

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.19310 of 2014**

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Ramesh Kumar Shrivastava Son of Late Banesh Prasad Sinha Resident of Mohalla -  
Brahamni Ghat (Srivastaava Bhawan) at Brahamani Ghat, P.S.- Civil Line Gaya at  
District - Gaya

.... .... Petitioner/s

Versus

1. The Water Board Cum Municipal Corporation, Gaya through the  
Commissioner, Water Board cum Municipal Corporation, Gaya
2. The Municipal Commissioner, Water Board cum Municipal Corporation, Gaya
3. The Administrator, Gaya Municipal Corporation, Gaya
4. The Executive Engineer, Water Board cum Municipal Corporation, Gaya
5. The Account Officer, Gaya Municipal Corporation, Gaya

.... .... Respondent/s

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**Appearance :**

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

For the Respondent/s : Mr. Rabindra Kumar Priyadarshi

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**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**

**ORAL JUDGMENT**

**Date: 23-06-2015**

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads

as follows:-

- "1(i) For issuance of a writ for quashing the Memo No. 31 dated 15.09.2014 issued by the Municipal Commissioner (Respondent No.2) by which the Respondent No.2 to 5 passed the Final order on account of the basis of the disposed of earlier writ petition of the petitioner, that the petitioner has retired from the post of the Tap-Inspector under the Respondents-Authorities (Gaya Municipal Corporation, at Gaya) to Respondent No.2 to 5).
- (ii) For issuance of a writ of mandamus for direction to the Respondent -Corporation to pay the others all retiral dues of the petitioner including the dues

*amount of Gratuity, benefits of fifth Pay Revision and leave encashment which could not be paid to the petitioner as per actual calculation."*

Learned counsel for the petitioner has submitted that once it is an admitted fact that the petitioner was promoted on the post of Tap Inspector, he would be entitled for the salary and emolument of the said post as also fixation of his pension after taking into account the pay-scale of the post of Tap Inspector. He has, accordingly, assailed the impugned order passed by the authorities refusing the petitioner to give benefit of the pay and emolument as also retirement benefit of the order of promotion on the post of Tap Inspector.

Learned counsel for the respondents, having filed counter affidavit, has explained that the petitioner was never given such promotion and in fact the order dated 25.3.1989 at best as contained in Annexure-A can be held to be assigning duty of the higher post for specific purpose wherein it was also made clear that the petitioner shall be entitled to draw salary of his substantive post of Pump Operator. Counsel, therefore, has submitted that the petitioner had already retired on 31.1.1998 and has been paid all his retirement benefit and the emoluments of the post of Pump Operator and is not entitled for any further amount on the head of retirement benefit.

In the considered opinion of this Court, the submission of the learned counsel for the respondents has to be accepted for more



than one reason. First of all, the promotion invariably means a person being placed from a lower pay-scale to higher pay-scale. In the present case, the order of so-called promotion very clearly makes it clear that the petitioner, who was working as a Pump Operator, was assigned the duty of Tap Inspector for a specific purpose, namely, for restricting the ban on the illegal water connection and use of machinery for extracting water of the municipality. The petitioner, in fact, was working as a Pump Operator and assigning with such duty against the higher post of Tap Inspector was only by way of current charge arrangement in order to vest him power to discharge the duty for such additional working.

The petitioner at best might have been entitled to some allowance as is envisaged under Rule 103 of the Bihar Service Code but he cannot claim promotion as a matter of right. This Court in fact would not even like to go into that aspect because it is not clear that whether the junior or senior to the petitioner was considered or whether the post of Tap Inspector was the promotional post of the Pump Operator when the order dated 25.3.1989 assigning the petitioner the work of Tap Inspector was passed. All these aspects even otherwise could not be gone into by this Court because of the specific terms and conditions of the order dated 25.3.1989 which was accepted by the petitioner without any demur or protest till he

continued in service. The fact that even when his pay fixation was made on 6.8.1991 i.e. after the order of the alleged promotion, there is a clear entry that the petitioner's pay and pension was of Pump Operator. Therefore, the petitioner throughout his service career was aware that he would be only entitled for salary and emolument of the post of Pump Operator and, as such, the claim, after more than fifteen years of his retirement, for the first time by filing a writ application in the year 2013, cannot improve his case and this Court now cannot direct the respondents to re-open the whole thing by revising the retirement benefit which has already been paid to the petitioner.

In that view of the matter, this writ application must fail and is, accordingly, dismissed.

**(Mihir Kumar Jha, J)**

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