

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1249 of 2001

Parmanand Singh, Son of Shri Ram Chandra Singh, aged about 48 years, resident of village Chanda, Police Station Mahandia District Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Water Resources (Irrigation) Department, Sinchai Bhawan, Patna
2. The Deputy Secretary, Water Resources (Irrigation) Department, Sinchai Bhawan, Patna
3. The Chairman, Bihar Public Service Commission, 15- Bailey Road, Patna
4. The Officer-on-Special Duty, Bihar Public Service Commission, 15- Bailey Road, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. R.N. Mukhopadhyay
Mr. Vishwa Nath Ram
Mr. Md.Nazir Ansari
For BPSC : Mr. Kumar Brajendra Naht
With Mr. Subodh Chandra Jha, AC
For the State : Mr. Ashgok Kumar Choudhary, AAG-13
With Ms. Meera Singh, AC to AAG-13

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 24-07-2015

1. This is an application seeking quashing of an order dated 02.09.1998 passed by the Officer-on-Special Duty, Bihar Public Service Commission, whereby the case of the petitioner for his promotion on the post of Assistant Engineer (Civil) from the post of Tube Well Operator has been rejected.

2. This is not in dispute that during the pendency of the

writ application, the petitioner attained the age of superannuation and has retired from the service of the State Government.

3. It is the case of the petitioner that he had qualification of Civil Engineering and being a regular State Government employee was eligible for promotion to the post of Assistant Engineer (civil). He is said to have passed B.Sc. Engineering (Civil) examination in the year 1979 but because of the fact that he was facing unemployment he accepted his appointment against Class IV Post of Tubewell Operator in the work charged establishment in Tubewell Division in the Water Resources Department in the year 1980. This is not in dispute that the post to which the petitioner seeks promotion is a Class-II gazetted Post in the State Government.

4. In the year 1987, the petitioner was placed in regular establishment as Tubewell Operator, from the work charged establishment by an order of the Chief Engineer (South), Water Resources Department. According to him, in terms of the provision under Bihar Public Works Department Code Vol. (2), a Government Servant having qualification for appointment to the post of Assistant Engineer can be given promotion to such post. Reference has been made in this regard to the Annexure to Appendix I of Vol(2) of the Bihar Service Code dealing with Bihar Engineering Service Clause (II). It has been contended that the persons confirmed in Government

service are eligible for such promotion, if they are otherwise eligible for appointment in terms of education qualification in accordance with procedure laid down in Part III of the Rules.

5. The petitioner had earlier approached this Court by filing CWJC No. 9113 of 1992 seeking similar direction. This Court vide order dated 27.6.1997 had held that the petitioner was entitled to be considered in accordance with said procedure for promotion as Assistant Engineer. The Court had accordingly, directed the respondents to send the petitioner's name to Bihar Public Service Commission for consideration of his case for promotion to the post of Assistant Engineer. In terms of the said decision of the Court dated 27.06.1997, the Bihar Public Service Commission considered his case and rejected his claim as would be evident from letter dated 02.09.1998, which is under challenge in the present writ application. Bihar Public Service Commission has pointed out that there was no provision for grant of promotion from class of employees. Class IV post to the post of Assistant Engineer which is a Class II gazetted post under the State of Bihar. It has further been mentioned in the said letter that there was no precedent of this nature.

6. I do not find any illegality in the said letter dated 02.09.1998. Learned counsel for the petitioner has not been able to point out any rule which makes the petitioner entitled to get

promotion as of right. The eligibility to get promotion is entirely different from entitlement to get promotion to the higher post.

7. Learned counsel for the petitioner has not been able to make out a case that the petitioner has been discriminated against, inasmuch as, any persons similarly situated have been granted such promotion and he has been denied.

9. I do not find any merit in this application. This application is accordingly, dismissed.

10. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			
---	--	--	--