

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10138 of 2005

=====

ANIL KUMAR TIWARY SON OF SRI SHYAM NANDAN TIWARI RESIDENT OF VILLAGE LATHANPUR, DUMRI, PO DUMARI BUJURA G, POLICE STATION NA YAGA ON, DISTRICT SARAN CHAPRA, PRESENTLY WORKING IN BANIAPUR BLOCK AS VLW/VEE, CHAPRA SARAN

.... Petitioner

Versus

1. THE STATE OF BIHAR
2. THE COMMISSIONER, AGRICULTURE PRODUCTION, GOVERNMENT OF BIHAR, PATNA
3. THE SECRETARY, AGRICULTURE DEVELOPMENT, GOVERNMENT OF BIHAR, PATNA
4. THE DEPUTY SECRETARY, AGRICULTURE DEPARTMENT GOVERNMENT OF BIHAR, PATNA
5. THE COLLECTOR, DISTRICT SARAN AT CHAPRA
6. THE DEPUTY COLLECTOR ESTABLISHMENT, SARAN AT CHAPRA
7. THE BLOCK DEVELOPMENT OFFICER, BANIAPUR, DISTRICT SARAN AT CHAPRA .

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Rajendra Pd.Singh, Sr. Advocate
Mr. Gyanendra Kr. Diwakar, Advocate

For the Respondents : Mr. Indradeo Prasad, SC 27
Mr. KK Tiwary, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 06-03-2018

Heard learned senior counsel for the petitioner and learned counsel for the state.

2. The writ petition has been filed for a direction to the respondents to promote the petitioner on the post of Block Agriculture Officer counting his service with effect from 1992 and for quashing order dated 29.1.2005 (Annexure 9), by which his claim for maintaining parity in the matter of pay, seniority and promotion with other employees who have been appointed in the year 1992, has been rejected.



3. The pleadings and undisputed facts of the case are that pursuant to an advertisement for appointment of Village Level Worker (V.L.W.) in which the desirous candidates having the eligibility criteria were required to submit their applications through Employment Exchange by 22.8.1987, the petitioner had made his application. The same was not considered as his application did not reach the Collector's office in time as the dispatch of his application was delayed from the office of the Employment Exchange. Being aggrieved, the petitioner approached this Court by filing C.W.J.C.No. 680 of 1993 seeking a direction upon the respondents to consider his case for appointment on the post of V.L.W. This Court disposed of the writ petition vide order dated 30.6.1993 with the following directions:-

“Having noticed the facts and circumstances aforementioned, in our view, the petitioner should obtain a certificate from the relevant Employment Exchange in support of his claim that such application was filed and duly forwarded by that Employment Exchange before an appropriate authority. If such a certificate is produced the appropriate authority, including the Agriculture Production Commissioner, Patna should consider his grievance and dispose of the same by reasoned order.”

4. It appears that after disposal of the said writ petition, petitioner's claim for appointment on the post of VLW was rejected vide order dated 1.9.1995 (Annexure A to the counter affidavit),



passed by the Secretary, Department of Agriculture, Government of Bihar. The petitioner challenged the rejection order in C.W.J.C.No. 10597 of 1997. This Court vide order dated 19.8.1999 was of the view that the petitioner's claim for consideration was justified as his application was received in the Employment Exchange within time and the delay had occasioned in the Employment Exchange in dispatching his application on 31.8.1987 due to which the same could not reach the office of the Collector within time, i.e., 22.8.1987. This Court, therefore, held that since the application of the petitioner was received well within the time before the Employment Exchange, there cannot be any justification to deny the claim of the petitioner for appointment. Setting aside the order dated 1.9.1995 the Court directed the Collector, Saran to consider the claim of the petitioner for appointment against such a post within two months from the date of the order, if he is otherwise found eligible for appointment.

5. From the earlier proceedings, one thing is evident that the petitioner had never claimed promotion nor was granted any benefit from the date prior to his appointment in any of the earlier writ proceedings. It is only after the petitioner approached this Court by filing contempt petition, that the petitioner was finally appointed as V.L.W. on 23.9.2003. The petitioner thereafter filed



contempt petition bearing M.J.C.No. 184 of 2000. During pendency of the contempt proceedings, the respondent authorities brought on record letter of the Director, Agriculture dated 20.11.2002 showing that the petitioner was being sent for training treating the same to be in compliance of order dated 19.8.1999, passed in C.W.J.C.No. 10597 of 1997. The contempt petition was disposed of vide order dated 22.11.2002 taking into consideration the stand of the respondents that petitioner's claim for appointment to the post of V.L.W. has been recommended and communicated to the Directorate by the Selection Committee in its meeting dated 23.9.2002.

6. This Court finds that till the said appointment, petitioner has never raised any claim for grant of past benefits nor has he claimed parity with those who were appointed on the post of the V.L.W. pursuant to the aforesaid advertisement in the year 1992. The instant case has been filed claiming parity with others who were appointed in the year 1992. The others with whom the petitioner claims parity were appointed about 11 years before the petitioner, on basis of one earlier decision contained in Memo no. 1154 dated 27.8.2003 (Annexure 7), issued under the signature of the Deputy Secretary, Government of Bihar, Patna, by which a policy decision was taken to promote all the



Jansewak/V.L.W./V.E.R. who have completed their eight year service or more on the post of Block Agriculture Officer. While placing reliance on Annexure 7 the petitioner contends that upon completion of eight years of service on the post of V.L.W. he was entitled to be promoted as Block Agriculture Officer. He submits that others, who were appointed pursuant to the same advertisement as the petitioner, have been granted promotion to the post of the Block Agriculture Officer and as such he too is entitled to the same with effect from the same date as has been done in the case of others who were appointed pursuant to the same advertisement.

7. Respondents, on the other hand, have resisted claim of the petitioner. They submit that the petitioner's claim is not sustainable since he has admittedly come into service on 23.9.2003 on the post of V.L.W. after receiving training and he completed eight years of service as V.L.W. in the year 2011 and as such does not fulfill the criteria mentioned in policy decision of the Government contained in Annexure 7. Respondents have further stated that as per V.L.W. Recruitment Rules, 1987, a person cannot be appointed on the post of V.L.W. without receiving extension training which the petitioner has received from 10.1.2003 to 9.4.2003 before being appointed on 23.9.2003 and therefore his date of appointment cannot be shifted back.



8. The appointment having been done subsequent to the said training on 23.9.2003, the petitioner has claimed for benefits for the period prior thereto. He was eligible to be appointed on the post of Block Agriculture Officer after completing eight years of service as V.L.W. The aforesaid stand of the respondents appears to be justified. This Court, in the earlier orders of this Court, have found that the petitioner's case for appointment on the post of V.L.W. was not considered due to delayed dispatch of his application occasioned by the Employment Exchange to the office of the Collector, Saran. Nonetheless, the petitioner could have claimed for past benefits, but he did not choose to make such claim in the earlier two writ petitions, i.e., C.W.J.C.Nos. 680 of 1993 and 10597/1997.

9. In view of the aforesaid consideration, and for reasons mentioned above, prayer of the petitioner made in the writ petition cannot be entertained. The writ petition is accordingly dismissed.

10. Before parting with the order, this Court would only observe that as per counter affidavit of respondent no.5, the petitioner has become entitled for consideration for promotion to the post of Block Agriculture Officer upon completion of eight years of his service from the date of his appointment as V.L.W., i.e., on 23.9.2003. In view of such stand of the respondents, right



having been accrued to the petitioner during pendency of the writ petition, this Court directs the respondent authorities to consider the claim of the petitioner for promotion as Block Agriculture Officer, if he is otherwise found fit, the same may be granted to him expeditiously and without any unnecessary delay.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	13.3.2018
Transmission Date	NA

