

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19335 of 2010

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1. Babue Lal Yadav S/O Late Rasik Lal Yadav R/O Vill & P.O.- Sangi, Police Station- Phulparas, Distt.- Madhubani At Present -Quarter No. C/20 (Old), Bihar State Electricity Board Colony, New Punaichak Patna
 2. Brahma Deo Thakur S/O Late Manger Thakur At & P.O.- Telmar, Police Station- Harnaut, Distt.- Nalanda At Present C/O Janki Niwas, Anup Lane, Machhua Toli, Town & Distt.- Patna
 3. Shamim Ahmad S/O Late Aas Mohammad R/O Vill.- Chhatapur, P.O.- Kolodehri, Vila- Khutahan, Distt.- Bhojpur
 4. Arjun Prasad S/O Late Ruplal Mahto Mohalla Shahganj Lane, P.O.- Mahendru, Police Station- Sultanganj, Distt.- Patna
 5. Sita Ram Gupta S/O Late Nathun Ram R/O Opp-Meridian Convent School, Mahatma Gandhi Nagar, P.S.- Agam Kuan, Distt.- Patna
 6. Shambahu Sharan Shrivastava S/O Late Jamuna Prasad Shrivastava R/O Vill.- Jagdishpur, P.O.- Nehra, P..S- Manigachhi, Distt.- Darbhanga
 7. Krishna Kumar Sinha S/O Late Suman Sinha R/O Vill.- Tajpur, P.O.- Kamla Gopalpur, P.S.- Maner, Distt.- Patna
 8. Nand Bihar Singh S/O Late Ram Bilash Sinha R/O Vill.- Dheka, P.O.- Sowar, P..S- Krishna Gram, Distt.- Buxar
 9. Dinesh Prasad Sinha S/O Late Braj Bihari Lal R/O Vill.- Pipra, P.O.- Dularpur, Vila Kasap, P..S- Agion, Distt.- Bhojpur
 10. Arjun Prasad S/O Not Known R/O Of At & P.O.- Majra, Police Station-Silao, Distt.- Nalanda At Present N/21, Madhukriti, Arya Apartment, Shahdeo Path, P.O. & P.S.- Shastri Nagar, Distt.- Patna
 11. Sudhir Kumar S/O Rama Nand Singh R/O Mohalla Postal Park, Road No.-4 , P.O.-G.P.O, Police Station- Jakkanpur, Distt.- Patna
 12. Nitya Nand Ghosh S/O Late Mahendra Chandra Ghosh R/O House No. 22, CDA Colony, P.O. & P.S.- Shashtrinagar, Distt.- Patna
 13. Nawal Kishore Singh S/O Late Shiv Chandra Singh R/O Vill. Sahit, P.O. & P.S- Vidyapati Nagar, Distt.- Samastipur
 14. Ram Chandra Bhagat S/O Late Dharikshan Bhagat R/O Mohalla-Balmiki Colony, P.-M.I.T, P.S. Bhramapura, Distt.- Muzaffarpur
 15. Krishna Nandan Chaudhary S/O Jagannath Chaudhary R/O Vill.- Bhataulia, Po.- Gidha, P.S.- Saraiya, Distt.- Muzaffarpur
 16. Devi Dayal Pandit S/O Late Dhanushdhari Pandit R/O Mohalla-Brindawan Colony, Road No.-2, Po & P.S.- Phulwari Sharif, Distt.- Patna
 17. Umeshwar Upadhyay S/O Late Jagannath Upadhyay R/O Anand Nagar, Po & P.S.- Bettiah, Distt.- West Champaran
 18. Binod Kumar Mishra S/O Late Shiv Shankar Mishra At Dhubha, Po-Govind Pitajhia, Ps- Runni Saidpur, Distt.- Sitamarhi
 19. Baskinath Singh S/O Late Raj Kumar Singh At Present Masradpur, P.S.- Shahjahanpur, Distt.- Patna
 20. Mahnul Haque S/O Late Md. Kuraishi At & Po. Mukhtarganj, P.S.- Chhohilpur, Distt.- Nalanda

.... Petitioner/s

Versus

1. The Bihar State Electricity Board Through Its Chairman, Vidyut Bhawan
Bailey Road, Patna

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2. The Secretary, Bihar State Electricity Board, Vidyut Bahwan Bailey Road, Patna
 3. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan Bailey Road, Patna
 4. The Director (Personnel), Bihar State Electricity Board, Vidyut Bhawan Bailey Road, Patna
 5. The Officer On Special Duty (Administration), Bihar State Electricity Board, Vidyut Bhawan Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeeva Roy, Adv
 For the Respondent/s : Mr. Vinay Kirti Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

(Date- 01.07.2015)

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

“For commanding the respondents to promote the petitioners on the post of Assistant Electrical Engineer with effect from 11.11.1995 when 31 posts were fallen vacant and the petitioners fell within the zone of consideration and were eligible and entitled for such promotion but due to the latches on the part of the Bihar State Electricity Board (hereinafter to be referred as the Board), they were not promoted.

For quashing of the notification No. 683-736 dated 31.08.2009 by which the petitioners have been shown to have been promoted from the post of Junior Engineer to the post of Assistant Executive Engineer with effect from 01.02.1999 and effectively from 01.02.2000 whereas they ought to have been promoted with effect from 01.02.1999 effectively.

For commanding the respondents to consider and recon the period the petitioners and/or any of the petitioner having performed the duty to higher post of Assistant Executive Engineer on current charge and give the benefit of the same to them in the matter of promotion to such post.

For commanding the respondents to pay the arrears of differential of salary to the petitioners on promotion to the post of Assistant Executive Engineer with effect from the appropriate dates.”



3. Mr. Rajeeva Roy, learned counsel appearing on behalf of the petitioners after having examined the materials on record and particularly Annexure-A to the counter affidavit now is satisfied that the promotion of the petitioners cannot be regularized from the first date from which they were given current charge because of the fact that there was no vacant sanctioned post available for them. He in fact also does not dispute the correctness of Annexure-A, so far it relates to fixing the respective date of regularizing the promotion in the period they were holding current charge.

4. A grievance, however, has been made by Mr. Roy that the Bihar State Electricity Board (hereinafter referred to as the Board) cannot have the best of the both worlds. He explains that once it is an admitted fact that the petitioners were working on current charge basis on higher post as per the order of the competent authority and now their promotion has also been notified from the



respective date as contained in Annexure-A with a finding that from that date such vacant sanctioned posts were available, their promotion cannot be made on notional basis, inasmuch as, that would be depriving the petitioners from the benefit of salary and emoluments of the promotional post on a wholly unreasonable ground Mr. Roy, explains that if therefore there has been a decision to shift back the date of promotion of the petitioners as contained in Annexure-A to the counter affidavit, the petitioners at least should be held entitled for payment of salary and emoluments from those respective dates as fixed for promotion in Annexure-A to the counter affidavit.

5. Mr. Vinay Kirti Singh, learned counsel appearing on behalf of the respondents having almost succeeded in his effort to get the decision of the Board sustained as with regard to shifting of the date of promotion to the petitioners as per Annexure-A, was also ambitious that this Court should also uphold the



decision of the petitioners such promotion being allowed to be only on notional basis. According to him, this decision of the Board as contained in Annexure-A has not been assailed by the petitioners despite service of copy of the counter affidavit.

6. In the considered opinion of this Court, such ambitious submission of Mr. Singh has to be only noted for its being rejected.

7. Annexure-A is only a proceeding of Departmental Promotion Committee on the basis of which the impugned order was passed on 31.08.2009, as contained in Annexure-1, which is under challenge. Thus, whatever has been stated in the decision contained in impugned order dated 31.08.2009 (Annexure-1) is based on the proceeding contained in Annexure-A. The petitioners have already assailed the consequential order as contained in Annexure-1, in the writ petition and therefore, the submission that the petitioners' writ petition must fail because they have not challenged



Annexure-A, seems to be only a too technical submission inasmuch as Annexure-A is a proceeding of Departmental Promotion Committee and is never communicated to the individual employee. In fact the consequential notified order is Annexure-1 and from that it becomes clear that the petitioners have also assailed the decision of their notional promotion because each of the petitioner have been given the date of promotion and certain period has been directed to be treated as notional. For example in the case of petitioner no. 1, his date of promotion has been shifted from 01.01.2002 to 02.02.2000 and the period of 02.02.2000 to 31.12.2001 has been directed to be 'notional promotion' to the petitioners.

8. Now, if this Court proceeds to analyze the case petitioner no. 1 only by eluciation, there would be no difficulty in coming to the conclusion that petitioner no. 1 was assigned the duty of higher post of Assistant Executive Engineer on 17.07.1998, and that current



charge arrangement continued till his regular promotion was notified by the Board on 22.11.2004, wherein, he was given such promotion w.e.f. 01.01.2002, on the basis of the vacancies that could be found for him it at that point of time on 22.11.2004. This decision of 22.11.2004, giving promotion to petitioner no. 1 w.e.f. 01.01.2002 was later on changed after a period of five years shifting at back to 02.12.2000 on the ground of availability sanctioned post. Thus in view of such decision taken by the Departmental Promotion Committee that the petitioner no. 1 on account of the vacancies available on the sanctioned post of Assistant Executive Engineer, shall be entitled to get that vacancy from previous date fixed as 02.02.2000 he cannot be given such promotion only on notional basis both on account of his having worked on the promotional post on current charge basis and also their being a vacancy for him on the promotional post in the relevant period. It was this aspect of the matter, which was protected under

the Service Regulation of the Board, framed under Rule-79C of Electricity Supply Act, 1948.

9. The issue as to whether the employee despite being eligible for promotion in all respect can be given notional promotion is no longer res integra. Reference in this connection may be usefully made to the judgment of this Court in the case of **Dr.Paras Nath Prasad vs State of Bihar, reported in 1990(2) PLJR 248**, wherein, the law was laid down in following terms:-

*“The other contentions of the learned counsel for the respondents that Rule 58 of the Bihar Service Code prohibits any grant of pay and allowances to the petitioner on a fictional and notional promotion granted to him is, in my view, misconceived. A notional promotion has to be as if, for service benefits, he had been given due promotion. A person, who is entitled to promotion and is not promoted, can always invoke the jurisdiction of this Court under Article 226 of the Constitution for a mandamus to the employer State to consider his case for such promotion. Such due promotion is not a claim of anything notional but it is something that is really attached to the status and the service contract of the employee concerned. In the case of **Alappat Narana Menon versus State of Kerala, (1977 Volume II S.L.R. 656)** the Supreme court has stated:*

“The foregoing discussion with reference to the pronouncement of the Supremes Court and the Gujarat, Allahabad and Mysore High Courts clearly establish that a Government servant cannot be said to have forfeited his claims for arrears of salary when he did not get his due promotion for want of his. The Government’s plea that the petitioner was given only a notional promotion is not sustainable in law. What the petitioner got was not a notional promotion and it is wrong to call this promotion as ‘notional’ in the context of the peculiar facts and circumstances of this case. The concept of notional promotion cannot enter the realm of discussion in this case. Notional promotion is one which a Government servant gets



under particular exigencies of situation, which he cannot claim as of right. Here the petitioner is entitled as of right to get the promotion from 1.4.1955 and, therefore, his claim for arrears of salary and other material benefits cannot be denied to him on the plea that what was given to him was only a notional promotion and the policy of the Government is not to give the arrears of salary in such cases. It is no argument to say that may have been promoted ignoring the petitioner's claim. I, therefore, hold that the petitioner is entitled to succeed."

10. In view of the above and also when there is no dispute that the petitioners have worked on current charge basis on promotional post on the basis of valid orders of the competent authority and that their such promotion also has been given with retrospective effect while they were working uninterruptedly on higher promotional post, they cannot be denied at least payment of salary from the date of their such retrospective promotion because that was decided by the D.P.C. on the basis of available vacant sanctioned post. Thus, the petitioner no. 1, who may have worked on the higher post of Assistant Executive Engineer since 17.07.1998, on current charge basis will not be entitled for payment of salary at least till 01.02.2000 because for him there was no vacant sanctioned post but then when on



02.02.2000, such vacant sanctioned post became available and he had continued to work on current charge basis, he cannot be denied salary and emoluments of the promotional post of Assistant Executive Engineer at least from 02.02.2000. Similar, will be the case of all other petitioners as they also are covered by the decision of the departmental promotion committee as contained in Annexure-A, on the basis of which the impugned order was passed by the Board as contained in Anneuxre-1.

11. Thus, for the reasons indicated above, this writ application is allowed only in part and the respondents are hereby directed to refix the salary and retirement benefit of all the petitioners keeping in view that their promotion on the post of Assistant Executive Engineer shall be deemed to be given on the date fixed by the respondents in Annexure-A, without they being notional. In other words, all the petitioners must be given benefit of full promotion on the post of Assistant

Executive Engineer and the resultant consequential benefits as if the shifting of the date of promotion by Annexure-1 was made without being notional for the period indicted against the respective names of the petitioners. This exercise for payment of salary and emoluments be taken on such calculation either in the matter of payment of salary and emoluments or retirement benefit, must be done within a period of four months from the date of receipt of this order.

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

(Mihir Kumar Jha, J)

Patna High Court
Dated the 1st July 2015
N.A.F.R./Ranjan/-

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