

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13901 of 2010

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Sri Bhuvneshwar Sahay S/O Late Manokamna Nath Sahay, resident of
Parwati Path, P.S.- Chitragupt Nagar At & Distt.- Patna

... .. Petitioner

Versus

1. The State of Bihar
2. Secretary, Road Construction Department (Nirman Bhawan), Patna
3. Secretary, Building Construction Department, Nirman Bhawan, Patna
4. Dy. Secretary, Building Construction Department Nirman Bhawan, Patna

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Mukul Sinha, Advocate Mr. Rajesh Kumar, Advocate Mr. Deep Anshuman, Advocate
For the Respondent/s	:	AAG-11

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 26-02-2018

1. Heard learned learned counsel for the petitioner. No one appears for the State. The counter affidavit has been filed by the State, statement made therein are being considered in disposing of the present case.

2. In the present case, relief has been sought to grant the benefit of promotion to the post of Superintending Engineer, Road and Building Construction Department with effect from the date he had been functioning as In-charge Superintending Engineer i.e. since 06.03.1998 till the date of superannuated i.e. 31.08.1998. The petitioner is also claiming all consequential benefits.



3. In the present case, the petitioner has entered into the service of Public Works Department as Assistant Engineer in the Bihar Engineering Service-II. Later on, the Road and Building Construction Departments were amalgamated and a common cadre was formed as Road and Building Construction Department. Accordingly, the petitioner was promoted to the post of Executive Engineer in the Bihar Engineering Service-I and after sufficient time he became entitled to the post of Superintending Engineer. The petitioner was made In-charge Superintending Engineer vide Notification dated 06.03.1998 and he continued to discharge the duty in his own pay scale, ultimately, he superannuated from the service on 31.08.1998. The Departmental Promotion Committee considered the case of the petitioner along with others and vide its proceeding dated 01.08.1998 found the petitioner fit for the promotion in the cadre of Superintending Engineer, but which remained pending, in the meantime, the petitioner superannuated and the Notification has been issued after his superannuation i.e. on 24.02.1999, ignoring the promotion of the petitioner to the post of Superintending Engineer.

4. Learned counsel for the petitioner submits that the petitioner has continued to discharge the duty of Superintending Engineer and that too he was found fit by the Departmental



Promotion Committee, merely because the petitioner has superannuated before the actual Notification was issued, he cannot be deprived of the benefit of promotion to the post of Superintending Engineer.

5. In support of his submission, learned counsel for the petitioner has placed reliance on the decision rendered in the case of *V.N. Meenakshi vs. Union of India and Ors.* reported in *1999 SCC (L & S), page 669* and in the case of *Shankar Ram vs. State of Bihar* reported in *2016(4) PLJR, 654*. Relevant part of the decision rendered in the case of V.N. Meenakshi (supra) is as follows:-

“The impugned order of the Tribunal is accordingly quashed. Since the appellant claimed to be otherwise entitled for promotion to the post of Joint Assistant Director but in the meantime has retired on superannuation, her case may be considered for promotion to the post of Joint Assistant Director in accordance with law and if ultimately she is promoted to the post of Joint Assistant Director, then she would be entitled to the consequential enhancement in retiral benefits but will not be entitled to any arrears of salary on that score. Appeal is accordingly allowed but there will be no order as to costs.”

6. He further submitted that other similarly situated persons have been given the benefit of promotion even after their superannuation in a case they were found fit for promotion.



7. In the present case, there is no dispute that the case of the petitioner was considered for promotion to the post of Superintending Engineer, by the time the actual promotion order could have been issued he superannuated from the service, that will not take away his right for promotion to the next post in a situation when in the same department other similarly situated persons were given the benefit of promotion even after superannuation.

8. The State has not brought on record the factual matrix for denying his claim as has been submitted by the petitioner, but on the last date it has been stated by learned counsel for the State that file with respect to notional promotion was sent for concurrence of the Finance Department but ultimate outcome has not been brought to the notice of this Court till date.

9. In such view of the matter, this Court directs the respondents to grant the notional promotion to the petitioner on the post of Superintending Engineer from the date he has been found fit for promotion by the Departmental Promotion Committee. In the consequence, the pensionary benefit will be recalculated treating the petitioner to the post of Superintending Engineer and fix the same accordingly and pay the arrears of retiral dues. Let the respondents grant the benefits as has been directed



hereinabove, within a period of four months from the date of receipt/production of a copy of this order.

10. With the aforesaid observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	09/03/2018
Transmission Date	N/A.

