

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16761 of 2007

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Subhash Kumar Das , son of Late Krishna Mohan Das, resident of village
– Sikandarpur, P.S. – town, P.O. - head post office Company bag,
Muzaffarpur, district - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Principal Secretary, Road Construction Department , govt. of Bihar,
Patna
3. special Secretary – cum – Engineer –in Chief, national Highway,
road construction Department, govt. of Bihar, Patna
4. chief Engineer, national Highway, road Construction Department,
govt. of Bihar, patna
5. Superintending engineer, national highway, mechanical circle road
Construction Department Bihar, patna
6. Executive Engineer, National Highway Mechanical division,
Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shanti Pratap
Mr. Shyama Prasad Mukherjee

For the Respondent/s : Mr. P.K. Verma, AAG No. 5

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV ORDER

4 12 -03-2015 The petitioner invoking writ jurisdiction of this court

under Article 226 of the Constitution of India had earlier prayed

for quashing of an order contained in Memo No. 551 dated

5.10.2006 issued under the signature of Superintending Engineer,

Mechanical, National Highway , Mechanical Circle, Patna to the

extent of Serial No. 22 by which the petitioner was provided

benefit under the A.C.P. scheme at the pay scale of Rs. 3200-

Rs. 4900/- .The petitioner had further prayed to declare that the post of Time Keeper was a Class III post and as such, petitioner was entitled to be paid salary in the scale of Rs. 1200 - Rs. 1800/- per month instead of Rs. 975 - Rs. 1540/- unrevised and pay the benefit under the A.C.P scheme in the pay scale of Rs. 5000 - Rs. 8000/-. By way of filing an interlocutory application vide I.A. No. 423 of 2008 further prayer was made on behalf of the petitioner for quashing the order contained in Memo No. 757 dated 18/12/2007 (Annexure - 9) issued under the signature of Superintending Engineer (Mechanical) National Highway, Mechanical Circle, Patna. By the said order the petitioner was communicated that benefit of A.C.P. granted to the petitioner was in accordance with law and further claim for promotion or change of cadre was ground less. He further prayed for quashing of order contained in Memo No. 962 dated 20.12.2007 (Annexure - 10) issued under the signature of Chief Engineer (Mechanical Zone) Bihar, Patna whereby claim of the petitioner was rejected. The said interlocutory application was allowed by order dated 2.3.2015 and it was observed that reliefs sought for in paragraph no. 1 of the interlocutory application shall be treated as part of the writ petition.

Sri Shyama Prasad Mukherjee, learned senior counsel

who was assisted by Sri Shanti Pratap, learned counsel for the petitioner has argued that after the death of father of the petitioner the compassionate committee considered the case of petitioner and others and recommended the petitioner for appointment against vacant Class III post of Correspondence Clerk vide letter no. 6762 dated 23.11.1990 (Annexure - 2 to the writ petition). However, the petitioner was appointed on the post of Time Keeper in the pay scale of Rs. 975 – Rs. 1540/- on compassionate ground under National Highway, Mechanical Division, Muzaffarpur. He submits that once recommendation by the compassionate committee was made for appointment of the petitioner as Correspondence Clerk which was Class III post, the respondents had committed serious illegality in appointing the petitioner as Time Keeper. According to learned senior counsel for the petitioner the post of Time Keeper may be treated as Class III post and salary and pay scale of the petitioner should be fixed at the rate of Rs. 1200 – 1800/- from the date of initial appointment of the petitioner. According to learned senior counsel after making correction the respondents be directed to fix the pay scale after grant of A.C.P and grant the A.C.P. in the scale of Rs. 5000 - 8000. It has been emphatically argued that once the recommendation was made for the post of

Correspondence Clerk the respondents authorities were not authorized to appoint the petitioner as Time Keeper.

Sri P.K. Verma, learned AAG No. 5 has opposed the prayer of the petitioner. He submits that after the death of father of the petitioner the petitioner was provided employment on compassionate ground long back in the year 1991 and petitioner continued on the said post for a considerable long period. Only after his pay scale was enhanced in view of scheme under the A.C.P. the petitioner has raised this issue and indirectly now he wants correction of his initial appointment. By way of referring to averments made in the counter affidavit he submits that once the petitioner was granted employment on compassionate ground at subsequent stage there is no provision for granting benefit of promotion on compassionate ground.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. On going through the materials on record it is evident that father of the petitioner who was a Crane Operator in the National Highway, Mechanical Division, Muzaffarpur died in harness on 1.12.1986. It is true that compassionate committee considered the case of petitioner along with others and vide Annexure - 2 to the writ petition and the case of petitioner was recommended for vacant post of



Correspondence Clerk. Vide Annexure - 3 i.e. order contained in Memo No. 150 dated 20.2.1991, the petitioner was appointed on recommendation of the compassionate committee as Time Keeper in the National Highway, Muzaffarpur Division in the pay scale of Rs. 975 - Rs. 1540/-. Of- course in the writ petition a plea has been taken that the petitioner had made representation right from the very beginning, but fact remains that petitioner continued on the post of Time Keeper for considerable long period and only when benefit under the A.C.P. was granted to the petitioner and his salary was fixed in the scale of Rs. 3200 – Rs. 4900/- the petitioner suddenly raised the issue for fixing the correct scale claiming that he was entitled to the scale which was applicable to Class III employee. In view of the fact that the petitioner continued as Time Keeper and drawn salary in the pay scale of Rs. 975 - Rs. 1540/- from his date of appointment i.e. 21.2.1991 and finally in the year 2006 when he was given benefit of A.C.P. he raised the dispute and claimed that he was entitled to get pay scale of Rs. 1200 – Rs. 1800/-, the Court is of the opinion that at such belated stage he is not entitled to raise such dispute.

Keeping in view the fact that for number of years no dispute was raised by the petitioner by approaching this court, at such belated stage i.e. after about 16 years, such question may

not be entertained.

On perusal of the materials on record I do not find any ground to pass any positive order in favour of the petitioner.

The writ petition stands dismissed.

(Rakesh Kumar, J)

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