

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18043 of 2008

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Baban Singh, son of Sri Ram Janam Singh, resident of Village-Kurur, P.O.-Karath, P.S.-Gadaree (Karakat), District- Rohtas (Sasaram) at present working at Chainman, Minor Irrigation Department, Investigation Sub-Division, Bhabhua.

... .. Petitioners

Versus

1. The State of Bihar through the Secretary-cum-Commissioner, Department of Minor Irrigation, Bihar, Patna.
2. The Secretary-cum-Commissioner, Department of Finance, Bihar, Patna.
3. The Under Secretary, Department of Minor Irrigation, Bihar, Patna.
4. The Joint Secretary, Minor Irrigation Department, Bihar, Patna.
5. The Director, Under Ground Water Nideshalaya, Bihar, Patna.
6. The Chief Engineer, Department of Minor Irrigation, Bihar, Patna.
7. The Superintending Engineer, Minor Irrigation, Anawashan Anchal, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Sinha, Advocate
For the Respondent/s : A.C. to G.A.-10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 26-02-2018

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

2. In this case, basically the petitioner is challenging the letter no.419 dated 17.10.2007, passed by the Director, Under Ground Water Nideshalaya, Bihar, Patna, whereby and whereunder the promotion granted to the petitioner in the year 1984 has been cancelled on the ground that the post of Chainman and the Correspondence Clerk do not fall in the line of same ladder.



3. The facts of this case are that the petitioner was initially appointed as Chainman on 24.10.1978 in the office of the Executive Engineer, Under ground, Water Hydro-logical Division, Bhagalpur and by the order of the Executive Engineer, Minor Irrigation Division, Sahebganj, the petitioner was promoted to the post of Correspondence Clerk in the Minor Irrigation Sub Division, Pakud, as he was fulfilling the requisite qualification. After a long period, the Department vide letter no.4399 dated 08.08.2000 reverted the petitioner from the post of Correspondence Clerk, which compelled the petitioner to approach this Court in C.W.J.C. No.9547 of 2000, where-after C.W.J.C. No.4641 of 2006, whereby and where-under quashed the impugned orders and directed to consider his case along with case of Brajnandan Singh (C.W.J.C. No.10394 of 2000). The representation of the petitioner was rejected vide order dated 17.10.2007 (Annexure-1) which was subject matter of M.J.C. No.1135 of 2007, the Court directed the petitioner, if so advised, may challenge the impugned order dated 17.10.2007 (Annexure-1), whereby and where-under it has been held that as the petitioner was appointed as Chainman could not have been promoted to the next grade of Correspondence Clerk as the Correspondence Clerk



does not fall in the line of the promotion as both stand on different line.

4. In the counter affidavit, same stand has been taken by the State that the petitioner was wrongly promoted to the post of Correspondence Clerk as the person appointed as Chainman does not fall in the cadre of Correspondence Clerk cannot be promoted to the said post. It has further been stated in the counter affidavit that the case of petitioner is different to the case of other employees who were appointed as Chainman in the work charge establishment, but subsequently, they were absorbed and appointed against the post of Correspondence Clerk. So, it has been claimed that those cases are not the case of promotion but the case of absorption in the post of Correspondence Clerk.

5. One thing is not very clear when the persons entered into the service as Chainmen in work charge establishment how they could be absorbed against the post of Correspondence Clerk. At the same time, this Court vide order dated 17.11.2007 directed the State to bring on record the manner they were made the Correspondence Clerk but till today no such information or explanation has been offered by the State. In such circumstance, it can safely be arrived to the conclusion that the claim made by the petitioner that certain persons, who were holding the post of



Chainman were promoted to the post of Correspondence Clerk is correct, this fact can be corroborated from Annexure-8 (series) indicates item no.3-Gopal Krishan Chaubey, item no.9-Nawal Kishor Jha, item no.11-Sridhar Thakur, item no.24-Vishwanath Viaswas, item no.28-Mishri Mubarak Hasan and item no.29-Vaijnath Prasad Singh, all were appointed as Chainmen and they were promoted to the post of Correspondence Clerk.

6. Learned counsel for the petitioner further argued that several persons namely, Ajay Kumar Sinha, Md. Parvej Ansari, Rajendra Singh, Krishndeo Singh, Prameshwar Nath Mishra and Surendra Kumar all were appointed as Chainman, but promoted to the post of Correspondence Clerk in the year 2009, only the petitioner has been discriminated as the petitioner earlier was granted promotion but has been withdrawn and the petitioner has been brought to the original post of Chainman. It is an act of selective practice leads to discrimination in the same class of person.

7. The State, in the present case, has not filed any affidavit to show what manner and method was applied in promoting persons, as stated above, as Correspondence Clerk.



8. In such view of the matter, it is a fit case to be allowed. Accordingly, the letter no.419 dated 17.10.2007 (Annexure-1) is quashed and this Court directs the respondents to restore the position of the petitioner on the post of Correspondence Clerk, if the persons, as stated above, were promoted to the post of Correspondence Clerk and give all consequential benefits and arrears of salary and other consequential claims. All the process should be completed within a period of three months from the date of receipt/production of a copy of this order.

9. 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.
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