

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16071 of 2011

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1. NANHE RAJ KUMAR SON OF LATE RAMDEO PRASAD
RESIDENT OF QUARTER NO. D-7 (OLD), B.S.E.B COLONY,
NEW PUNAICHAK, PATNA-23
 2. SHIVA SHANKAR PANDEY SON OF LATE YAMUNA PANDEY
RESIDENT OF MOHALLA-A/40, BIRLA COLONY, P.O + P.S.-
PHULWARISHARIF, PATNA
 3. KRISHNA KUMAR SON OF LATE SATYANARAYAN SINGH
RESIDENT OF HOUSE NO. 505, MOHALLA- KOIRY TOLA,
SULTANPUR, P.O + P.S.- DANAPUR, DISTRICT- PATNA

... .. Petitioner/s

Versus

1. THE BIHAR STATE ELECTRICITY BOARD THROUGH ITS
SECRETARY HAVING OFFICE AT VIDYUT BHAWAN, BAILEY ROAD,
PATNA
2. THE CHAIRMAN , BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA
3. THE SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA null null
4. RAJIV KR. SINGH, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O
SECRETARY , BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA
5. NIRAJ KUMAR SINGH, ASSISTANT EXECUTIVE ENGINEER (GTO)
C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA
6. DEVENDRA NATH NANDA, ASSISTANT EXECUTIVE ENGINEER
(GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD,
VIDYUT BHAWAN, BAILEY ROAD, PATNA
7. PRASHANT KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O
SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA
8. PRABHAT KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O
SECRETARY , BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA
9. SUNIL KUMAR GUPTA, ASSISTANT EXECUTIVE ENGINEER (GTO)
C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA
10. RAVI BHUSHAN , ASSISTANT EXECUTIVE ENGINEER (GTO) C/O
SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA
11. SAYED SHAKIR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O
SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA
12. SURYA KANT KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO)
C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA
13. ABHISHEK KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O
SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT
BHAWAN, BAILEY ROAD, PATNA



14. SHIV KUMAR TANTI, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
15. VARUN BINIT, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
16. MANOJ KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
17. TANMAY PATHAK, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
18. SANTOSH KUMAR MISHRA, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
19. NIMISHA KUMARI, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
20. ASHWANI KUMARI, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
21. MD. SHADABUL HASAN, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
22. DEVENDRA CHOUBEY, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
23. AKHILESH KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
24. HARENDRA PRASAD, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
25. ARUN KUMAR RAY, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
26. RAVI SHANKAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
27. DINESH KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
28. PANKAJ KUMAR CHOUDHARY, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
29. VISHAL KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
30. ANWAR ALAM, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA



31. NIRMAL KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
32. AHSAN REZA, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
33. DASHRATH BAITHA, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
34. KUMARI INDU SINHA, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
35. PRAVEEN KUMAR DAS, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
36. AMIT KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
37. RAAMISH TAUSEEF, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
38. AMITABH KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
39. MD. JAMSHED ANSWAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
40. JITESH KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
41. MD. RAGHIB KAMIL, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
42. ROHIT KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
43. KUMAR GIREESH, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
44. SIDHNATH KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
45. AMIT KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
46. ASHISH KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
47. ABHISHEK RANJAN, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA



48. RAKESH KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
49. HARENDRA KUMAR SINGH, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
50. ARVIND KUMAR, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA
51. GAURAV RANJAN, ASSISTANT EXECUTIVE ENGINEER (GTO) C/O SECRETARY, BIHAR STATE ELECTRICITY BOARD, VIDYUT BHAWAN, BAILEY ROAD, PATNA

... ... Respondent/s

Appearance :

For the Petitioners : Mr. Awadh Bihari Ojha, Sr. Advocate
Mr. Nitesh Kumar, Advocate

For the Respondents : Mr. Ranjit Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 22-11-2018

Heard learned Senior Counsel Mr. A.B.Ojha for the petitioner as well as Mr. Ranjit Sinha for the respondent Board.

2. By the instant writ petition the petitioners sought shifting back of their date of promotion as Assistant Executive Engineer from 21.7.2011 to 16.12.2004, i.e. the date on which they were granted promotion on ad hoc basis to the said post.

3. The petitioners were granted the aforesaid promotion from the post of Junior Electrical Engineer to the post of Assistant Electrical Engineer on ad hoc basis. The notification granting them ad hoc promotion has been issued



in view of an agreement between the Coordination Committee for officers and workmen of the Board whereby it was decided to fill up the vacant post of direct recruitment quota of Assistant Electrical Engineer (JTO category) on ad hoc basis from promotion of Junior Electrical Engineer. The said promotion was ad hoc and specifically was to have effect till direct recruitment was made by the Board. Clause (2) of the ad hoc promotion contemplates that the ad hoc promotion being granted was to freeze on availability of Assistant Electrical Engineer by way of direct recruitment. The petitioners availed of the ad hoc promotion with the aforesaid stipulations and conditions contained in the notification dated 16.12.2004.

4. It is also observed that in between 2009 and 2010 direct recruitment was made by the Board of Assistant Electrical Engineer.

5. The petitioners were granted their regular promotion as Assistant Electrical Engineer by order dated 21.7.2011. Under the said notification petitioner No. 1 was promoted to the post of Assistant Electrical Engineer with effect from 1.5.2010, petitioner No. 2 with effect from 1.8.2010 and petitioner No. 3 with effect from 1.9.2010. The different dates with effect to which the promotion was made



applicable was based on their inter se seniority of the petitioners.

6. Learned Senior Counsel appearing for the petitioners submitted that the petitioners should have been granted promotion with effect from on 16.12.2004 which they were promoted on ad hoc basis. He submits that the ad hoc promotion granted to the petitioners was not frozen by the respondent authority, they were allowed to continue on ad hoc promoted post of Assistant Electrical Engineer. Such continued officiation, it is submitted, cannot be obliterated in the manner as has been done by issuing notification dated 21.7.2011 notifying their promotion with effect from different dates. In support of his submission, learned Senior Counsel has placed reliance on the case of ***Rajendra Narain Singh & ors. Vs State of Bihar & ors.*** reported in ***AIR 1980 SC 1246*** and the case of ***Narender Chadha & ors vs. Union of India*** reported in ***AIR 1986 SC 638***.

7. The other submission advanced by the learned Senior Counsel is that the agreement between the Coordination Committee of Officers and Workmen as well as Bihar State Electricity Board crystallized in the notification dated 13.8.2005 bearing No. 540 which was issued in exercise



of powers conferred under Section 79C of the Electricity Supply Act.

8. Relying upon the said notification, it is submitted by the learned Senior Counsel that as per the same the vacancies were earmarked for different categories. The percentage of vacancy in the post of Assistant Electrical Engineer / Assistant Executive Engineer was to be filled up by different categories. 62 % of the vacancy was mandated for direct recruits and within 62 %, 2 % was quota was reserved for candidates who were eligible for direct recruitment and already in the employment of the Board. 28% of the vacancies were to be filled up by promotion from amongst the Junior Electrical Engineer (such as the petitioners) in the service of the Board. Another 10% was reserved to be filled up by the Junior Electrical Engineer who had obtained a degree in AMIE or equivalent while in service or before entering into service of the Board and had put in at least five years of service as Junior Electrical Engineer.

9. Relying upon para 5 of the notification dated 13.8.2005 it is submitted that last 10% quota was to be de-reserved on non availability of the eligible person in that category. It is submitted by the learned Senior Counsel that



altogether 55-57 vacancies has thus remained unfilled and were required to be de-reserved. Had that been done the petitioners could have easily got promotion with effect from 16.12.2004.

10. Counsel for the respondent Board has referred to the averments made in the second supplementary counter affidavit. It is submitted that the notification dated 13.8.2005 on which learned Senior Counsel is placing reliance has since been amended. Para 5 of the said notification was amended with effect from 3.3.2015. In view of the amended provisions the last 10% quote for Junior Electrical Engineer having AMIE qualification was to be de-reserved in the particular manner as prescribed in the amendment; but if for any reason decision to fill up the posts were not taken in a year then the posts were required to be carried forward. It is submitted that the petitioners have not placed on record any such decision to de-reserve the vacancy in any year. Further, the amended provision were applicable only after 16.3.2015. The petitioners, thus could not be granted benefit under the amended provisions. From the counter affidavit it is apparent that 22 number of posts of Assistant Electrical Engineer remained vacant between 1.11.2002 to 1.3.2004 against which



promotion to the post of Assistant Electrical Engineer was not given. Considering the claim raised by the petitioner with reference to notification dated 13.8.2005 the matter was placed before the DPC on 15.1.2013 for considering the shifting back of the date of promotion to the post of Assistant Electrical Engineer.

11. Taking into consideration the vacancies, the petitioner No. 1 by virtue of his seniority was allowed promotion vide notification no. 349 dated 30.05.2010 to the post of Assistant Electrical Engineer with effect from 1.9.2009 in stead of 1.5.2010 which had been granted to him under the promotion order dated 21.7.2011. Under notification no. 361 dated 30.05.2013 the promotion of petitioner No. 2 had also been shifted back from 01.08.2010 and made effective from 1.6.2010. Thus two of the petitioners have been benefited from shifting back of date of promotion taking into consideration 22 vacancies existing in the light of the provisions contained in the notification dated 13.8.2005.

12. Now after reworking of the date from which the petitioners were entitled to be promoted, nothing remains in the instant writ petition and the grievance of the petitioners have been redressed. Regarding petitioner No. 3 there is no



mention of shifting back his date of promotion. From the notification dated 21.7.2011 it is obvious that name of the petitioner is 23rd in the notification. In view of the stand taken by the respondent Board that only 22 vacancies were available, perhaps the benefit of shifting back has not been made available to petitioner No. 3. The petitioner No. 3 who was at 23rd position, therefore, could not be made available shifting back date of promotion for want of vacancies.

13. The ad hoc promotion granted to the petitioners on 16.12.2004 specifically contemplated that the same was to have effect only till direct recruitment was made by the Board on the post of Assistant Executive Engineer. It is apparent that ad hoc promotion was granted in light of the agreement made between the Coordination Committee for Officers and Workmen, which would obviously include the petitioners, and the Bihar State Electricity Board. The petitioners were, therefore, all along conscious that ad hoc promotion was granted on 16.12.2004 specifically till direct recruitment was made by the Board as an interim measure pursuant to the agreement. The petitioners are, therefore, stopped from claiming any benefit as a result of the said ad hoc promotion dated 16.12.2004.



14. For the reasons indicated hereinabove and in view of the fact that during pendency of the proceedings the promotion of petitioner Nos. 1 and 2 has been shifted back as per their entitlement and petitioner No. 3 has been found not to be entitled to any shifting back for want of vacancies, this Court would observe that the writ petitioners have no further enforceable claim for which any direction is required to be issued in the instant proceedings.

15. The writ petition is dismissed.

(Madhuresh Prasad, J.)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.12.2018
Transmission Date	N/A

