

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23373 of 2011

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Ajay Kumar Sinha, S/O Late Umesh Chandra Prasad, Resident of Mohalla Dr. Rameshwar Dayal Path, Boring Road, P.S. Sri Krishnapuri, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna.
2. The State of Bihar through the Principal Secretary, Department of Urban Development & Housing, New Secretariat, Patna.
3. The Commissioner, Patna Municipal Corporation, Patna.
4. The Executive Officer, Water Supply Branch, Patna Municipal Corporation, Patna.
5. The Chief Engineer, Water Supply Branch, Patna Municipal Corporation, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. R. N. Shukla, Advocate
Mr. Ravindra Kumar Shukla, Advocate
For the PMC : Mr. Ranjeet Kumar Pandey, Advocate
For the State : Mrs. Neelam Prasad, AC to GP 25

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

ORAL JUDGMENT

Date: 18-03-2015

Heard learned counsel for the parties.

2. Petitioner served as Assistant Engineer in the Patna Municipal Corporation (hereinafter referred to as the Corporation). He superannuated from the said post on 31.12.2010. By filing this writ petition on 23.12.2011 he is assailing the proceedings of the Screening Committee of the Corporation dated 16.07.2011, Annexure-16 issued under the signature of the Municipal Commissioner whereunder request of the petitioner for grant of 1st, 2nd Assured Career Progression benefits have been refused on the ground



that he served the Corporation on an unsanctioned post and was allowed to continue on that unsanctioned post on humanitarian ground, as such, is not entitled for grant of ACP benefits in terms of sub-clause 1(ii) of Rule 3 of ACP Rules. Perusal of the impugned resolution indicates that there is only one post of Assistant Engineer sanctioned in the Corporation under Letter No. 53 dated 05.01.1985 on which some other person was serving from before, as such, petitioner could not have been appointed on the said post and he served the Corporation on an unsanctioned post on humanitarian ground and is not entitled for grant of 1st, 2nd ACP benefits. It further appears that the impugned resolution refers to the order of this Court dated 23.01.1996, passed in C.W.J.C. No. 946 of 1993.

3. Learned counsel for the petitioner assailed the impugned resolution on several grounds. In this connection he points out that petitioner was appointed in the Corporation as Assistant Engineer on 27.05.1983. His services were made ad hoc on the post of Assistant Engineer in the Corporation with effect from 01.04.1984 whereafter he continuously earned his increments on 01.04.1985, 01.04.1986 and onwards. On 30.11.1992 one Sri D.N. Tiwary, who served as Assistant Engineer in the Corporation, superannuated whereafter Administrator of the Corporation recommended to the State Government in Urban Development Department that services of



the petitioner be regularized on the post of Assistant Engineer available in the Corporation after superannuation of Sri D.N. Tiwary under Letter No. 416 dated 24.08.1996 Annexure to the supplementary affidavit filed by the petitioner in C.W.J.C. No. 8071 of 2012. Aforesaid affidavit has also been annexed with the present second supplementary affidavit as Annexure-24 and Letter No. 416 dated 24.08.1996 of the Administrator is also enclosed with the said supplementary affidavit of the petitioner.

4. Counsel for the Corporation, though opposed the prayer made in the writ petition, but has neither disputed the genuineness of the document relied on by the petitioner in this writ petition nor has he controverted the submission of the petitioner that he was appointed as Assistant Engineer in the Corporation on 27.05.1983 and his appointment was made ad hoc with effect from 01.04.1984 and that he earned increments on 01.04.1985, 01.04.1986 and onwards and that after superannuation of Sri D.N. Tiwary the then Administrator recommended to the Government under Letter No. 416 dated 24.08.1996 that his services should be regularized as Assistant Engineer in the Corporation. He also does not dispute the fact that right from 27.05.1983 till the date of superannuation of the petitioner on 31.12.2010 he continuously served the Corporation as Assistant Engineer. He also does not dispute that petitioner is not entitled for



promotion on a higher post but the only impediment coming in the way of the petitioner in either earning the benefit of promotion or the benefit of ACP is that he served the Corporation as Assistant Engineer for long 28 years on humanitarian ground and as formal order of petitioner's regularization has not been passed he is not entitled for any of the two benefits.

5. Once the Corporation has allowed the petitioner to serve the Corporation for 28 years, may be on ad hoc basis, humanitarian ground without regularizing his services, the Corporation has to treat the petitioner as a regular employee and entitled for grant of promotion or ACP. Petitioner having not earned promotion for 28 years should have been granted ACP under the impugned order as he is otherwise qualified for promotion but for the fact that his services could not be regularized for failure of the Government to consider the recommendation of the Administrator of the Corporation dated 24.08.1996 for 12 years and thereby petitioner served the Corporation for 28 years without being regularised. The Corporation having chosen not to grant ACP benefits to the petitioner, he has suffered. Accordingly, I not only set aside the order dated 16.07.2011, Annexure-16 but also direct the Corporation to pay the petitioner ACP benefit in accordance with law within one month from today with interest @ 8.5 per cent per annum and cost of Rs.50,000/-. Having

paid the ACP benefit to the petitioner with interest, cost the Corporation shall be at liberty to recover the amount of interest and cost from the then Administrator of the Corporation as also five other members of the ACP Screening Committee, which refused such lawful claim of the petitioner for all these years.

6. This writ petition is, accordingly, allowed.

(V.N. Sinha, J.)

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