

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1476 of 2012

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1. Mahesh Prasad Singh Son Of Late Ramanand Singh Resident Of Village-Ufroul, P.S.-Pipra, District-Patna At Present Posted As Surveyor In The Department Of Sone Command Area Development Agency (SCADA), Patna Working In The Office Of Executive Engineer Of SCADA, Aurangabad, District-Aurangabad (Bihar)

2. Nawal Kishore Singh Son Of Late Jagdish Singh Resident Of Village-Gosai Math, P.S.-Gopalpur, District-Patna, At Present Posted As Surveyor In The Department Of Sone Command Area Development Agency (SCADA), Patna, Working In The Office Of Executive Engineer (SCADA) At Aurangabad, District-Aurangabad, Bihar

.... Petitioner/s

Versus

1. The State Of Bihar through Area Development Commissioner-Cum-Chairman, SCADA, Sone Bhawan, Birchand Patel Marg, Patna

2. The Secretary, Sone Command Area Development Agency (SCADA), Sone Bhawan, Birchand Patel Marg, Patna

3. The Superintending Engineer, Sone Command Area Development Agency (SCADA), Sone Bhawan, Birchand Patel Marg, Patna

4. The Executive Engineer, SCADA at Aurangabad, Bihar

.... Respondents

With

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Civil Writ Jurisdiction Case No. 8944 of 2014

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Md. Firoz son of Md. Jamil Resident of Mohalla - Maripur, P.S. Kazi Mohammadpur, District - Muzaffarpur, presently working as Junior Engineer, Sone Command Area Development Agency, Dehri - on - Sone, District - Rohtas

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna

2. The Chairman, Sone Command Area Development Agency (SCADA), Sone Bhawan, Birchand Patel Path, Patna

3. The Secretary, Sone Command Area Development Agency (SCADA), Sone Bhawan, Birchand Patel Path, Patna

4. The Superintending Engineer, Sone Command Area Development Agency



(SCADA), Sone Bhawan, Birchand Patel Path, Patna

5. The Executive Engineer, Sone Command Area Development Agency (SCADA),
Dehri - on - Sone

.... Respondents

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Appearance:

(In CWJC No.1476 of 2012)

For the Petitioner/s : Mr. Birendra Kumar Singh, Advocate.

For the State: Mr. Birju Prasad, GP 13.

For the Respdt. (SCADA): Mr. Naresh Dikshit and
Mr. Lalan Kumar, Advocates.

(In CWJC No.8944 of 2014)

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate.

For the Respondent/s : Mr. Birju Prasad, GP 13, Mr. Ravi Kumar &
Mr. Ashok Kumar, AC to GP 13.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 06-04-2018

These two Writ Applications have been placed before us
by virtue of the order dated 03.05.2013 passed by a learned Single
Judge of this Court while hearing the Writ Petition (CWJC No. 1476
of 2012).

2. The learned Single Judge found that there are divergent
views of this Court on the question involved in the Writ Application
as to whether the petitioners, who were initially appointed on the post
of Surveyor in Sone Command Area Development Agency, Sone
Bhawan, Patna (in short, 'SCADA'), on completion of 10 years of



tenure are entitled to get promotion on the higher post of Junior Engineer?

3. The learned Single Judge found that the petitioners are relying on the judgment and order dated 17.04.1998 passed in CWJC No. 977 of 1998 by a learned Single Judge of this Court followed by the judgment and order dated 13.01.2009 passed in CWJC 9943 of 2009 and its analogous cases by another learned Single Judge of this Court. The petitioners also relied on the judgment dated 07.08.1998 passed in S.L.P. (Civil) No. 11648 of 1998, brought on record as Annexure-H to the Counter Affidavit, by which the Hon'ble Apex Court dismissed the S.L.P. preferred by A.D.C.-cum-Chairman, Sone Command A.D.A. against the judgment dated 18.03.1998 passed in CWJC No. 1439 of 1998.

4. By order dated 18.03.1998 passed in CWJC No. 1439 of 1998, a learned Single Judge of this Court had been pleased to quash the order dated 16.01.1998 issued by the Area Development Commissioner-cum-Chairman, SCADA cancelling the promotion of the petitioners in the said case to the post of Junior Engineer. In the said case the petitioners were working as Draftsmen and in the year 1985 they were promoted along with Surveyors to the post of Junior Engineer and they were continuing on the said post on 23.07.1997, when promotions were sought to be cancelled on the ground that they



were promoted while they had completed only 8 years of service.

5. Before the learned Single Judge the respondents submitted that there was no rule or circular having statutory force on the basis of which the petitioners can legitimately claim their promotion on the post of Junior Engineer from their substantive post of Surveyor. The respondents relied on the judgment and order dated 18.03.2005 passed in CWJC No. 1475 of 2000 by a learned Single Judge of this Court. It is the contention of the respondents that in exactly identical situation involved in the said case the claim for promotion by the petitioners of that case from the post of Surveyor to the post of Junior Engineer was negatived. The respondents contended that the issues involved in the present Writ Application stands concluded by the aforesaid judgment and order dated 18.03.2005 passed in CWJC No. 1475 of 2000, which has been brought on record as Annexure-J to the Counter Affidavit filed by the respondents.

6. It is in this situation that the learned Single Judge came to opine that there has been divergent views amongst the Judges of this Court on the issue involved in the present proceeding and, therefore, the dispute involved in the present proceeding is required to be decided authoritatively once for all by a Division Bench of this Court.

7. We have heard learned counsel representing the



petitioners and learned counsel representing the State.

8. Learned counsel for the petitioners submits that so far as these writ petitioners are concerned they came to be appointed on the post of Surveyor in SCADA after following all norms and procedures which were then in vogue. Petitioner no. 1 was posted in the Office of the Executive Engineer, SCADA and remained there on the post of Surveyor till 1986, thereafter he was assigned the work of Junior Engineer in addition to his own posting as Surveyor and was asked to discharge the duties of the post of Junior Engineer which he did to the utmost satisfaction of his superior officers and there was no complaint whatsoever from any corner during his tenure. It is the case of the petitioners that by order dated 22.02.1995 about nine employees of the same cadre of the petitioners were given promotion from the post of Surveyor to the post of Junior Engineer. Copies of the orders passed in their case have been brought on record by way of Annexure-5 to the Writ Application. These orders granting promotions were recalled by the new incumbent on the post of Commissioner, SCADA vide his order dated 16.01.1998. Again when a new Commissioner came in SCADA he reinstated all the nine Surveyors whose orders of promotions were cancelled.

9. Regarding petitioner no. 2, it is stated that he joined the post of Surveyor on 24.07.1981 and was posted in the Office of the



Executive Engineer, SCADA and continued there till 2001. It is stated that petitioner no. 2 was also given additional charge to the post of Junior Engineer and he continued to render his duties on the post of Junior Engineer. In this regard, Annexure-10 to the Writ Application has been brought on record.

10. It is the common contention of the petitioners that they were called upon to work as Junior Engineers vide Memo No. 131/So.Ka. (SCADA) dated 20.04.2011, as contained in Annexure-11 to the Writ Application.

11. In course of hearing our attention has been drawn towards Office Order as contained in Annexure-11 to the Writ Application. A perusal of Annexure-11 would show that these petitioners were given current charge of the sanctioned and vacant posts of Junior Engineers in order of seniority by virtue of a decision taken by the Regular Establishment Committee from amongst the working Surveyors in order of their seniority.

12. In Paragraph 17 of the Writ Application there is a specific averment that other persons whose cases were identical and similarly situated have been promoted to the post of Junior Engineer just after completion of eight years of service on permanent vacant posts with the direction to pay them pay & allowances for the said post of Junior Engineer whereas the petitioners have been totally



denied the said benefit which, according to them, is a violation of Article 14 of the Constitution of India.

13. Petitioners had moved this Court in CWJC 7298 of 2010 which was disposed of vide order dated 30.04.2010 directing the petitioners to file fresh representations before the Commissioner-cum-Chairman, SCADA, who was directed to dispose of the same in accordance with law as early as possible but the representations of the petitioners were not considered in right perspective and Annexure-11 was issued referring the order passed by the learned Writ Court in CWJC No. 7298 of 2010 by which the petitioners were given current charge of the posts of Junior Engineers but they were not given the benefits of the said posts which were sanctioned and vacant posts. It is in these circumstances that they have claimed their entitlements for salary & other emoluments attached to the post of Junior Engineer.

14. In course of argument learned counsel for the respondent State has brought to our notice the decision rendered by a learned Single Judge of this Court on 18.03.2005 in CWJC No. 1475 of (Triloki Singh & Ors. Vs. State of Bihar & Ors.). We have perused the said judgment of the learned Single Judge and found that in the said case the petitioners who were earlier treated to be equivalent to Sub Junior Engineer and were promoted to the post of Junior Engineer were sought to be reverted by cancelling the promotion orders. When



they challenged the order of cancellation of their promotion, the learned Single Judge considered the entire aspect of the matter and taking note of the Government Circular of 1976 and then the Notification dated 09.11.1987 which was published in the Official Gazette whereunder it was informed that the post of Junior Engineer shall be filled up only by direct recruitment and not otherwise, the learned Single Judge finally held that the petitioners in the said case cannot be granted promotion in derogation of what has been held out in the public notification dated 09.09.1987.

15. We have considered the submissions advanced on behalf of the learned counsel for the petitioners as also learned counsel representing the State.

16. There is a distinguishing feature of these cases. In the present Writ Applications, the petitioners are those who had been asked to discharge the duties of the post of Junior Engineer. The judgment of the learned Single Judge in CWJC No. 1475 of 2000, decided on 18.03.2005, was very much available to the respondents when they came out with the Office Order dated 20.04.2011 as contained in Annexure-11 to the Writ Application. From a perusal of the said Office Order, it is evident that vide Agenda Note No. 2, the Regular Establishment Committee of SCADA considered the case of the petitioners and other Surveyors named therein in order of their



respective seniority for purpose of placing them in the current charge of the sanctioned and vacant posts of Junior Engineer. The Office Order provides that they were asked to discharge their responsibilities on the post of Junior Engineer in the same pay scale in which they were posted as Surveyors.

17. These are not the cases where the petitioners were granted substantive promotion on the posts of Junior Engineer but as the facts revealed the petitioners were found fit for discharging the duties of the post of Junior Engineer and they were considered by the Regular Establishment Committee who placed them in the current charge of the post of Junior Engineer. It was not a stop-gap-arrangement as there is no denial of the fact that these petitioners continued for years together and discharged their duties on the post of Junior Engineer in SCADA and ultimately retired from there. There is no denial of the statement made in Paragraph 17 of the Writ Application that other persons who were identically and similarly situated were promoted to the post of Junior Engineer and have been paid salary & other emoluments for the post of Junior Engineer. If it is so, considering the fact that despite there being order dated 18.03.2005 passed in CWJC No. 1475 of 2000 if the respondents decided to take work from these petitioners continuously for several years against the sanctioned and vacant posts of Junior Engineer, there



is no reason why they would not pay the salary and other emoluments attached to the post of Junior Engineer to these petitioners as they have rendered their services satisfactorily and have ultimately retired in the current charge of the post of Junior Engineer. In order to oust the petitioners from claiming their pay and emoluments attached to the post the respondents cannot rely upon the order dated 18.03.2005 passed in CWJC No. 1475 of 2000 which was available to them but not availed of.

18. In the circumstances stated here-in-above and on the basis of what have been brought on record, we find that in terms of the government policy, as contained in the notification dated 09.11.1987 which was published in the Official Gazette also, the post of Junior Engineer in 'SCADA' would be liable to be filled up only by direct recruitment and not otherwise. It is made clear that we are directing the respondents to pay the salary and emoluments attached to the post of Junior Engineer to the petitioners only for the reason that in their case they have been consciously given current charge of the posts of Junior Engineer after finding them fit for that job and posts were sanctioned and vacant posts, there is no dispute that the petitioners were continuously made to work for several years on the said posts and they ultimately retired while discharging their duties in the current charge of the post of Junior Engineer.



19. In result, these Writ Applications are allowed. The respondent ‘SCADA’ and its authorities are directed to pay the salary and emoluments attached to the post of Junior Engineer to these petitioners for the period they have rendered their duties in the current charge on the sanctioned and vacant posts of Junior Engineer in ‘SCADA’. All such benefits shall be paid to the petitioners within a period of two months from the date of receipt / production of a certified copy of this order.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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