basic pay would have been extended to him and not the pay scale. On the other hand, the aforementioned pay scale has been extended. Therefore, one has to draw inference that appellant was regular holder of the post with effect from 10.06.1969. Consequently, 25 years of service is required to be counted with effect from 10.06.1969. If it is counted in that event he is entitled to second time bound advancement in the year 1994 that is much before the date of his retirement on 31.01.1999.

7. Accordingly, the appellant has made out a case so as to interfere with the order of the learned Single Judge dated 01.08.2018 passed in CWJC No. 17745 of 2016, accordingly, it is set aside while allowing CWJC No. 17745 of 2016 of the appellant. The concerned respondent is hereby directed to extend second time bound advancement to the appellant with effect from the date on which he has completed 25 years of service. 25 years of service is required to be counted with effect from 10.06.1969 and date may be assigned consequently re-fixation of pay and arrears of pay or difference of pay shall be



calculated and extended to the appellant. If the appellant is entitled to pensionary benefits in that event the concerned respondent is also hereby directed to undertake revised fixation of retiral benefits including provident fund. If the appellant is not entitled to provident fund in that event a detailed speaking order shall be passed and communicated to the appellant as to why the appellant is not entitled to provident fund. The above exercise shall be completed within a period of four months from the date of receipt of this order failing which the appellant is entitled to litigation cost and it is quantified at Rs. 5,000/- .

8. At this stage we have noticed that Mannu Prasad is stated to have been died and consequently, I.A. 1 of 2023 filed and allowed in respect of substitution. Therefore, the official respondents are hereby directed to extend the monetary benefit to the legal heirs of Mannu Prasad after due identification of legal heirs.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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