

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2224 of 2015

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Prithwi Raj Kumar Singh son of Late Raghubir Singh, resident of Mohalla Kachahari Road, Police Station, Town and District Siwan.

.... Petitioner/s

Versus

- 1.The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
- 2.The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
- 3.The District Magistrate, Siwan.
- 4.The Board of Director's through its Chairman Siwan Nagar Parishad, Siwan.
- 5.The Executive Officer, Siwan Nagar Parishad, Siwan.
- 6.Kishan Lal son of not known at present head clerk cum Accountant, Siwan Nagar Parishad Siwan, Police Station Town, District Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kundan Kumar Sinha, Adv

For the Respondent/s : Mr. SC10- S.S. Prasad

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 04-02-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ
application reads as follows:-

“That the petitioner seeking promotion to the post of Head Clerk/Selection Officer in Siwan Nagar Parishad as being senior most Assistant having graduation degree. The authority ignoring his seniority for no reason, private respondent Mr. Keshav Lal who is more than 20 years junior to the petitioner in service has been granted promotion to the post of Section Officer with effect from 10.02.2014 only having matriculate qualification can not be given promotion to the post of Head Clerk/Section officer is otherwise also not eligible for such promotion. His promotion is against the provisions of Rules “for regulating the appointments and qualifications for the officer’s and servants of Municipalities of N.A.C. 1977.”



Learned counsel for the petitioner submits that when a junior to the petitioner namely, respondent no. 6 got promoted on 10.02.2014, while the petitioner was not in service on account of order of punishment in departmental proceeding and such order of punishment having been set aside by this Court and subsequently, the petitioner has been reinstated in service, he would be entitled to claim promotion because respondent no. 6 who was promoted was junior to the petitioner. He further submits that even if a departmental proceeding was pending his case should have been considered for promotion and the result had to be kept in a sealed cover.

In the considered opinion of this Court, the petitioner has somehow misconceived notion of service jurisprudence. The petitioner got memo of charge on 23.05.2012 and thereafter, he was dismissed from service by an order dated 08.06.2012, while continuing under the order of punishment. The respondent Nagar



Parishad had promoted respondent no. 6 by an order dated 10.02.2014. The petitioner however having assailed the order of his dismissal on 08.06.2012 in C.W.J.C No. 732 of 2013 had succeeded in getting the order of dismissal set aside on the ground of violation of principles of natural justice. This Court therefore, had remitted the matter to proceed apart from the stage of enquiry.

In that view of the matter, unless the petitioner is acquitted in the departmental proceeding, there would be no question of his being considered for promotion. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of ***Union of India and Ors vs V.K.V Jankiraman & Ors Janki Raman reported in AIR 1991 SC 2010.***

That being so, this writ application is wholly misconceived and ill advised. It is, accordingly, dismissed.

The dismissal of this writ application however

will not come in the way of the petitioner for consideration of his case of promotion, in case, he is fully exonerated in the departmental proceeding.

(Mihir Kumar Jha, J)

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