

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.435 of 2022

In

Civil Writ Jurisdiction Case No.14332 of 2010

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Gangeshwar Sharma, Son of Late Ram Charan Singh, resident of Village -
Waina, Police Station - Ghosi in the district of Jehanabad.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General and Inspector General of Police, Government of Bihar, Patna.
4. The Deputy Secretary, Department of Home (Police), Government of Bihar, Patna.
5. The Inspector General of Police (Personal), Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Sunil Kumar, Advocate Mr. Ranjeet Kumar, Advocate
For the Respondent/s	:	Mr.P.K. Verma (AAG-3) Mr. Sanjay Kumar Ghosarvey, A.C. to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-04-2024

The writ-petitioner is the appellant, who seeks promotion to the post of Senior Deputy Superintendent of Police (Sr. Dy.S.P.). The appellant was aggrieved with the fact that his claim to the post of Sr. Dy.S.P was rejected ignoring the fact that his juniors were given such promotion; that too on the only ground that the appellant was not confirmed as Dy. Superintendent of Police (Dy.S.P.). It is the case of the appellant



that the appellant's retrospective promotion itself was after his retirement.

2. The impugned judgment held that the appellant has not produced any material to show that he was confirmed in the final seniority list of Dy.S.P. On the above finding, the writ petition was dismissed with a cost of Rs. 5,000/- to be remitted to the Patna High Court Legal Services Committee. Liberty was also reserved to file a fresh petition with fresh materials.

3. Obviously, the appellant does not have any further material to be produced and hence the appeal has been filed.

4. Learned counsel for the appellant took us through the writ petition and the documents produced therein to show us that there were persons who were promoted along with him; or rather on the very same date, as he was granted retrospective promotion from 01.06.1994. Even persons who were promoted later to that date, were accommodated in the post of Sr. Dy.S.P. The appellant took us through Annexure-2 to 8 produced and also relied on Annexure 12 and the statements made in the supplementary counter affidavit in support of the same. The appellant's contention is that he should be granted promotion as a Sr. Dy.S.P.

5. Learned AAG-3, however, pointed out that the



appellant's claim was once considered in CWJC No. 1714 of 2016 and he was directed to make a representation. A representation was made which was rejected. It is specifically pointed out that the appellant who had not passed the Accounts examination; which was mandatory as per Rule 648(b) of the Bihar Police Manual was not confirmed in the post of Dy.S.P. This is what stood against his further promotion and all the juniors he has named in the writ petition have qualified in the Accounts examination.

6. The appellant's claim has a chequered career. The appellant was promoted as a Dy.S.P on 04.03.1999 pursuant to a writ proceeding. The appellant had approached this Court by CWJC No. 3991 of 1996, the judgment in which is produced as Annexure-2; which decision records his service history. The appellant was appointed as a Steno-Sub-Inspector of Police on 26.06.1969 and then promoted as Sub-Inspector of Police, in which post he was confirmed with effect from 05.08.1971. The appellant was then promoted to the post of Inspector of Police with effect from 01.10.1981 after the recommendation of the Central Selection Board and was confirmed as Inspector of Police with effect from 01.01.1988. The appellant was duly performing the duties of an Inspector of Police when according



to him persons who were appointed later to him or promoted on an officiating basis to the post of Inspector of Police were granted promotion to the higher post of Dy.S.P. since June, 1994. It was admitted by the Government that persons who were promoted later than the appellant to the post of Inspector of Police had been promoted to the post of Dy.S.P.

7. This Court by Annexure-2 directed the respondents to find out as to whether any person who had been promoted to the post of Inspector of Police on or after 01.10.1981 had been promoted to the higher post of Dy.S.P. The appellant was also given liberty to apprise the respondents about such promotions. It was directed that on finding any junior to have been promoted, the respondents would consider the case of the appellant also for such promotion from the date of promotion of such junior.

8. Annexure-3 was the order of promotion of the appellant on 04.03.1999, which obviously did not reckon the judgment of this Court produced as Annexure-2. The appellant was before this Court in M.J.C No. 3531 of 1997 which was disposed of as per Annexure-4. This Court granted an opportunity to the respondents to look into the matter and the respondents brought out Annexure-5 order dated 12.11.2003



which promoted the appellant as Dy.S.P. with retrospective effect from 01.06.1994.

9. The appellant's further case is that by Annexure-6 of the very same date, two other persons Shri Arun Kumar Sinha and Shri Hiralal Jha were promoted as Dy.S.P. on 01.06.1994 who were in fact juniors of the appellant. By Annexure-7 again two other juniors Shri Kumar Amar Singh and Shri Md. Hasnain were promoted to the post of Dy.S.P. respectively on 06.06.1994 and 01.12.1994. Both of them were juniors to the appellant in the cadre of Dy.S.P. who were granted promotion by order dated 08.08.2008, produced as Annexure-8. Shri Md. Hasnain was granted promotion from 01.12.2002 and Shri Hiralal Jha from 01.06.2002 till 31.08.2007, when he retired. The appellant also points out from Annexure-12 and Serial No. 65 wherein Shri Kumar Amar Singh was granted promotion to the post of Sr. Dy.S.P. on 06.06.2002; when he had not passed the departmental examination. According to the learned counsel, who argued with reference to the supplementary counter affidavit, Kumar Amar Singh passed the first and second Half Yearly Departmental Examination, 2004 which was held from 11.04.2005 to 13.04.2005 and 15.04.2005 while his promotion was from 06.06.2002.



10. We see from the judgment of the Writ Court in CWJC No. 1714 of 2016, filed by the very same petitioner, dated 17.01.2019 that therein it was virtually admitted that he did not qualify the Accounts examination which was a mandatory requirement under Rule 648(b) of the Bihar Police Manual. We accept the contention of the learned counsel for the appellant that the said writ petition was with respect to Assured Career Progression and the present one is with respect to promotion to the post of Sr. Dy. S.P. However, that does not permit the appellant to make any submission with respect to his passing the Accounts examination, which in the earlier proceeding he had admitted to have not qualified.

11. Rule 648(b) of the Bihar Police Manual requires that a Deputy Superintendent promoted from the rank of Reserve Inspector or Inspector must pass the examination in accounts and that he will be on probation for one year. At the end of the probation period if he has passed the examination in accounts, he would be confirmed in the post of Dy.S.P. It is also indicated that if a person fails to pass the examination in accounts within one year, or if he be unfavorably reported upon, he will be liable to be reverted to his substantive post. There is also a provision that if a person is performing the duties of a



Deputy Superintendent, he would be confirmed if he has officiated as a Deputy Superintendent for one year or more and that he may be even confirmed without further probation on his passing the examination in Accounts.

12. With the above provision in mind, we look at the service details of the appellant who was promoted as a Dy.S.P. on 04.03.1999 and retired as Dy.S.P. on 31.07.2002, without qualifying in the Accounts examination. The petitioner has sought for and obtained the promotion to the post of Dy.S.P. as on 01.06.1994. However, the fact remains that his confirmation would occur only after passing in the Accounts examination or when he is confirmed by reason of continuance beyond one year. He had not passed the Accounts examination, and there is no case set up of a confirmation after one year probation. He cannot in the said circumstance claim promotion to the post of Sr. Dy.S.P.

13. We cannot but notice that Shri Md. Hasnain by Annexure-8 has been given promotion only from 01.12.2002, after the retirement of the appellant. In so far as Shri Hira Lal Jha is concerned, he was promoted on 01.06.2002 by an order in the year 2008 by which time he had qualified in the Accounts examination, even according to the appellant. Hence, his



confirmation would relate back to the date of his eligibility and hence he would also be entitled for further promotion.

14. We find absolutely no reason to interfere with the order of the learned Single Judge in so far as it declined consideration of the retrospective promotion claimed. However, we are of the opinion that the cost ordered by the learned Single Judge can be deleted, and we do so.

15. The writ petition in so far as the claim for retrospective promotion is rejected, but, the cost stands deleted.

16. The Letters Patent Appeal stands disposed of.

17. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

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