

Gopal Prasad Vs. Road Construction

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Court : Jharkhand

Decided On : Oct-13-2017

Appellant : Gopal Prasad

Respondent : Road Construction

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S)No. 2027 of 2015 1. Gopal Prasad.Petitioner -Versus- 1. The State of Jharkhand.

2. The Secretary, Road Construction Department, Govt. of Jharkhand, Office at Project Bhawan Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi.

3. The Superintending Engineer, Road Circle, Road Construction Department, Hazribagh, P.O. G.P.O. (Hazaribagh) P.S. Sadar (Hazaribagh), District-Hazaribagh. ...Respondents ----- CORAM: THE HON'BLE MR. JUSTICE DR. S.N.PATHAK For the Petitioner: Mr. Sunil Kumar Sinha, Advocate. Mr. Shailesh Kumar Sinha, Advocate. For the Respondents: Ms. Kanchan Kumari, J.C. to A.A.G. ----- C.A.V. on 23.08.2017: Pronounced on 13.10.2017 ----- Dr. S.N.Pathak,J.

The petitioner has approached this Hon'ble Court with a prayer for quashing the order as contained in memo No.378 dated 27.3.2015 passed by the Superintending Engineer, Road Circle, Road Construction Department, Hazaribagh by which the representation filed by the petitioner in compliance of the

order passed by this Hon'ble Court in W.P.(S)No.5795 of 2011 has been rejected. Further prayer has been made to make payment of arrear of salary from 1.1.2006 to the date of superannuation after quashing the order dated 27.7.2012 passed by the Superintending Engineer whereby promotion granted to the petitioner under time bound scheme, ACP scheme and regular promotion on the post of Head Clerk has been cancelled after 5 years of superannuation of the petitioner. Factual Matrix 2. The petitioner was appointed as correspondence clerk in Public Works Department, Hazaribagh on 1.9.1975 and after attaining the age of 60 years, he was superannuated w.e.f. 31.1.2007 from the post of Head Clerk in the Department of Road Construction, Road Circle, Hazaribagh.

3. It is the case of the petitioner that on completion of ten years of his service he was given 1 st Time Bound Promotion in the pay scale of Rs.680-695 w.e.f. 1.9.1985. During his service tenure, he had passed Departmental examination and had also cleared 2 nd paper of Departmental Accounts examination on 27.9.1999.

4. It is the further case of the petitioner that after passing of the 2nd paper of Departmental Accounts Examination he was given promotion on the post of Head Clerk vide office order No.1116 dated 2. 30.6.2000 and was posted as Head Clerk in Road Circle of Road Construction Department, Hazaribagh and had joined on the said post on 1.8.2000. He finally superannuated from the said post with effect from 31.1.2007.

5. It is the specific case of the petitioner that after his retirement he received his gratuity, leave encashment and pension on the basis of his last pay drawn which was calculated on the basis of old pay scale. The petitioner filed representation before the respondent No.3 for fixation of his pay on the basis of VI th Pay Revision Committee report and on his representation his pay has been fixed at Rs.18,230/- as basic pay from 1.7.2006 to 31.1.2007 vide pay fixation order dated 30.4.2009.

6. It is further specific case of the petitioner that after fixation of the pay scale on the basis of VI th pay revision committee report the same was sent to the District Accounts Officer, Hazaribagh for verification but the same was returned to the Superintending Engineer with a note that the Time Bound Promotion given to the

petitioner was not proper on account of non-passing of final Departmental Accounts Examination though the order of exemption of the petitioner from passing the Departmental Examination was also submitted to the District Accounts Officer, Hazaribagh.

7. Learned Counsel for the petitioner submits that the impugned order cannot be sustained in law when the same has been passed in gross violation of the order of this Hon'ble Court passed in W.P.(S)No.5795 of 2011. The finding of the Superintending Engineer that promotion granted to the petitioner under Time Bound Scheme is against the Government Circular and is not in consonance with the finding of this Hon'ble Court passed in W.P.(S)NO.5795 of 2011.

8. Learned Counsel further submits that the promotion granted to the petitioner as back as in the year 1985 under Time Bound Promotion Scheme and benefits granted under ACP scheme in the year 1999 cannot be cancelled after 5 years of superannuation of the petitioner. In view of Circular dated 14.8.2002 which was made effective w.e.f. 9.8.1999 the petitioner is entitled to get 1 st ACP on completion of 12 years of service and 2 nd ACP on completion of 24 years of service and the said benefit cannot be withdrawn/cancelled 3. after superannuation of the petitioner.

9. Learned Counsel further submits that the impugned order for rejection of the claim of the petitioner is perverse and against the finding of the Hon'ble Court passed in W.P.(S)No.5795 of 2011 and thus the order passing authority is liable for committing contempt of the order passed by this Hon'ble Court.

10. Per contra counter-affidavit has been filed.

11. Learned Counsel for the respondents submits that the petitioner has been granted the benefits of first time bound promotion w.e.f. 01.09.1985 and promotion as Head Clerk w.e.f. 01.08.2000 and the benefits of second ACP w.e.f. 01.09.1999 without passing the Departmental Examination. The petitioner upon non- qualifying in the Departmental Examination has applied for exemption vide his letter dated 14.12.2006 and accordingly it has been considered and exemption was granted to the petitioner vide order dated 09.03.2007.

12. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioner needs consideration. It is an admitted fact that the petitioner retired from his service on 31.1.2007. The respondents cancelled the benefit/up-gradation in pay scale granted to the petitioner under Time Bound Promotion Scheme with effect from 1.9.1985 without following the principle of natural justice and that too after lapse of 22 years. The benefit of second up-gradation granted to the petitioner under A.C.P. scheme w.e.f. 1.9.1999 has also been cancelled without any notice to the petitioner. The regular promotion on the post of head clerk w.e.f. 1.8.2000 has also been cancelled after 5 years from the date of his retirement without any proceeding or following the principle of natural justice, which is absolutely arbitrary and illegal and not sustainable in the eyes of law.

13. It is settled principle of law that no order visiting with civil consequences can be withdrawn/cancelled without following the principle of natural justice. This Hon'ble Court in its full Bench decision in case of Normi Topno Vrs. State of Jharkhand, reported in 2007 (4) JLJR466 has clearly held that any promotion which continued for more than 20 long years cannot be abruptly withdrawn/cancelled without following the principle of natural justice and as such any order causing prejudice to a person cannot be passed without giving any opportunity of hearing. In the instant case, 4. the same was not done which is clear violation of principle of natural justice and the order of cancellation/withdrawal is null and void in the eyes of law. The order of withdrawal/cancellation has been passed on the premises that petitioner did not pass departmental examination/accounts examination. From perusal of the records it is being admitted by the respondents itself that petitioner was granted exemption from passing the accounts examination vide letter No.1134 (S) dated 9.3.2007 by the letter of Engineer-in-Chief, Road Construction Department, Jharkhand and meanwhile petitioner has retired on 31.1.2007. Nowhere it has been disputed that petitioner filed application for exemption from passing the accounts examination during his service period but the order has been passed by the department after his superannuation and thus it can comfortably be inferred that petitioner was at no fault. The petitioner had made application for exemption from passing departmental examination before the concerned authority before his superannuation but order vide letter No.1134 dated 09.03.2007 granting

exemption from passing the departmental examination came after his superannuation. As the exemption letter from passing the departmental examination was issued after the superannuation of the petitioner, his promotion granted in the year 1985 was cancelled. This contention of the learned Counsel for the respondents is not acceptable to this Court. Similar view was taken by this Hon'ble Court in W.P.(S)No.5795 of 2011 disposed of on 19.12.2014 with a direction to consider the case of the petitioner in accordance with law. Taking into consideration the findings of this Court in W.P. (S)No.5795 of 2011 dated 19.12.2014 it is held that the impugned order dated 27.03.2015 issued vide memo No.378 has been passed mechanically and in a most cryptic way which is not sustainable in the eyes of law. No recovery can be done on the ground of audit objection that too after retirement. Cancellation/withdrawal of the order of promotion and ACP benefits cannot be done after retirement without following the procedures of law. In the instant case procedures of law has not been followed and abruptly, illegally arbitrarily the promotion and ACP has been withdrawn on the ground of audit objection. The petitioner was granted exemption from passing of accounts examination vide letter No.1134(S) dated 09.03.2007 by the Engineer-in-Chief, Road Construction Department, Jharkhand after retirement and was never recalled and as such it 5. attained finality. The said exemption was never challenged and as such it cannot be set aside by an officer much below the rank i.e. Superintending Engineer.

14. Similar view fell for consideration before the Apex Court in case of State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors., reported in (2015) 4 SCC334 wherein recoveries in following circumstances had been made impermissible in law:- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service). (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery. (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post. (v) In any other case, where the court arrives at the conclusion, that recovery if made from

the employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

15. As the order dated 27.03.2015 is not sustainable in the eyes of law, the same is quashed and set aside. Resultantly, the writ petitioner is entitled for all consequential benefits and for fixation of pension in the last pay drawn by him at the time of his retirement.

16. The order of cancellation of promotion dated 27.07.2012 and order of recovery dated 27.07.2013 is also quashed and set aside.

17. The writ petition stands allowed. [Dr. S.N.Pathak,J.] P.K.S.

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