

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3413 of 2013

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1. Opendra Paswan S/O Late Gulab Paswan R/O - Bharatpur, P.S.- Madanpur, District- Darbhanga, At Present Posted As Assistant Engineer, Public Health Engineering Department (Mechanical), Sub.Div.- Siwan

2. Satyendra Mahto S/O Late Vishwanath Mahto R/O Gangwara, P.S.- University Campus, Darbhanga, District- Darbhanga, At Present Posted As Assistant Engineer, P.H.E.D. (Mechanical), Sub.Div.- Bhagalpur, District- Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar

2. The Commissioner-Cum-Special Secretary Public Health Engineering Department, Govt. Of Bihar, Patna

3. The Engineer-In-Chief Public Health Engineering Department, Government Of Bihar, Patna

4. The Secretary Personnel and Administrative Reforms Department, Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bala Verma

For the State : Mr. Ramadhar Singh, GP 25

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-09-2016

Heard learned counsel for the petitioners and learned counsel for the State.

In the present case, this Court has granted several adjournments to the State to file an affidavit with regard to the statement made in paragraph 12 of the writ petition which is as follows:

“That it will be relevant to state here that the Department always shows step motherly behaviour in promotion to the post of Assistant Engineer from the Junior Engineer. It is not out of



place to mention here that one Assistant Engineer Raghav Jee Ram who has been appointed in the year 26.6.1987 as Assistant Engineer became Executive Engineer in the year 31.5.1997 in pursuant to the Annexure-1. Same circular Annexure-1 has not been allowed for the post of Junior Engineer, it is keeping mum and they have been promoted on 2.5.05 after 26 years of their service.”

On different dates the State has taken time on one ground or the other and in the order dated 5.7.2016 this Court has specifically mentioned the name of Raghav Jee Ram who was promoted to the post of Executive Engineer with retrospective effect from 31.5.1995 by the order vide memo no. 551 dated 19.5.2005. The basic plea has been taken by the State that petitioners have been given benefit of promotion to the post of the Assistant Engineer vide notification no.34 and 35 dated 2.5.2005 from the date of notification and would get financial benefit from that date not from the date he has made in-charge or from the date of first recommendation for promotion. Even after repeated directions from this Court the State has no time to file reply to the statement made in paragraph 12 of the writ petition though the counsel for the State has sought instruction on this matter.

In such view of the matter, this Court has no other alternative option but to pass an order treating the statement to be a correct statement.

In the present writ petition, petitioners were appointed as Junior Engineers on 26.2.1979 who were made in-charge of Assistant Engineer vide letter, vide memo no.1987 dated 27.4.1989 (Annexure-4). Circular of the State Government dated 6th April, 1972 (Annexure-1) stipulates that those who has acquired AMIE degree of engineering are entitled for promotion subject to completion of five years of service as Junior Engineer but those who do not possess AMIE degree are entitled for promotion to the post of Assistant Engineer subject to completion of eight years in service as Junior Engineer.

By the another resolution of the State Government dated 20.10.1982 one year age relaxation was granted to the scheduled caste and scheduled tribes. Petitioners continued to discharge the duty of Assistant Engineer the day they were made in-charge as Assistant Engineer in the pay scale of Junior Engineer. The Departmental Promotion Committee assembled for consideration of promotion to the post of Assistant Engineer petitioners were found fit for promotion and accordingly petitioners and others were recommended for promotion, names



of petitioners were standing at sl. nos. 18 and 20 respectively but that was not acted upon on account of change of reservation policy. Again the case of petitioners were placed for promotion in the year 2000 and petitioners were recommended for promotion but could not be executed on account of division of the State of Bihar, thereafter lapse of about five years the matter for promotion to the post of Assistant Engineer was placed before Departmental Committee in 2005, on recommendation, petitioners have been given the benefit of promotion from the date of joining.

Learned counsel for the petitioners has drawn the attention towards the seniority list dated 14.8.2000 (Annexure-7) showing that one Raghav Jee Ram is standing at sl.no.26 has been promoted to the post of Executive Engineer was recommended by the Departmental Promotion Committee which was held on 6.9.1995 and has been given the promotion with retrospective effect dated 31.5.1997 which itself belies the stand of the State that they do grant promotion with retrospective effect. Petitioners continued to discharge the duty on the post of Assistant Engineer in the scale of Junior Engineer since 1989 but State has refused to grant the relief of promotion with retrospective date of joining. All the Departmental Promotion

Committee recommended their name for promotion for next post. Reasons have been given that there was change in the reservation policy later on account of division of the State of Bihar and no person junior to them has been given benefit of promotion from earlier date.

Learned counsel for the State submits that when names of the petitioners were recommended in the year 1995 and 2000 but were not acted upon on account of reservation policy and due to bifurcation of the State of Bihar which can not be said on account of inaction on the part of the State.

So in nutshell every time from 1995 onward petitioners were found to be eligible for promotion but the State of Bihar has kept them in the scale of Junior Engineer and right from 1989 up to the date of 2.5.2005 though have taken work of Assistant Engineer from the date they were made in-charge.

It appears that they have acted with impunity, the reasons are as follows: All the petitioners were found fit for promotion right from 1995 but did not act on account of change of reservation policy and again recommendation was made in 2000, they have not acted upon bifurcation of the State of Bihar, but waited for five years and have been granted promotion in the year 2005 whereas one Raghav Jee Ram who was recommended



on the basis of 1995 Departmental Promotion Committee has been given promotion with retrospective effect, so the plea taken by the State completely belies that they did not give promotion with retrospective effect. On the face it is completely wrong statement has been made and as such act of respondents are arbitrary and discriminatory. The Rule of law provides that the State should act fairly not in arbitrary manner which is antithesis of rule of law. It will be relevant to place reliance on the judgments of the Hon'ble Supreme Court in the case of S.G. Jaisinghani v. Union of India, reported in AIR 1967 SC 1427, Natural Resources Allocation In Re, Special Reference No.1 of 2012, reported in (2012) 10 SCC 1 and (2015) 1 SCC 750 where the Court has deprecated such action in case of behaviour of State in incoherent manner.

In such view of the matter, this Court has no alternative but to quash the order dated 14.12.2012 (Annexure-9) and matter is remanded back for re-consideration. The authority is directed to reconsider their cases to examine whether in the year 1995, when Departmental Promotion Committee, recommended was the vacancy for promotion was available as the impugned order itself shows that there was sufficient vacancies for promotion as it has been mentioned 29 vacancies were



available, only four persons were found to have completed the period of Kalawadhi and out of four names petitioners were among them.

In this view of the matter, this Court issues a mandamus to the respondent to reconsider the case of the petitioners, if it is arrived to the positive finding, petitioners would be granted benefit from due date. Let the whole process be completed within six months from the date of receipt/production of a copy of this order. In failure to complete the process within the stipulated period petitioners will be at liberty to take action in accordance with law.

With the aforesaid observation and direction this writ petition is allowed.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.9.2016
Transmission Date	NA