IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14138 of 2008

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Eqbal Ahmed Jamshed S/o Late Mohammad Yusuf, resident of House No. 203, Road No. 1/D, P.S. & P.O. Patliputra Colony, District- Patna- 800013.

... ... Petitioner/s

Versus

1. The State of Bihar, through Chief Secretary, Old Secretariat Patna.
2. The Commissioner-cum-Principal Secretary Finance (Commercial Taxes), Department of Bihar, Patna.
3. The Member Board of Revenue cum-Chairman Departmental Promotion Committee, Old Secretariat, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Mani Madhukar, Advocate
For the Respondents	:	Mr. Gyan Shankar, AC to GP-2

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
Date : 09-01-2024

Heard Mr. Rajendra Narayan, learned Senior counsel for the petitioner assisted by Mr. Mani Madhukar and Mr. Gyan Shankar, learned AC to GP-2 for the State.

2. The present writ petition has been filed praying for issuance of writ in the nature of Mandamus or any other writ, directing the respondent-authority to promote the petitioner on the post of Joint Commissioner of Commercial Taxes in the scale of 14300-400-18300 with effect from 31.03.2004 when the petitioner was notified to work as Incharge Joint Commissioner Commercial Taxes in the scale of Deputy Commissioner Commercial Taxes and to pay/allow other consequential benefits

including monetary benefit for which the petitioner is entitled and accordingly revised the pension of the petitioner in accordance with Rule.

3. Learned Senior counsel for the petitioner submits that the petitioner was a member of Bihar Finance Service and superannuated in the scale of Deputy Commissioner of Commercial Taxes while working as Incharge Joint Commissioner Commercial Taxes with effect from 31.10.2007. As per gradation list published by the Finance (Commercial Taxes) Department vide letter no. 3521 dated 21.08.2006 the petitioner was placed at Serial No. 15.

4. The matter of promotion of the petitioner on the post of Joint Commissioner of Commercial Taxes was taken up on 02.04.2007 and it appears from the proceeding of the Departmental Promotion Committee that the case of the petitioner was not taken up on the ground that there was notice under Section 10(1)(ka) of Bihar Lokayukta Act and the same was pending against the petitioner. Learned Senior counsel for the petitioner submits that no notice under Section 10(1)(ka) of Bihar Lokayukta Act was pending against the petitioner and later on this fact was found untrue. The Office of Lokayukta confirmed this fact vide letter no. 2782 dated 07.05.2007 that no notice under Section 10(1)

(ka) of Bihar Lokayukta Act was pending against the petitioner. Learned Senior counsel for the petitioner further submits that after confirmation from the office of Lokayukta, the Department was required to place the matter of promotion of the petitioner before the Departmental Promotion Committee for consideration the case of the petitioner but this was not done for the reason best known to the respondent-authorities. Learned Senior counsel for the petitioner submits that the Departmental Promotion Committee' meeting again convened on 04.07.2007 and the case of the petitioner was not considered on the ground that the confidential character roll of the relevant period was incomplete and hence the matter was kept pending for consideration and again the Departmental Promotion Committee was convened on 21.11.2007 to consider the case of the promotion on the post of Joint Commissioner of Commercial Taxes and the case of the petitioner again was not considered on the ground that he has superannuated from service with effect from 31.10.2007. Learned Senior counsel for the petitioner submits that the State Government had issued instruction with regard to writing of confidential character roll vide letter no. 2478 dated 03.12.70 and from perusal of the aforesaid Circular, the reporting officer is required to writ down the remarks in Confidential Character Roll latest by 15th April and thereafter, the reviewing officer is required to complete the paper by 30th April and it appears from the aforesaid Circular/letter of the State Government the petitioner was not responsible if Confidential Character Roll is not written in time and the responsibility of getting the Confidential Character Roll written is of the Administrative Department and the petitioner was not promoted due to latches on the part of the respondent-authority. The Department was responsible to get Confidential Character Roll written but this was not done in time and due promotion of the petitioner was not given and he was forced to retire in the lower scale of Deputy Commissioner of Commercial Taxes.

5. Learned Senior counsel for the petitioner further submits that the Departmental Promotion Committee again considered the matter on 21.11.2007 and this time the case of the petitioner was not considered on the ground that petitioner has since been retired with effect from 31.10.2007 but the respondent allowed retrospective promotion to retired employees of the Commercial Taxes Department. One Shri Girja Nandan Prasad and Shri Kailash Thakur were given retrospective promotion on the post of Joint Commissioner Commercial Taxes with effect from 08.03.2003 and 07.08.2008 respectively vide Notification No. 793 dated 26.02.2008 (Annexure-7) though they have superannuated

on 31.12.2007 and 20.06.2007 respectively but in the case of the petitioner this principle was given go by and suggests that the petitioner has superannuated from the post in question so the case of the petitioner for promotion was not considered. In fact, the petitioner was already working on the post of Joint Commissioner Commercial Taxes In-charge from 31.03.2004 till the date of superannuation (31.10.2007) and this fact was not placed before the Departmental Promotion Committee.

6. Learned counsel for the State submits that the Departmental Promotion Committee in its meeting dated 02.04.2007 in which the A.C.R. of the petitioner for the relevant period i.e. for the period 2005-06 and 2006-07 were also not presented before the Departmental Promotion Committee and for the same petitioner is himself responsible because the self appraisal in the prescribed format were not submitted by the petitioner for recording the A.C.R. for that very period and then Commissioner-cum-Principal Secretary had recorded the A.C.R. of the petitioner for the aforesaid period in the month of July, 2007 so the case of the petitioner was not considered in the Departmental Promotion Committee's meeting dated 02.04.2007 and so far as promotion of the other retired persons is concerned, as per the provision made in the Finance Department Resolution No. 7020,

for his own fault or latches, the petitioner is not entitled for his subsequent promotion or promotion after his retirement.

7. In view of the aforesaid, it appears that the Department one reason to another reason has not considered the case of the petitioner for the promotion to the post of Joint Commissioner of Commercial Taxes from the post of Deputy Commissioner of Commercial Taxes and the petitioner was in the zone of consideration with effect from 02.04.2007 but the case of the petitioner was not considered on the ground that there is notice under Section 10(1)(ka) of the Bihar Lokayukta Act is pending against the petitioner but in fact it was found that there was no such notice under Section 10(1)(ka) of the Bihar Lokayukta Act was pending against the petitioner and it appears that ACR of the petitioner was not placed before the Departmental Promotion Committee and as per Annexure-6, the petitioner was not responsible for the same. Apart from the aforesaid, the respondent authority also allowed retrospective promotion to the retired employees of the Department.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the writ petition is disposed of with a direction to the respondent-authority (Respondent No. 2) to consider the case of the petitioner for

promotion to the post of Joint Commissioner Commercial Taxes from the post of Deputy Commissioner of Commercial Taxes (retrospective promotion) with effect from the date when the petitioner was in the zone of consideration and take a decision within a period of three months from the date of receipt/production of a copy of this judgment.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
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