

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1064 of 2000

=====

1.Suryadeo Paswan son of Late Mahabir Paswan resident of Village Baroguraru P.S. Guraru Mill, District Gaya.

2.Shambhu Sharan Prasad son of Late Kuldeep Sahay resident of Mohalla Shalimar Talkies, P.S. Police Line District Gaya.

3.Shiv Shankar Prasad Sinha son of Late Damodar Prasad, resident of Mohalla Ghoori Tand Police Station Civil Line, District Gaya.

4.Motichand Ram son of Late Sheojagi Ram, resident of Pararia P.S. Tarari District Bhojpur.

5.Vinod Kumar son of late Lallan Prasad Singh, village Andhar Karma Police Station Surajpura District Rohtas.

6.Sudama Prasad son of Sri Parmeshwar Ram resident of Mohadiganj Police Station Sasaram, District Rohtas at Sasaram.

.... Petitioner/s

Versus

1.The State of Bihar.

2.The Secretary, Department of Art Culture and Youth Welfare, Patna, Bihar.

3.The Deputy Secretary, Department of Art Culture and Youth Welfare, Patna, Bihar.

4.The Deputy Director General, N.C. C. Directorate, Rajendra Path Patna 800019, Bihar.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv & Mr. Md.Gayasuddin Khan, Adv

For the Respondent/s : Mr. Udai Shankar Singh AC to GA-2

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

8 01-04-2015 Heard learned counsel for the parties as with regard to the following reliefs, prayed in this writ application:-

“For issuance of writ in the nature of mandamus or any other appropriate writ commanding the respondents to promote the petitioners from class IV to class III post on the basis of final test/interview held for this purpose at N.C.C Directorate Patna on 8th August, 1995 and also to give them all consequential benefit including seniority for the same date.

For issuance of a writ in the nature of Mandamus commanding the respondents to give the allowances the

petitioner was admissible under the provisions of the Bihar Service Code for officiating on class III Post since long through appointed on class IV.

For issuance of a writ in the nature of Mandamus commanding or any other appropriate order commanding the respondents to fill up 50% of the total vacancies of class III post by way of promotion from class IV post pursuant to resolution no. 786 dated 14.10.90 or in alternative to direct the State Government to take a policy decision in this regard for filling up 50% of total vacancies of class III post by way of promotion from class IV post.

For holding that non-promoting the petitioner for a long time despite having taken examination for the same is arbitrary unconstitutional and malafide.”

Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioners in support of the aforementioned prayer has firstly, submitted that once the process of selection had been undergone by the NCC Directorate for filling up class-III post by way of promotion of class-IV employees and in which the petitioners had also appeared that the process could not have been abandoned in the midstream on account of change of policy decision of the State Government notifying the B.P.S.C the agency for holding the examination for promotion of Class-IV to Class-III employees. He has also submitted that the petitioners appointed and holding class-IV post were asked to work



on class-III post by the competent authority of NCC directorate but they have not been given any financial benefit as yet for their working against higher class-III post.

Learned counsel for the respondents on the other hand with the help of the counter affidavit has submitted that the petitioners may have a right of being considered for promotion but as a matter of fact the concept of class-IV employees being given class-III post is not strictly governed by the Rule of promotion because class-IV employees have different cadres whereas the concept of promotion itself envisages from feeder post to higher post to another post in the same cadre. According to learned counsel for the State, the Government resolution dated 11.02.1985 or even the subsequent resolution dated 14.10.1990 had envisaged internal recruitment from Class-IV employees against class-III post which cannot be equated with the concept of promotion. He has also submitted that judged in this



background if the B.P.S.C., was made the nodal agency to examine the cases of all class-IV employees of the State Government for being given the higher post of class-III, the petitioners cannot insist that their earlier examination held on the basis of the circular in force should be now acted upon and specially when the mode of selection had been changed by the State Government by making B.P.S.C., the agency to hold the examination and recommend the Class-IV employees for their internal recruitment on Class-III posts.

Mr. Singh, in reply has submitted that the petitioners in fact had also filed their application through proper channel before the Commission for consideration of their cases for promotion against class-III post but they were rejected on the ground of their being over-age. Mr. Singh, in this regard has also drawn support from the counter affidavit for explaining his plea that the applications of the petitioners were wrongly rejected on the ground that such advertisement was only meant for



direct recruitment on class-III post inasmuch as the case of the petitioners was for being promoted on class-III post on the basis of their being allowed to work on class-III post N.C.C. Directorate.

In the considered opinion of this Court, the petitioners could not in the year 2000 insist on a selection which was undertaken at the level of the N.C.C Directorate for filling up class-III post in 1995. The Government resolution dated 11.02.1985 which had authorized the appointing authority to fill 25 per cent of Class-III post from class-IV employees was based on fulfillment of minimum eligibility criteria and the length of service. That had undergone change in view of Government resolution dated 11.12.1990, by bringing the concept of limited departmental examination and while this process was undergone in the N.C.C Directorate the Government came with a policy decision that all the class-III posts from amongst class-IV employees, shall be filled up on the basis of the

recommendation of the B.P.S.C. on the basis of a common examination conducted for all Class-IV employees.

In that view of the matter, whatever examinations may have been conducted by the N.C.C Directorate and whose result was also never declared, cannot be at least made subject matter of this writ application because of lapse of more than five years from the date of holding of such examination as on the date of filing of this writ petition. As noted above in the meantime the Government has changed the mode of filling up of class-III post from amongst Class-IV employees both by increasing the number of posts from 25% to 50% posts as also the mode of selection through B.P.S.C. The petitioners' promotion even on the basis of limited departmental examination and that when too they had filed their application to B.P.S.C. for appearing in examination for recruitment on Class-III posts could not have been done by the N.C.C Directorate.

This Court therefore, would not find any error in the decision of the N.C.C Directorate in refusing the petitioners to promote on class-III post.

As with regard to the claim of the petitioners of filing their applications against class-III post advertised by the Commission the issue has been rather simplified by the respondent themselves that the advertisement was never meant for persons like the petitioners holding class-IV post rather it was meant for filling up class-III post by way of direct recruitment. Admittedly, neither the petitioners were seeking direct recruitment nor could be held to be eligible on account of completion of their maximum age limit.

In such a situation, this Court can only hold that if the petitioners are still in service and they have not yet been considered against class-III post by B.P.S.C., in course of last 15 years, their cases if they are still in service may be considered in the next round of consideration by B.P.S.C. if need be by also giving them



relaxation of age limit that may have been prescribed for class-IV employees to earn internal appointment on class-III posts. It is further made clear that the case of the petitioners, in the event they have not retired from service must be considered by the competent authority in NCC directorate strictly according to the latest prevalent decision of the State Government.

As with regard to the submission of learned counsel for the petitioners that the petitioners while holding their substantive appointment on Class-IV posts had/have worked on class-III post for a pretty long period but were not give financial benefit, this Court can only observe that there is a specific provision under Rule-103 of the Bihar Service Code, which lays down as follows:-

“103. The pay of a Government servant appointed by the State Government to hold substantively, as a temporary measure, or to officiate in, two or more independent post at one time shall be regulated as follows:-

(a) the highest pay to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post;

(b) for each other post he may draw such reasonable pay, in no case exceeding half the

presumptive pay (excluding overseas pay) of the post, as the State Government may fix; and

(c) if a compensatory allowance is attached to one or more of the posts he may draw such compensatory allowance as the State Government may fix provided that such allowance shall not exceed the total of the compensatory allowance attached to all the posts.”

Thus, if the petitioners qualify for such financial benefit by way of compensatory allowance in terms of Rule-103 of the Bihar Service Code and they file their representation for giving such benefit for the period they had/have worked or still holding the Class-III posts under the order of the competent authority, their cases should be examined and the benefit under Section-103 of the Bihar Service Code should be given to them.

This Court hopes and believes that if such individual representation by each of the petitioners separately along with their separate office orders of holding class-III post is filed, the competent authority of NCC directorate shall take appropriate decision within a period of three months from the date of filing of the representation by the petitioners. It is made clear that if

the petitioners have already retired, they may still claim and if found eligible for financial benefit by way of compensatory allowance under Section-103 of the Bihar Service Code.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

Ranjan/-

U			
---	--	--	--