

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2525 of 2015

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1. Ram Pravesh Singh, son of late Siya Sharan Singh, resident of 72, Chaprasi Quarter, R Block, Patna- P.S. – Sachivalay, District – Patna
 2. Awdhesh Prasad, S/O Rameshwar Prasad, resident of Anisabad, Dhirachak Bangali Tola, P.S. – Gardanibad, District – Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Housing Department, Vishwesraiya Bhawan, Patna
2. The Engineer in Chief, Building Construction Department, Patna
3. The Chief Engineer (Design), Building Construction Department, Patna
4. The Superintending Engineer, Advance Planning Circle, Building Construction Department, Patna
5. The Executive Engineer Advance Planning Division-2, Building Construction Department, Patna
6. Satydeo Prasad Singh (Treasure) Office of the Executive Engineer Advance Planning Division-2, Building Construction Department, Patna
7. Jagnarain Choudhary (Correspondence Clerk) Office of Executive Engineer, Advance Planning Division-1, Building Construction Department, Patna
8. Yogendra Prasad Sharma (Correspondence Clerk) Office of the Superintending Engineer Advance Planning Circle-2, Building Construction Department, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Prasad

For the Respondent/s : Mr. SC17-ARBIND KUMAR NO. II

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 21-04-2015

21.04.2015

Heard learned counsel for the parties.

Impugned order is Annexure-16, dated 06.08.2014. This is the order, passed by the Superintending Engineer, Building Construction Department, Government of Bihar, Patna. Vide this

order, claim of the petitioner for promotion from Class-IV post to Class-III has been rejected.

Earlier the petitioners had approached the Court, seeking a direction for grant of promotion to Class-III posts, since according to them they were working in that capacity for a long time. It is in this context that the claim of the petitioners have been considered and rejected vide order, contained in Annexure-16, which is dated 06.08.2014.

There is a decisive finding that no persons junior to the petitioners have been granted promotion on a Class-III post. Respondent Nos. 6, 7 and 8 in fact were not granted promotion by the Building Construction Department, they were adjusted or regularized on a Class-III post looking at their long period of work and efficiency coupled with the experience gained in the Family Welfare Wing of Health Department, Bihar, Patna, from where, after its winding up, the petitioner and the said respondents were adjusted in the BCD Department.

There is a clear statement and finding that no person has been granted promotion on Class-III post. Whatever exercise has happened in this regard was a uncalled for exercise and contrary to the guidelines



provided by the State and whatever is required to be done can only be done in accordance with rule, which have now been notified and is part of the counter affidavit as Annexure-D.

Right to promotion or consideration thereof will always emerge from a set of rules or guidelines laid down by the employer. If a rule has been notified under Article 309 of the Constitution of India, the right of the petitioners will flow in accordance with the said rule. Any deviation or a direction issued in contrary to the said rule in the opinion of the Court is an uncalled for exercise and would amount to overreach the rule and procedure.

However, claim of the petitioners would be required to be considered, because surely every employee has hopes and aspirations for promotion to the next higher post and in regard to this an exercise in terms of Annexure-D is required to be made by the respondents.

Since the petitioners has spent long period of time working under the respondents and are inching towards their age of superannuation and have never been granted promotion from the date of their initial entry into service, it will be in the interest of efficiency of service for the respondent-authorities, to expedite the

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exercise in terms of the rule, contained in Annexure-D, so that all such eligible persons' claim can be considered and those who make it, derive the benefit of promotion on a substantive basis.

Writ application stands disposed off with observation / direction as above.

(Ajay Kumar Tripathi, J.)



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