

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4080 of 2022

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Santosh Kumar Upadhya, S/o Late Awadhesh Narayan Upadhya, Resident of
Rajlaxmi Bhawan, Sita Ram Bag, Japlinganj, Ballia (U.P) 277001.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Personal and
Administration, Govt. of Bihar.
2. The Registrar General, Hon'ble Patna High Court of Judicature at Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amit Shrivastava, Sr. Advocate
Mr. Girish Pandey, Advocate
Mr. Baban Kumar, Advocate

For the Respondent/s : Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

For the High Court : Mr. Satyabir Bharti, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 15-02-2024

We have heard Mr. Amit Shrivastava, learned
senior counsel, along with Mr. Girish Pandey, learned counsel
for the petitioner, Mr. Satyabir Bharti, learned counsel for the
Patna High Court. The State is represented by Mr. Sanjay
Kumar Ghosherway, learned AC to AAG-3.

2. The petitioner, who was an officer of Bihar



Judicial Service, 23rd Batch after serving in different judgeship has superannuated from the post of Sub-Judge-cum-ACJM on 31.07.2018, has filed the present writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction upon the respondent authorities to pay the increased amount of pension from higher notional pension amount w.e.f. 20.07.2012.

3. The short facts, as gleaned from the records, is that with respect to the acts complained against the petitioner, who was the then Judicial Magistrate, Sitamarhi, the Standing Committee vide its Resolution dated 25.03.2008 had been pleased to resolve to initiate departmental proceeding and placed him under suspension with immediate effect. After submission of memo of charges and holding the enquiry, the Inquiry Officer submitted its enquiry report, leading to the issuance of the show-cause notice and finally the Standing Committee having considered the reply to the second show-cause has been pleased to resolve vide its order dated 07.07.2009 that the petitioner be punished by withholding his promotion for a period of three years from the due date of promotion if he is otherwise found fit for the same and further for the period of suspension he will not be entitled to any salary



except subsistence allowance.

4. It is pertinent that the aforementioned order of punishment has not been challenged and thereby the petitioner accepted the same.

5. Learned senior counsel appearing on behalf of the petitioner submits that as the petitioner has accepted this punishment, which was imposed to him on 20.07.2009 and it has been ended on 19.07.2012, thereafter, he was accorded promotion to the post of Sub-Judge and then promoted to the cadre of Civil Judge (Senior Division) vide notification dated 22.09.2015. However, despite the petitioner being eligible for promotion to the post of District Judge (Entry Level) when his case was not considered for promotion, he submitted representation, which remained unanswered. Thereafter, the petitioner moved this Court in C.W.J.C. No. 14005 of 2017, which came to be dismissed by the learned coordinate Bench of this Court vide order dated 25.01.2018.

6. Referring to the aforesaid facts, learned senior counsel further submitted that the petitioner was placed under departmental proceeding for his act alleged to have been done at Sitamarhi as a Judicial Magistrate, Sitamarhi with the charge that he has conducted a trial against a practicing Advocate,



against whom there was an allegation of brute audacious and insolent behaviour, but the case resulted in acquittal.

7. Being aggrieved, the State of Bihar preferred Cr. Revision No. 650 of 2009 before this Court and this Court has been pleased to set aside the order passed by the petitioner in connection with Complaint Case No. 535 of 1995, corresponding to Trial No. 746 of 2004 and remitted the matter back to the learned trial court to proceed afresh from the stage of evidence by taking all necessary precautions and pass judgment in accordance with law.

8. The trial Court, pursuant to the direction of this Court proceeded further, however, it has again resulted in acquittal vide judgment dated 10.12.2015 passed by the learned court of Sub-Divisional Judicial Magistrate, Sitamarhi. In the aforesaid premise, learned senior counsel for the petitioner submits that since the judgment delivered by the petitioner has since been affirmed, thus the order of punishment imposed upon him becomes non-est in the eyes of law.

9. Per contra, learned counsel for the State while refuting the contention of the petitioner has submitted that for the identical relief, the petitioner had earlier approached before this Court in C.W.J.C. No. 14005 of 2017, which came to be



dismissed on 25.01.2018 and duly affirmed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s). 11594 of 2018.

10. Having heard the learned counsel for the respective parties and on perusal of the records this Court finds that the issue raised before this Court has already been dealt with by the learned coordinate bench of this Court in the earlier round of litigation where the learned court has taken note of the fact that the Selection and Appointment Committee of the High Court has considered the case of promotion of the petitioner for the year 2013-14 because no exercise was done earlier for the year 2011-12 and 2012-13. Further, while the case of the petitioner was considered for promotion in the year 2013-14 he was again not found fit for promotion on account of poor disposal of work between the period from 2009-13. The aforesaid decision of the Selection and Appointment Committee was duly accepted by the Standing Committee and moreover the representation against the decision of the Selection and Appointment Committee also came to be rejected by the Standing Committee on 01.09.2015, which has never been questioned.

11. It is further noted that for the year 2014-15, the



claim of the petitioner along with 16 others was taken up but again his performance was found to be sub par, therefore, no decision was taken for extending the benefit of promotion. Finally, the promotion came to be granted in the year 2015 after having a re-look of the performance as well as the explanation offered by the petitioner in relation to the poor performance of the petitioner for the year 2014-15, and, therefore, the benefit of promotion was extended.

12. Learned coordinate Bench while negating the contention of the petitioner has rightly observed that if the petitioner having not been found eligible for promotion then he cannot make a grievance through a writ Court that he has been denied promotion for no apparent, cogent and valid reason.

13. So far as the contention of the learned senior counsel for the petitioner in respect of the affirmation of judgment of acquittal in the subsequent trial, on being remanded by this Court is of no help, as the order of punishment has never been questioned. We are not in the present writ petition concerned with the departmental enquiry or the punishment of withholding of promotion. The penalty imposed has become final and the officer could not have been considered for promotion during the rigor of punishment. After that also, he



was found to be not entitled to promotion. In that context there is no question of the petitioner being entitled to the pay in the higher post or entitled to the revision of pay in that post, when he was continuing in the lower post.

14. In view of the aforesaid facts and circumstances, especially the order passed by the learned coordinate Bench of this Court in C.W.J.C. No. 14005 of 2017, which stood affirmed by the Apex Court, the writ petition sans any merit, stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.02.2024
Transmission Date	NA

