

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.860 of 2009

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Sarvanand Paswan, son of Ramanand Paswan, resident of Village-Maulani Chak, P.S.-Maner, District- Patna, at present posted as Assistant Engineer (Minor Irrigation) under Tube Well Division, Bettiah, District- West Champaran.

.... Petitioner

Versus

1. The State of Bihar
2. Secretary, Government of Bihar, Water Resources Department, Old Secretariat, Patna.
3. Deputy Secretary, Water Resources Department, Government of Bihar, Old Secretariat, Patna.
4. Under Secretary, Water Resources Department, Government of Bihar, Old Secretariat, Patna.
5. Joint Secretary (Management), Water Resources Department, Government of Bihar, Old Secretariat, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate
For the State : Mr. Ajay Behari Singh, G.A.-8
Mr. Neeraj Raj, A.C. to G.A.-8.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 19-01-2018

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

2. In the present case, this Court has to give answer about the applicability of period of 'Kalawadhi' with respect to scheduled caste candidates. The petitioner has placed reliance on the Resolution no.288 dated 16.05.1978 which has been amended by Resolution dated 20.10.1982.

3. As per the petitioner for general category candidate the 'Kalawadhi' is eight years, but one year relaxation has been given to



the scheduled caste candidate.

4. Learned counsel for the State has submitted that on account of issuance of fresh Resolution of the year 1982, the earlier Resolution will be treated to have been superseded and not in existence, but the argument of the State is fallacious, reason is that, in the Resolution of 1982 amendment has been made to certain extent which stipulates no relaxation of 'Kalawadhi' will be given in first transaction, but when some vacancies are left out to be filled up, in such circumstance, the benefit of relaxation will be given to all employees including scheduled caste employee, but in case scheduled caste will be given one year more relaxation. So 1982 amendment has brought minor change but the Resolution dated 16.05.1978 has remained so in normal situation the scheduled caste and scheduled tribe employees will get relaxation of one year in 'Kalawadhi' as fixed for normal employee.

5. There is no dispute that for the purposes of promotion from Junior Engineer to Assistant Engineer the 'Kalawadhi' for employees is eight years, but in case of scheduled caste and scheduled tribes employees 'Kalawadhi' will be seven years. 'Kalawadhi' means crosses the period mentioned, will be eligible for promotion and that does not create any right, but subject to fulfilling



the qualification and availability of the post. But, so far 1978 Resolution makes it very clear that for general category candidates 'Kalawadhi' is eight years and one year relaxation will be given to scheduled caste candidates. This 1982 Resolution has not in any manner diluted the Resolution of 1978 because no fresh 'Kalawadhi' has been provided in 1982 Resolution.

6. The State has further submitted that the petitioner has been promoted to the post of Assistant Engineer after completion of eight years of service, but the petitioner says that he should have been given the promotion after seven years of service.

7. This Court cannot issue a *mandamus* in favour of petitioner as the petitioner has already deleted the private respondents against whom claimed seniority, they may be affected by the promotion of the petitioner and no order can be passed which affects the right of others without their hearing.

8. This petition, is accordingly, disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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