

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

**Civil Writ Jurisdiction Case No.1506 of 2008**

Shivesh Jha, son of Late Kripanand Jha, resident of village- Garatal, P.S. Phulparas, District- Madhubani, at present posted as Deputy General Manager-cum- Electrical Superintending Engineer, Tirhut Electric Supply Area, Muzaffarpur, P.S. & District- Muzaffarpur

.... .... Petitioner

Versus

1. The Bihar State Electricity Board, Vidyut Bhavan, Patna, Bihar through the Chairman
2. The Chairman, Bihar State Electricity Board, Vidyut Bhavan, Patna, Bihar
3. The Secretary, Bihar State Electricity Board, Vidyut Bhavan, Patna, Bihar
4. The Joint Secretary, Electricity Board, Vidyut Bhavan, Patna, Bihar

.... .... Respondents

**Appearance :**

For the Petitioner/s : Mr. Sachchidanand Choudhary 2

For the Respondent/s : Mrs. Nivedita Nirvikar, Adv.

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**ORAL JUDGMENT**

**Date: 26-03-2015**

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Heard Sri Kripa Nand Jha, learned counsel for the petitioner and Smt. Nivedita Nirvikar, learned counsel appearing on behalf of Bihar State Electricity Board.

The petitioner, invoking writ jurisdiction of this Court under Article-226 of the Constitution of India, has prayed for directing the Respondents to give him promotion to the post of Superintending Engineer with effect from 31.10.2005. However, the petitioner's promotion was given with effect from 15.11.2006 on the plea that in the ACR of the petitioner, warning was recorded. On this ground alone, the petitioner was not given promotion with effect from the date, on which

similarly situated persons, namely, Sri Uday Shankar Mishra, Sri Chandrama Singh and Sri Rama Raman Prasad Sinha were granted promotion.

Learned counsel for the petitioner has firstly argued that recording of warning in the ACR is not such a punishment to enable the employer to debar the petitioner from giving promotion. Relying on a Division Bench Judgment of this Court reported in 2007 (4) PLJR 502; Rabindra Jha Vs. Bihar State Electricity Board & Ors. he submits that in case of an employee of Bihar State Electricity Board, the Division Bench has already given direction that one may not be debarred from giving promotion on the plea that warning recorded in the ACR. It would not amount to be punishment depriving the petitioner to get promotion. He further submits that even punishment of warning , which was earlier reduced from the Censure, was subsequently withdrawn by the competent authority vide Annexure-5 to the supplementary affidavit filed on behalf of the petitioner contained in Memo No.960 dated 15.10.2008 . In view of aforesaid ground, it has been pleaded that the direction may be issued to consider the case of the petitioner for promotion to the post of Superintending Engineer with effect from 31.10.2005 and correction may be made.

In this case, a counter affidavit has been filed on behalf of Respondents. Smt. Nivedita Nirvikar, learned counsel for the Bihar State Electricity Board, though, has opposed the prayer of the petitioner, she was not in position to distinguish the case of the petitioner from Ravindra Jha's case ( supra).

In view of facts and circumstances, particularly the fact that warning, which was recorded in the ACR of the petitioner, has already been withdrawn vide Annexure-5 to the supplementary affidavit as well as the fact that in the case of an employee of Bihar State Electricity Board, warning was not treated as a punishment , the Court is of the opinion that the petitioner is entitled to be considered for his promotion to the post of Electrical Superintending Engineer with effect from 31.10.2005 , as other similarly situated persons have been granted such promotion.

The writ petition stands allowed with a direction to consider the case of the petitioner and pass appropriate order in accordance with law within a period of two months from the date of receipt/production of a copy of this order and grant all consequential benefits.

**(Rakesh Kumar, J)**

NKS /-

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