

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10188 of 2015

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Jagdish Paswan, son of late Satyadeo Paswan, resident of Village, P.O,
Police Station,Block- Jhanjharpur, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Deputy Secretary, Urban Development Department, Bihar.
2. The District Magistrate, Madhubani.
3. The Executive Officer, Nagar Panchayat, Jhanjharpur, District- Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Narayan Mahto, Advocate.

For the Respondent/s : Mr. M.K. Singh, SC-6

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 27-07-2015

Having regard to the fact that the petitioner in this writ

application has prayed for the following relief:

".. to make the payment of salary since 29.08.2012 on the post of IIIrd Grade, by the order of Executive Officer of Nagar Panchayat Jhanjharpur issued vide Memo No. 362 dated 29.08.2012 whether petitioner is entitled for the same much before on the basis of petitioner has submitted higher qualification as matric in the year 1985 but similar persons has got the same and due to malafide intention and harassing attitude of the authorities same has not given to the petitioner and further give the direction to give the same since 1985".

and that this court does not find any order of regular promotion of the petitioner, it would find difficult to give any direction for payment of salary of the promotional Class-III post as being claimed by the petitioner in this writ application.

2. As a matter of fact, from the resolution of the Nagar Parishad, it appears that the petitioner was deputed to work on the post of Clerk for the Tax Section of the Nagar Panchayat Jhanjharpur. Such

working arrangement being made will never allow the petitioner to get the salary of the post till an order of regular promotion is made. As a matter of fact, this fact has been clarified in the order itself that the payment of salary of the promotional post may be made after receiving approval from the State Government.

3. What really would again come in the way of the petitioner that he is not the only Class-IV employee under the Nagar Panchayat Jhanjharpur and yet only his case was considered in isolation for the purpose of deputing and assigning the work on the higher post. The petitioner may have a grievance, but the promotion can only be given to him in the event of existence of cadre and availability of sanctioned promotional post.

4. In that view of the matter, this Court would direct the competent authority of Nagar Panchayat Jhanjharpur to firstly examine as to whether there is an existence of cadre post on which the petitioner, a Class-IV employee could be promoted. In the event, if it is found that there is an existence of sanctioned promotional cadre post of Class-IV employees, the case of all persons including the petitioner working on Class-IV posts must be considered in accordance with law.

5. Till it is done so, this Court would find it difficult to issue any direction for payment of salary to the petitioner of the post of Class-III, who had been only deputed to work under temporary arrangement and subject to specific condition of his consideration for promotion on the sanction of post by the State Government.

6. At this stage, learned counsel for the petitioner submits that the petitioner has already retired. If that be so, now the petitioner's promotion cannot be considered in isolation because no one junior to the petitioner had been given such promotion till the date of retirement of the petitioner. The petitioner may at best claim allowance for working against the higher post in terms of Rule 103 of the Bihar Service Code and, therefore, if the petitioner files a representation for the allowance of higher post for the work that he was assigned in terms of Rule 103 of the Bihar Service Code, the competent authority of the Jhanjharpur Nagar Panchayat shall consider the same in accordance with law and take a conscious decision within a maximum period of four months from the date of receipt of a copy of this order.

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

(Mihir Kumar Jha, J)

Sujit/-

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