

IN THE HIGH COURT OF JUDICATURE AT PATNA

Vinod Kumar Sinha

vs.

The State of Bihar and Others

Civil Writ Jurisdiction Case No.7276 of 2016

13 October 2023

(Hon’ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

Whether the Petitioner was correctly denied the benefit of 1st time bound promotion on the ground that he has not passed the departmental examination?

Headnotes

Service Law – Departmental Examination vis-a-vis Time Bound Promotion – Recovery from employee of excess amount paid – writ petition to quash impugned orders wherein it has been held that since the petitioner has not passed the departmental examination, he would not be entitled to 1st time bound promotion and accordingly, a sum of Rs. 99,150/- has been sought to be recovered.

Held: non passing of departmental examination shall not be an impediment to grant of the benefits of time bound promotions /ACP /MACP – extending the benefit of ACP, which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, cannot be withheld for not possessing additional educational qualification – after retirement, no recovery can be made from an employee, in case there is no misrepresentation on his part, which is the case of the petitioner in the present matter – impugned orders quashed – respondents directed to refund the amount of recovery made from the petitioner – writ allowed. (Para- 4, 5)

Case Law Cited

State of Bihar & Ors. vs. Ram Subhag Singh, **LPA No. 4 of 2021**; State of Bihar & Ors. vs. Anjani Kumar, **2013 (2) PLJR 643**; Amresh Kumar Singh & Ors. vs. the State of Bihar & Ors., **2023 (2) PLJR (SC) 423**; State of Punjab & Others. vs. Rafiq Masih & Others, **(2015) 4 SCC 334 – Referred To.**

List of Acts

Constitution of India

List of Keywords

Service Law – Departmental Examination – Time Bound Promotion – Recovery from employee of excess amount paid – Mis-representation on part of Employee.

Case Arising From

Letter dated 14.7.2014, issued by the Secretary to the Commissioner, Bhagalpur Division, Bhagalpur, and order dated 10.4.2013, passed by the Director, Information & Public Relations Department, Government of Bihar, Patna.

Appearances for Parties

For the Petitioner/s: Mr. Upendra Prasad, Adv; Mr.Veena Kumari Jaiswal, Adv.

For the Respondent/s: Mr. Swapnil Kumar Singh, AC to GP-19

Headnotes Prepared by Reporter: Ghanshyam, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7276 of 2016

Vinod Kumar Sinha son of Late Parmeshwar Dayal, resident of village-
Manpur, P.O. Paroha, P.S. Manpur, District- Nalanda Retired Assistant in the
office of Commissioner, Bhagalpur, at present residing in the House of
Sheonandan Prasad, Rental Flat No. 512, Kankarbagh, Patna 800 020,
District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, State of Bihar, Patna
3. Principal Secretary, General Administration Department, Government of Bihar, Patna
4. Commissioner, Bhagalpur Division, Bhagalpur
5. Secretary, Information and Public Relations Department, Government of Bihar, Patna
6. Under Secretary, General Administrative Department, Govt. of Bihar, Patna
7. Director, Information and Public Relations Department, Government of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Upendra Prasad, Adv.
Mr.Veena Kumari Jaiswal, Adv.
For the Respondent/s : Mr. Swapnil Kumar Singh, AC to GP-19

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 13-10-2023

The present writ petition has been filed for quashing the
letter dated 14.7.2014, issued by the Secretary to the
Commissioner, Bhagalpur Division, Bhagalpur, as also the order
dated 10.4.2013, passed by the Director, Information & Public



Relations Department, Government of Bihar, Patna, i.e. the Respondent No. 7, whereby and whereunder it has been held that since the petitioner has not passed the departmental examination, he would not be entitled to 1st time bound promotion and accordingly, a sum of Rs. 99,150/- has been sought to be recovered.

2. The learned counsel for the petitioner has submitted that the petitioner has passed the departmental exam in the year, 2007 and 2008.

3. Per contra, the learned counsel for the Respondent-State has submitted that since the petitioner has not passed the departmental examination in time, he was wrongly granted the benefits of the 1st time bound promotion, hence, the same has been withdrawn.

4. This Court finds that the law regarding the issue under consideration is no longer rest integra, inasmuch as a learned Division Bench of this Court in the case of the ***State of Bihar & Ors. vs. Ram Subhag Singh*** (LPA No. 4 of 2021), by a judgment dated 11.5.2022, has held that non passing of departmental examination shall not be an impediment to grant of the benefits of time bound promotions / ACP /MACP. In fact, this aspect of the matter has also been decided by a judgment,



rendered by this Hon'ble Court in the case of ***State of Bihar & Ors. vs. Anjani Kumar***, reported in 2013 (2) PLJR 643, which has also been upheld by the Hon'ble Apex Court, by an order dated 10.3.2014, passed in SLP (C) No. 19182 of 2013. In a recent judgment, rendered by the Hon'ble Apex Court in the case of ***Amresh Kumar Singh & Ors. vs. the State of Bihar & Ors.***, reported in 2023 (2) PLJR (SC) 423, it has been held that extending the benefit of ACP, which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, cannot be withheld for not possessing additional educational qualification. In fact, in yet another judgment, rendered by the Hon'ble Apex Court in the case of ***State of Punjab & Others. vs. Rafiq Masih & Others***, reported in (2015) 4 SCC 334, the Hon'ble Apex Court has held that after retirement, no recovery can be made from an employee, in case there is no misrepresentation on his part, which is the case of the petitioner in the present matter.

5. Having regard to the facts and circumstances of the case and for the reasons mentioned herein-above, this Court finds that the impugned orders dated 14.7.2014 and the one dated 10.4.2013, passed by the Respondent No. 7 are perverse and contrary to the law laid down by the Hon'ble Apex Court as also



by the learned Division Bench of this Court, hence, are quashed.

The respondents are directed to refund the amount of recovery made from the petitioner within a period of four weeks from today.

6. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.10.2023
Transmission Date	NA

