

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5184 of 2002

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Dr. Kalyan Kumar Biswas, son of late Baidyanath Biswas, at present resident of Sadhanapuri, P.O. and P.S. Town Chapra, District- Saran.

.... Petitioner

Versus

1. The State of Bihar
2. Secretary, Urban Development Department, New Secretariate, Patna.
3. Commissioner, Saran Division, Chapra.
4. Collector Chapra, District- Chapra
5. Special Officer, Chapra Municipality, Chapra.
- 5(a) Chairman, Nagar Parishad, Chapra
- 5(b) The Vice-Chairman, Nagar Parishad, Chapra
- 5(c) Nagar Parishad, Chapra, through the Executive Officer.
6. Raghubarjee @ Raghubar Prasad, son of Late Sheo Nath Prasad, Assistant, Chapra Municipality, Chapra.
7. Sri Mahendra Prasad, son of Sukeshwar Prasad, Assistant, Chapra Municipality, Chapra, at present resident of Gandhi Chowk, Chapra.
8. Sri Kameshwar Prasad Verma, son of late Sheo Chand Prasad, retired Assistant, Chapra Municipality, Chapra, presently residing at Mohallah-Basantpur, P.S.- Dighwara, District- Saran, Chapra.
9. Sri Shaligram Prasad Shrivastava, son of late Ram Awatar Prasad Shrivastava, Assistant, Chapra Municipality, Chapra.
10. Sri Basisth Kumar Mishra, son of late Mana Mishra, Assistant, Chapra Municipality, Chapra.
11. Lallan Singh, son of Rajballav Singh, Assistant, Chapra Municipality, Chapra.
12. Ram Chandra Prasad Yadav, son of late Sulagan Prasad Yadav, Assistant, Chapra Municipality, Chapra.
13. Shamsheer Ali, son of Md. Taque, Chapra Municipality, Chapra.
14. Baidya Nath Das, son of not known, Typist, Chapra Nagar Parishad, Chapra, District- Chapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Laxmi Narayan Das, Advocate
Mr. Subroteswar De, Advocate



For the Respondents : Mr. Indu Bhushan, Advocate
Mr. Rakesh Kumar Tiwary
Mr. Arbind Kumar Pandey
Mr. Arbind Kumar Singh-1
Mr. Raghwanand
Mr. Vijay Kumar
Mr. Rajani Kumari

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 05-01-2018

Heard learned counsel for the parties.

2. The present litigation has been confined to petitioner vis-à-vis Baidya Nath Das, respondent no.14, who has been added as new respondent vide Interlocutory Application no.4240 of 2007. So the limited consideration of the petitioner with Baidya Nath Das, respondent no.14. Though the petitioner has claimed seniority over the number of private respondents but vide order dated 23.01.2009 it was confined to the dispute between the petitioner and the respondent no.14. Notices were issued, accordingly appeared before this Court.

3. As the limited question has been raised by the petitioner that he has wrongly been denied the benefit of Upper Division Clerk in view of fact that admittedly, the respondent no.14 is junior to the present petitioner, was granted the benefit of Upper Division Clerk on 17.03.2007 i.e. during the pendency of the writ application. The petitioner was appointed on compassionate ground, later on, was



confirmed to Lower Division Clerk in the year 1976. The respondent no.14 was appointed as Lower Division Clerk on 01.05.1978, his entry in the service two years' later of the present petitioner. In such circumstances, admittedly, the respondent no.14 is junior to the present petitioner. In the year 1997, the Municipal Corporation has published the gradation list of Lower Division Clerks, wherein the name of present petitioner is at serial no.8 and the name of respondent no.14 is at serial no.10, which itself reflects that respondent no.14 was/is junior to the petitioner. During the pendency of this writ application, vide order dated 17.03.2007 the respondent no.14 was promoted to the post of Upper Division Clerk, but the case of the present petitioner was not considered, he was left in high and dry.

4. Learned counsel for the Chapra Municipal Corporation submits that the respondent no.14 had never been promoted to the post of Upper Divisional Clerk. In the counter affidavit there is no denial from the Municipal Corporation that respondent no.14 was not junior to the present petitioner but what has been stated that the respondent no.14 was not promoted substantively to the post of Upper Division Clerk but was asked to discharge the duty of Head Clerk in his own pay scale. So, it was not a promotion at all, merely



he had worked on ad-hoc basis on the post of Head Clerk in his old pay scale.

5. As there is no denial that respondent no.14 was junior to the present petitioner, this Court directs the Chapra Municipal Corporation to give the same and similar benefit as has been given to respondent no.14. If respondent no.14 has been promoted to the post of Upper Division Clerk, in such circumstance, the present petitioner should also be promoted to the post of Upper Division Clerk from the date the respondent no.14 has been promoted to the said post. The entire process must be completed within a period of four weeks from the date of receipt/production of a copy of this order.

6. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	09.01.2018
Transmission Date	N/A.

