

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16335 of 2016

=====

Raman Kumar Mishra, S/o late Pran Mohan Sharma, resident of Village- Janta,
P.S.- Gayghat, District- Muzaffarpur. Petitioner

Versus

1. The State of Bihar
 2. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
 3. The Engineer-in-Chief, Minor Water Resources Department, Government of Bihar, Patna.
 4. The Chief Engineer, Minor Water Resources Department, Government of Bihar, Patna.
 5. The Executive Engineer, Minor Irrigation Division, Muzaffarpur.
 6. The Chief Engineer, Minor Water Resources Department, Muzaffarpur
- Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Bidhanesh Misra, Adv.
Ms. Tanuja Mishra, Adv.

For the Respondent/s : Mr. Jitendra Kumar, AC to AAG-14

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT

Date: 17-05-2017

Let the Chief Engineer, Minor Water Resources Department, Muzaffarpur be added as party respondent no.5 during the course of the day. Let incorporation be also carried out in the pleadings of the respondents.

Heard Mr. Bidhanesh Misra, learned counsel appearing for the petitioner and Mr. Jitendra Kumar, AC to AAG-14, for the State.

The petitioner is aggrieved by the order bearing Memo No. 300 dated 28.2.2015 passed by the Chief Engineer, Minor Water Resources Department, Govt. of Bihar, Patna, whereby the claim of the petitioner for promotion from Class IV to Class III post has been rejected.

A submission was made by Mr. Bidhanesh Misra, learned



counsel for the petitioner, that in fact the respondents have got confused in the process, inasmuch as even when the petitioner was praying for regular promotion in normal course of business but the respondents have treated the request for regular promotion as a promotion by way of compassionate appointment.

Adverting to the order passed by this Court in the previous round of litigation arising from C.W.J.C.No. 3658/2014 he submits that the order is very clear and though the respondents were required to consider the grievance of the petitioner for promotion to Class III, they have misconceived themselves in passing the order impugned.

It is taking note of the nature of the dispute raised that the respondents were directed to file counter affidavit and when they have returned with the counter affidavit which in paragraphs 11 and 12 admits to the situation but informs that under the Rules 15% of the post of Lower Division Clerk is to be filled up by promotion from Group-D employees and for which a seniority list has to be prepared. Paragraph 12 of the counter affidavit informs that the petitioner and similarly placed Group-D employees would be considered for promotion in the light of the Rules after preparation of the seniority list. The deponent in paragraph 13 states that eligibility for a post does not create a right for promotion.

I have heard learned counsel for the parties and have perused the records and in view of the statements made at paragraphs 11 and



12 of the counter affidavit the order impugned at Annexure 1 cannot be upheld and is accordingly quashed and set aside.

In so far as the legal position as explained by the respondent at paragraph 13 of the counter affidavit is concerned, there cannot be a dispute that attaining an eligibility does not confer a right for promotion but nonetheless it does vest a right of consideration. In fact once a Government servant attains the qualification for promotion and there is post available then there has to be valid reason available with the respondents to justify a denial for such promotion. Thus, even while partially accepting the legal position explained by the respondents at paragraph 13, it would be an advice to them that they cannot have a laid back attitude for once they find that the Group-D staff is entitled for promotion under the Rules then they need to wake up and take measures in this regard.

The writ petition is accordingly allowed with a direction to newly added respondent no.6 to consider the grievance of the Group-D employees for promotion and take a final decision within a period of three months from the date of receipt/ production of a copy of this order.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.05.2017
Transmission Date	NA

