

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19829 of 2010

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BALBHADRA NARAYAN RAI S/O LATE RAM JEEVAN RAI R/O VILL.-
DHARAMGAT, P.O.- DIGHWARA, DISTT.- SARAN (CHAPRA)

... .. Petitioner/s

Versus

1. THE COMMISSIONER, PATNA MUNICIPAL CORPORATION, PATNA
2. THE CHIEF ENGINEER, WATER SUPPLY BRANCH PATNA (PATNA WATER BOARD), UNDER PATNA MUNICIPAL CORPORATION
3. THE EXECUTIVE OFFICER WATER SUPPLY BRANCH, PATNA (PATNA WATER BOARD), UNDER PATNA MUNICIPAL CORPORATION

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar
For the PMC : Mr. Ranjeet Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 18-07-2018

The present writ petition was filed for quashing Memo No. 585 dated 02.11.2009 whereby and whereunder the case of the writ petitioner for grant of promotion on the post of Assistant / Diary Dispatcher has been rejected.

2. At this juncture, it would be relevant to state that the original writ petitioner had died during the pendency of the present writ petition and he has been directed to be substituted by his legal heirs, by an order dated 06.07.2015 passed by this Court, by the following persons:-

(a) Mithilesh Kumar son of Late Bal Bhadra Narayan Rai (petitioner)

(b) Sudhir Kumar s/o Late Balbhadra Narayan Rai



(c) Manoj Kumar S/o Late Balbhadra Narayan Rai

(d) Dhiraj Kumar S/o Late Balbhadra Narayan Yadav

3. The learned counsel for the petitioners has submitted that the original writ petitioner was discharging the duties of Diary Dispatcher with effect from 01.02.1992 and for the same, he was granted twenty per cent additional allowance, as is apparent from the order dated 24.08.1992, hence, the Respondents should at least make payment of salary admissible to the post Assistant / Diary Dispatcher with effect from 01.02.1992.

4. Per contra, the learned counsel appearing on behalf of Patna Municipal Corporation has submitted that the original writ petitioner was appointed as Peon in the Patna Water Board and thereafter, he was promoted on the post of Abhilekhwah vide memo dated 30.12.1991 and till date of his retirement, he continued to discharge his duties on the said post of Abhilekhwah.

5. I have heard the learned counsel for the parties and gone through the records and I find that disputed questions of facts have arisen in the present case inasmuch as on the one hand, the original writ petitioner claims that he was performing the duties as Assistant while on the other hand, the Respondents have stated that the petitioner was promoted on the post of



Abhilekhwah vide office memo dated 30.12.1991 and he continued to work on the said post till the date of his retirement. Such disputed questions of fact cannot be adjudicated under Article 226 of the Constitution of India by a writ court. Moreover, admittedly, the petitioner was being paid additional allowance for being deputed as in-charge Diary Dispatcher and the petitioner continued to receive the additional allowance without any demur or protest, hence, any grievance being raised at this belated stage is circumscribed by the principles of acquiescence, delay and laches.

6. For the reasons mentioned hereinabove, there is no merit in the present writ petition, hence, the same is dismissed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	11.07.2018
Uploading Date	18.07.2018
Transmission Date	NA

