

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.963 of 2007

IN

Civil Writ Jurisdiction Case No. 12364 of 2005

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1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
 2. The Commissioner-cum-Secretary, Water Resources Department, Government of Bihar, Patna.
 3. The Joint Secretary, Water Resources Department, Government of Bihar, Patna.
 4. The Finance Secretary, Bihar, Patna.

.... Appellants

Versus

1. Shiv Nandan Prasad, son of Late Sonbhadra Prasad, resident of village – Amarpura, P.S. – Mohania, District – Bhabhua, at present – Parasa Bazar Chanakya Colony, P.S. – Parasa Bazar, District – Patna.
2. The Accountant General (A & E), Bihar, Birchand Patel Path, Patna.
3. Shri Jagannath Hansda, Chief Engineer, S/o – not known, through Secretary, Water Resources Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellants : Mr. Mayank Rukhaiyar, AC-GA-1
For Accountant General : Mr. J.P. Karn, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 09-11-2015

State has filed this Intra-Court Appeal against the judgment and order of the learned Single Judge passed in CWJC No. 12364/2005 disposed of on 17.05.2007. State is not aggrieved by the entire judgment and order. State is aggrieved only by that part of the order where the learned Single Judge has rejected the argument of the State that a Diploma Holder Engineer cannot be

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considered for appointment either by way of promotion or direct recruitment to Bihar Engineering Service Class – I.

We have heard learned counsel for the State. No one appear on behalf of the contesting private respondent.

However, in view of the order that we propose to pass, we need not wait any further for the Lawyer having entered appearance and is not available at the stage of hearing and, that too after such a long period, it would not be proper for us to delay any further in the matter.

The writ petitioner/appellant, having completed his matriculation, had done a three year diploma course in engineering and then he had joined Bihar Subordinate Engineering Service which is subordinate cadre to the Bihar Engineering Service Class – I. The Bihar Subordinate Engineering Service consists of the cadre of Junior Engineer, Assistant Engineer and Executive Engineer. The writ petitioner/appellant had sought promotion to the post of Chief Engineer, apart from other reliefs, before the learned Single Judge. We are not concerned with the other reliefs as granted by the learned Single Judge to the writ petitioner. The State has filed this appeal only in respect of that part of judgment by which the learned Single Judge negated the protest of the State that a

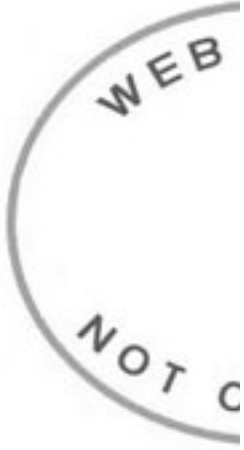
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Diploma Engineer could not be promoted as Chief Engineer.

We need not labour on this issue, which is available after final and detailed consideration of learned Single Judge (Hon'ble Mr. Justice Navaniti Prasad Singh) in the case of **Bihar Engineering Services Association Vs. State of Bihar** since reported in **2013(1) PLJR 410**; in which case it is held that Diploma Engineers could not be permitted to be promoted beyond the stage of Executive Engineer. This Court noticed the entire history and statutory provisions in this regard. This decision of learned Single Judge has been affirmed by the Division Bench in Letters Patent Appeal No. 294/2013 decided on 30/06/2015.

In view of the decisions as aforesaid, this Intra-Court Appeal limited to the aspect, as noted above, is allowed. The order of the learned Single Judge holding that Diploma Engineer could be promoted and made Chief Engineer has to be held to be erroneous and contrary to the statutory service rules.

We are informed that the writ petitioner had retired in the year 2004 itself, and the writ petition itself was filed in the year 2005, after his superannuation, That being so, the question aforesaid, is of academic interest only. We are of the opinion that either before or by virtue of order of learned Single Judge, if there had been any monetary gain to the writ petitioner, it would not be



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taken back or recovered. In other words, though on issue of law, this Intra-Court Appeal is allowed, we are of the opinion that it would not be taken to be adversely affecting the rights of the writ petitioner.

With this observation and direction, this appeal stands disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/N.A.F.R.

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