

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.29 of 2018

In

Civil Writ Jurisdiction Case No.6599 of 2017

Shiv Kumar Mishra, Son of Ramadhar Mishra, resident of Village- Latara,
P.S.- Karagahar, District- Rohtas. Appellant

Versus

1. The State of Bihar through Principal Secretary, Water Resources Dept. Govt. of Bihar, Patna.
 2. The Principal Secretary, Department of Water Resources Govt. of Bihar, Patna.
 3. The Deputy Secretary to the Govt. Water Resources Govt. of Bihar, Patna.
 4. The Principal Secretary Dept. of Rural Works, Dept. Secretary Govt. of Bihar, Patna.
 5. The Deputy Secretary to the Govt. Rural Works Dept. Govt. of Bihar, Patna.
- Respondents

Appearance :

For the Appellant/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Satyam Shivam Sundaram, Advocate
For the Respondent/s	:	Mr. Anjani Kumar -AAG 4

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-07-2018

Challenge in the present Letters Patent Appeal is to the judgment dated 27.11.2017 passed by the learned Writ Court in Civil Writ Jurisdiction Case No. 6599 of 2017. By the impugned judgment the learned Writ Court has refused to grant the prayer of the petitioner to direct the respondent authorities for shifting the



date of promotion of the petitioner on the post of Assistant Engineer (Civil) from 01.01.2005 to 29.03.2004.

2. The facts of the case are not in dispute to the extent that the petitioner who was working as a Junior Engineer, having passed his examination for Associate Membership of the Institution of Engineers (in short 'A.M.I.E. ') on 29.03.2004 got promotion to the post of Assistant Engineer vide Notification No. 917 dated 16.04.2007 (Annexure-2 to the writ application) w.e.f. 01.01.2005. The grievance of the petitioner is that he was eligible for promotion w.e.f. 29.03.2004 when he passed the A.M.I.E. examination. In this connection reliance has been placed on the resolution as contained in Memo No. 5008 dated 22.07.1998 (Annexure-3 to the writ application) issued by the Road Construction Department, Govt. of Bihar wherein paragraph 4 (Gha) it is provided that on the basis of passing of the A.M.I.E. or equivalent examination by the Junior Engineers, their seniority shall be fixed on the basis of the date of passing of the examination and promotions shall be given against 10 % quota of the vacant posts of Assistant Engineers in terms of the seniority. The case of the petitioner is that once he passed the A.M.I.E. examination on 29.03.2004 and on that date the vacancies were available under 10 % quota, he would be entitled for promotion



with effect from the date he became eligible by passing the said examination.

3. Learned Writ Court has quoted in detail the contents of Annexure-3 to the writ application and after going through the proceeding of the Committee, which considered the case of the promotion of the petitioner, found that the meeting of the Committee was held on 06.10.2006, the Committee found that 19 Junior Engineers were eligible for promotion including the petitioner whose name appeared at serial no. 19. It was further found that since there were only 16 posts available under 10 % A.M.I.E. quota on 01.01.2004, the candidates listed at serial no. 1 to 16 of the merit list were entitled to get promotion w.e.f. 01.01.2004 and since the petitioner appeared at serial no. 19 of the said list, he was granted promotion against the posts falling vacant in the year 2004 w.e.f. 01.01.2005 along with two others.

4. The learned Writ Court has dealt with the various clauses of Annexure-3 to the writ application and held that the stipulations present there make it clear that irrespective of the vacancies appearing in the midst of the year, the determination of the quota is to be done on the beginning of the calendar year which has been done in the present case. The Court has also found it to be



a stale claim being raised after almost a decade of the grant of promotion vide Notification Dated 16.04.2007 (Annexure3).

5. In course of argument, Mr. P. K. Shahi, learned Senior Counsel representing the petitioner, argues that once the petitioner became eligible for promotion by passing the A.M.I.E. examination on 29.03.2004, given the fact that the vacancies were available on 29.03.2004, the petitioner would be entitled to be promoted w.e.f. 29.03.2004 alone and the shifting of his promotion date to 01.01.2005 would not be just and proper.

6. In response, Mr. Anjani Kumar, learned AAG 4 representing the State, submits that the petitioner is unable to show any 'Rule' or 'Resolution' of the Government of Bihar to the effect that the date of promotion will be the date on which the concerned Junior Engineers passes his eligibility examination. It is further submitted that the petitioner is unable to show any discrimination in the matter of the policy of the Government as contained in Annexure-3 to the writ application. It is his submission that clause 4 (Gha) of Annexure-3 clearly provides that the seniority among the Junior Engineers, passing the A.M.I.E. or equivalent examination, will be fixed taking into account the date of passing of the examination but the said clause nowhere says that they



would be entitled for promotion with effect from the date of passing of their respective examination.

7. Attention of this Court has also been drawn towards clause 4 (Anga) which provides that the 10 % quota providing promotion to the Junior Engineers to the post of Assistant Engineer is to be fixed on the basis of the calculations of available vacancies every calendar year and therefore, the Government is consistently following this provision by calculating the available vacancies under 10 % quota every calendar year with effect from 1st of January. It is further submitted that there is no illegality or infirmity in the order passed by the learned Writ Court.

8. Having heard learned Senior Counsel for the petitioner and learned AAG 4 for the State and after going through the resolution of the Government as contained in Annexure-3 to the writ application, which is the Sheet Anchor of the contest between the parties, we are of the considered opinion that the contention on behalf of the petitioner that he would be eligible to get his promotion with effect from the date of passing of his examination of A.M.I.E. is only misconceived and cannot be accepted on the face of the policy decision fully enumerated in Annexure-3 to the writ application.



9. It is crystal clear from a complete reading of Annexure-3 that available vacancies under 10 % quota is to be calculated every calendar year w.e.f. 1st January. The Respondent have accordingly, calculated the quota w.e.f. 01.01.2004 and 01.01.2005. The vacancies as on 01.01.2004 was 16, therefore, against those vacancies persons placed at serial no. 1 to 16 were granted promotion w.e.f. 01.01.2004. the vacancies calculated as on 01.01.2005 were 3 against which persons from serial no. 17 to 19 were promoted w.e.f. 01.01.2005. The petitioner was placed at serial no. 19 so he has been rightly promoted w.e.f. 01.01.2005. No case of violation of any 'Rule' or 'Resolution' of the Government could be pointed out to us in course of argument. It is not the case of the petitioner that any Junior Engineer, placed below him in the seniority list, has been granted promotion with effect from an early date, thus, no case of discrimination has been pleaded before us.

10. We also agree that the finding of the learned Writ Court that it is a stale claim which is being agitated by the petitioner after almost a decade. In our considered view there is no basis to give any indulgence to the petitioner in the facts of the present case. It would unsettle the settled things.



11. Finding no merit in this Letters Patent Appeal, we
dismiss the same but without any order as to cost.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.07.2018
Transmission Date	NA

