

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1128 of 2024

In
Civil Writ Jurisdiction Case No.12240 of 2024

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Santosh Kumar S/o Narendra Kumar R/o Vill Basantpur, Shakurabad, Jehanabad, Bihar-804425. Presently posted as Assistant Director, Regional Planning Office, Magadh Division, Gaya

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Planning and Development, Govt of Bihar, Old Secretariat, P.O. Sachivalay, Patna.
2. The Additional Chief Secretary, General Administration Department, Govt of Bihar, Old Secretariat, P.O. Sachivalay, Patna.
3. The Joint Secretary, Department of Planning and Development, Govt of Bihar.
4. Om Prakash Singh S/O Unknown R/o Unknown Presently posted as District Planning Officer (Level 11), Lakhisarai

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Dhananjay Kumar
For the Respondent/s : Mr. Anjani Kumar, AAG (4)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 24-01-2025

1. Heard the learned counsel for the parties.
2. The appellant, a member of the Bihar Planning Service and posted as an Assistant Director, Regional Planning Office, Magadh Division, Gaya was overlooked for promotion and his juniors were promoted to the higher post. The reason for his being



overlooked is a warning having been issued to him.

3. It appears from the records that the District Magistrate, Nawada on 03.05.2022 served a charge memo on the appellant and his reply was called for. On perusal of his reply, the Joint Secretary, Planning & Development Department, Govt. of Bihar, took a decision to only issue a warning against the appellant to remain careful in future and dropped any further action against him.

4. It was thereafter that a meeting of departmental screening committee was held on 06.02.2024 in which the appellant was not considered for promotion on the next higher post because the period of warning was in currency.

5. The warning may not be a penalty within the meaning of the concerned rule and, therefore, it has not been placed in anyone of the categories of penalty. However the explanation given in Bihar Govt. Servants (Classification, Control and Appeal), Rules, 2005 is that if after the procedure of



disciplinary proceeding for an allegation, is followed and is concluded that it will be sufficient to warn the delinquent employee instead of censoring him, then in that circumstance the warning awarded should be entered into the character roll. However, with the entering into the character roll of such warning also, it would not be converted into any censor. However, it shall have its effect on the merits of the Govt. servant or on his being considered for promotion on higher post. The proviso further explains that if the Govt. servant is awarded warning after adopting the prescribed procedure of awarding penalty i.e. after giving an opportunity to explain his conduct and keeping in view the explanation submitted by him and which is entered into the character roll, in that case, it shall have the adverse effect for next one year on the promotion and confirmation of the Govt. servant.

- 6.** The contention of the appellant is that the learned Single Judge disposed of his writ petition only with a direction to the respondents to consider his



candidature for promotion on accrual of vacancy on the promotional post in the Planning and Development Department in future and did not take into account that the warning which was construed against him for not being considered for promotion had not been entered in the character roll. If that be so, it ought not to have been taken into account while considering the promotion of the appellant along with others. The decision of the Department has led to promotion to juniors to the appellant.

7. It appears from the records that the procedure was followed and on the explanation offered by the appellant, the Joint Secretary of the Department thought it fit not to continue any further and give the appellant a warning for good future conduct.

8. There is nothing on record which would indicate that it was not meant to be put in the character roll. The entry in the character roll ought to have been automatic unless the decision of warning specifically excluded it to be entered in the character roll. In that



view of the matter, the currency of such warning would continue for a year.

9. As noted by the learned Single Judge, the warning was given to the appellant on 27.02.2023. The Departmental Screening Committee was held within one year i.e. on 06.02.2024. Precisely for this reason, the appellant was not considered for promotion.

10. We are absolutely in agreement with the decision of the learned Single Judge whereby he has directed the respondents to consider the case of the petitioner/appellant for promotion immediately on accrual of vacancy in the promotional post in future.

11. This position stands admitted in the counter affidavit filed by the State as well.

12. There is thus no reason for any apprehension in the mind of the appellant.

13. The issue with respect to *inter se* seniority later when the petitioner is promoted to the next higher promotional post would remain open to be agitated, in



case so required.

14. The appeal stands disposed of accordingly.

(Ashutosh Kumar, ACJ)

sunilkumar/-

(Partha Sarthy, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.01.2025
Transmission Date	NA

