

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7690 of 2011

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1. Rajdeo Singh Son Of Late Ramprit Singh R/O Vill.- Karhari Mathia, P.O. Kinger, P.S. Kinger, District Jehanabad

2. Balmiki Sharma Son Of Late Chandeshwaeri Sharma R/O Vill. Jarkha, P.S. - Sigori, Dist. Patna

.... Petitioner/s

Versus

1. The State Of Bihar

2. The Commissioner-Cum-Secretary Water Resources Department, Govt. Of Bihar, Sichai Bhawan, Patna

3. The Engineerin Chief South Water Resources Department, Govt. Of Bihar, Sichai Bhawan, Patna

4. The Chief Engineer, Central Design Office Water Resources Department, Govt. Of Bihar, New Sichai Bhawan, Anisabad Patna

5. The Executive Engineer Nahar Designation Pramandal No. 2 Water Resources Department, Govt. Of Bihar, Sichai Bhawan, Patna

6. The Secretary To The Govt. Water Resources Department, Govt. Of Bihar, Sichai Bhawan, Patna

7. The Under Secretary To The Govt. Water Resources Department, Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Sahi,
Mr. Manoj Kumar

For the Respondent/s : Mr. M. Kumar, Ac to GA-4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-12-2017

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

In the present case, petitioner is challenging the order dated 20.1.2011 passed by the Chief Engineer, Central Design Office, Water Resources Department, Government of Bihar by which petitioners have been down graded from Class III to Class



IV posts placing reliance on the order passed in C.W.J.C. No.10553 of 1999.

Petitioners and others were Class IV employees vide office order no. 121 of the Chief Engineer dated 18.1.1988. Petitioners no.1, Rajdeo Singh was promoted to Class III post of correspondence clerk and petitioner no.2, Balmiki Sharma was promoted to Class III post of accounts clerk which are Class III posts whereafter Under Secretary, Government of Bihar, Irrigation Department vide letter dated 7.1.1993 demoted the petitioners and 12 others from Class III to Class IV posts which the petitioners and others challenged vide C.W.J.C. No.787 of 1993 and this Court has held that petitioners and others will continue of holding posts of Class III so long the examination is not conducted and regular promotion is made to Class III whereafter again the petitioners were brought lower down to Class IV posts vide letter no.879 dated 20.5.1993 by the Chief Engineer, Water Resources Department. Again the order was challenged by the petitioners Vide C.W.J.C. BNo.5451 of 1993, this Court, on the ground of failure to observe natural Justice, set aside the order of demotion. After that, again vide order dated 16.9.1999, the petitioners and others were again brought down to Class IV which was challenged before this Court vide C.W.J.C.



No.10553 of 1999 and this Court has refused to interfere with the matter but has given liberty to file representation before the concerned authority who will consider the same and take decision. The Chief Engineer, Water Resources Department has passed the impugned order dated 20.1.2011 (Annexre-12) wherein verbatim quoted the opinion of the legal department and accordingly demoted the petitioners.

Learned counsel for the petitioners submits that the Chief Engineer, Water Resources Department instead of applying his independent mind has only quoted opinion of the law department whereas being competent authority ought have applied his independent judicial mind and pass the order. Opinion is opinion cannot be the basis of the order. The order must disclose that competent authority has applied its mind and has taken decision in accordance with law.

Learned counsel for the State submits that appointment in Class III posts are made from two sources. First on direct recruitment of 75% and 25% vacancy from the internal resources i.e. internal examination is conducted of Class IV employees and whoever succeeds are appointed/promoted to Class III post but in the present case the petitioners were promoted to Class III post without observing the procedure which is required to be



followed, they were promoted in a manner which is completely illegal and not sustainable.

Having considered the rival contentions of the parties, of course the Chief Engineer, Water Resources Department has verbatim quoted the legal opinion but should have applied his independent mind and arrived to his own independent conclusion could have passed the order. But question would be if quashing the order perpetuated the illegality in such circumstances the Court should refuse to interfere in the matter as the law is well settled that Court should not pass such order which perpetuates the illegality. Admittedly the petitioners were not promoted on facing internal examination but they were brought to Class III posts without observing the procedure from Class IV to Class III and that issue has gone into vide C.W.J.C. No.10553 of 1999 wherein this Court has examined the matter and has refused to interfere with the order but only given liberty to file representation and authority will take decision.

In such view of the matter, this Court does not find any merit in the present case. Accordingly this writ petition is dismissed.

But before parting with the order it has been brought to the notice of this Court that similarly situated persons are still



continuing in service and they should be given the same treatment as has been given to the petitioners. In this regard the petitioners are completely correct.

The Chief Engineer, Water Resources Department , Government of Bihar is directed to examine the matter and if any such person is still holding the post of Class III post, in the identical manner, after giving them notice they should be brought down to class IV post but it is also made clear that department should conduct the examination regularly so that persons who are holding Class IV post will have an opportunity to move up to Class III post and this Court directs if examination has not been conducted, should be conducted, if petitioners qualifies in such circumstances the petitioners would be given the promotion to Class III post.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
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