

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5483 of 2001

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1. Raj Deo Sinha, S/o- Late Ramaotar Sinha, District Engineer, Patna, resident of Mohalla- Jaiprakash Nager, Patna, Bihar
 2. Chandra Bhushan Singh, Son of Shri Babban Singh, District Engineer, Saran, Chapra, resident of Bara Telpa (Naya Basti) Chapra, Saran, Bihar

.... Petitioner/s

Versus

1. State of Bihar through the Chief Secretary, Bihar, Patna
2. The Chief Secretary, Govt. of Bihar, Patna
3. The Commissioner-cum-Secretary, Department of Rural Development, Bihar, Patna
4. The Engineer in Chief-cum-Additional Commissioner-cum-Special Secretary, Road Construction Department, Bihar, Patna
5. The Director, Panchayat Raj Directorate, Government of Bihar, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1416 of 2002

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1. Bihar Rajya Zila Parishad Abhiyantran Seva Sangh, Bihar, Patna, Zila Parishad Campus through its General Secretary Sisir Kfudmar, Assistant Engineer, Zila Parishad, Vaishali.
2. Shishir Kumar, son of Shri Nand Kishore Sinha, Assistant Engineer, Zila Parishad, Vaishali.
3. Mahendra Narayan Sinha, son of late Jwala Prasad, President, Bihar Rajya Zila Parishad Abhiyantran Seva Sangh, presently posted as District Engineer, Zila Parishad, Bhojpur at Arrah
4. Suresh Prasad Sinha, son of late Chandrika Prasad Sinha, Treasurer, Bihar Rajya Zila Parishad Abhiyantran Seva Sangh, Bihar, Patna, presently posted as District Engineer, Zila Parishad, Vaishali
5. Ravi Ranjan Prasad Sinha, son of Shri Bindhyachal Prasad Sinha, Deputy General Secretary, Bihar Rajya Zila Parishad Abhiyantran Seva Sangh, Bihar, Patna presently posted as Junior Engineer, Zila Parishad, Vaishali

.... Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Old Secretariat, Patna
3. The Secretary, Rural Engineering Organisation, Panchayati Raj, Old Secretariat, Patna
4. The Secretary, Road Construction Department, Technical Secretariat, Vishwasraiya Bhawan, Patna
5. The Director, Panchayati Raj, New Secretariat, Patna
6. Superintendent, Secretariat Press, Gulzarbagh, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6760 of 2005

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Bhuneshwar Prasad Singh sonof Late Ram Lakhan Singh, R/o village Lavadana, P.O. Jaypima, Distt. Aurangabad, at present working as District Engineer, Zila Parishad, Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Rural Development/Rural Engineering Organisation, Government of Bihar, Patna
3. Under Secretary, Department of Rural Development, Government of Bihar, Patna
4. The Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Aurangabad
5. Sri Gangeshwar Prasad Sharma, Executive Engineer, Rashtriya Gramin Niyojan Karyakarm, Aurangabad

.... Respondent/s

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Appearance :

(In CWJC No.5483 of 2001)

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

(In CWJC No.1416 of 2002)

For the Petitioners : Mr. Rajiv Kr. Verma, Sr. Advocate

Mr. Sanjay Pandey, Advocate

Mr. Ratnesh Kr. Singh, Advocate

For the State : Mr. P.N. Shahi, AAG-6

Mr. Jainendra Kumar Sinha, AC to SC-17

(In CWJC No.6760 of 2005)

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 02-02-2017

This order shall dispose of aforesaid three writ applications wherein the petitioners have sought quashing of Bihar Zila Parishad Junior Engineer and Assistant Engineer Service/Cadre Rules, 2000 published in the extra ordinary State Government gazette on 15.12.2000. The writ applicants have also sought a



direction to the respondents to implement the order passed by the Division Bench of this Court dated 8.2.2000 in C.W.J.C. No. 1371 of 1987 (party name). The other prayer of the petitioners is to provide promotional avenues to the Assistant Engineers and the Junior Engineers employed in the Zila Parishad of the State of Bihar to the same extent as is provided to the members of other engineering services of the State such as the Road Construction Department.

2. The facts, in brief, out of which the writ applications arise, is that the State Government in the year 1965 merged Engineering cells and Directorates of each Department and put under the control of Rural Development Department, but the Assistant Engineers as well as Junior Engineers of the District Board continued to remain under the District Board which was under the control of Directorate of Panchayat Raj under the Rural Development Department. On 13th of December, 1976, the Rural Development Department placed a memorandum before the Cabinet pointing out difficulty in creating separate cadre of Engineers, but suggested to merge the posts available with the Rural Development Department, including the District Engineer, Assistant Engineer and Junior Engineers in Zila Parishad with the parallel cadre of the Public Works Department, which is now known as “Road Construction Department”. The said memorandum was accepted,



but still no decision was taken with regard to merger of the post of Assistant Engineers, Junior Engineers of Zila Parishad with the parallel cadre of Road Construction Department.

3. It is for the claim of merger of Assistant Engineers, Junior Engineers of the Zila Parishad into the Road Construction Department, a writ application was filed bearing C.W.J.C. No.1371 of 1987. In the said writ application, the Division Bench of this Court passed the order. The operating portion of the order reads as under:

“(i) The State Government shall frame appropriate rules providing for promotional avenues to the Assistant Engineers and Junior Engineers employed in the Zila Parishads of the State of Bihar to the same extent as is provided to the members of other engineering services of the State, such as the engineering cadres of the Road Construction department. These rules shall be framed within a period of four months from the date on which a copy of this order is produced before respondent No.1, the Chief Secretary of the Govt. of Bihar. Upon such rules being framed, the cases of Assistant Engineers and Junior Engineers shall be considered for promotion in accordance with such rules forthwith.

(ii) In case the State of Bihar fails to frame the rules as directed, it will be open to the Junior Engineers and Assistant Engineers employed in the Zila Parishads to opt for absorption in an equivalent cadre maintained in the Road Construction department. On such option being exercised, the Junior Engineers/Assistant Engineers shall be given appropriate seniority, having regard to their length of service, in the cadres in which they are absorbed. If necessary, they shall be granted promotion to higher posts based upon their length of service and



suitability as evident from their record of service. In doing so, the length of service rendered by such Assistant Engineers/Junior Engineers in the Zila Parishads shall be taken into account. If any of the Junior Engineer/Assistant Engineer retires within this period of four months, they shall be deemed to have been transferred to the equivalent cadre in the Road Construction department and their seniority shall be reckoned by reference to their length of service as aforesaid. However, if the rules are framed as directed, their cases shall be considered in the light of the rules framed.”

4. The Rules, as directed, were not notified in four months, but notified on 15.12.2000. It is argued that in the said Rules, there are inadequate chances of promotion inasmuch as only four District Engineers are contemplated as against the 50 post of Junior Engineers which is wholly inequitable and does not provide enough promotional avenues to the limited cadre of the Junior Engineers.

5. Learned counsel for the petitioners has further argued that the Rules had not been notified in terms of proviso to Article-309 of the Constitution, but enacted in terms of Section-85(5) of Bihar Panchayat Raj Act, 1993 and, thus, such rules violate the provisions of Article 309 of the Constitution.

6. We have heard learned counsel for the parties and find no merit in the present writ application. The rules have been notified in exercise of powers under Section 85(5) Bihar Panchayat



Raj Act, 1993. Article 309 of the Constitution contemplates framing of rules by the Legislature. It is only when the Legislature does not frame rules, the rules are framed in exercise of proviso to Article 309 of the Constitution. In the present case, the rules have been framed in exercise of the powers conferred by the Statute, i.e. Section 85(5) of the Bihar Panchayat Raj Act, 1993. Therefore, it cannot be said that the rules framed are illegal since such rules have not been notified in terms of proviso to Article 309 of the Constitution of India.

7. In respect of the grievance regarding lack of adequate chance of promotion, it is for the Executive to consider and determine the chances for promotion including the conditions to grant promotion. It is in exercise of such power, the rules have been framed.

8.. In P.U. Joshi v. Accountant General, (2003) 2 SCC 632, the Hon'ble Supreme Court held that the questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service is within the exclusive discretion and jurisdiction of the State, subject to the limitations or restrictions envisaged in the Constitution of India. The Court held to the following effect:

“10. We have carefully considered the submissions made on



behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

9. In another judgment, reported as (2012) 9 SCC 545,



State of Gujarat v. Arvindkumar T. Tiwari, the Hon'ble Supreme Court held that fixing eligibility criteria for a particular post falls within the exclusive domain of the legislature/executive and cannot be subject matter of judicial review unless it is found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service or that it has no relationship with the objective to be achieved. The Court held to the following effect:-

“12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of “fair play”, “good conscience” and “equity”. (Vide *State of J&K v. Shiv Ram Sharma*, (1999) 3 SCC 653: 1999 SCC (L&S) 801: AIR 1999 SC 2012, and *Praveen Singh v. State of Punjab*, (2000) 8 SCC 633 : 2001 SCC (L&S) 62.)”

10. Still further, in the absence of chances of



promotion, the petitioners may be entitled to Assured Career Progression, i.e. granted in lieu of stagnation in the cadre in accordance with law, but the legality of rule cannot be challenged on the ground that there are not sufficient chances of promotion. Therefore, we do not find that any of the rights of the petitioners have been violated by notifying the rules on 15.12.2000.

11. Consequently, we do not find any merit in the present writ applications. The same are dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

K.C.jha/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	14.02.2017
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