

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2493 of 2014

In

Civil Writ Jurisdiction Case No. 11788 of 2006

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1. The Bihar Engineering Services Association, Abhiyanta Bhawan, Jai Prakash Path, Boring Road, Patna through its General Secretary.
 2. Chanakya Kumar Singh S/o Late Baijnath Singh Resident of 107A, Officers Hostel, Bailey Road, P.S. Kotwali, District Patna, at present General Secretary, Bihar Engineering Services Association.

.... Petitioner/s

Versus

1. The State of Bihar through Sri Anjani Kumar Singh S/o Not known At present Chief Secretary, Govt. of Bihar, Main Secretariat, Patna.
2. Sri Arun Kumar Singh S/o Not known At present posted as Principal Secretary, Road Construction Deptt. Govt. of Bihar, Visheshwaraiya Bhawan, Bailey Road, Patna.
3. Sri Deo Narain Prasad S/o Not known At present post as Engineer-in-chief-cum-Addl. Commissioner-cum-Special Secretary, Road Construction Department, Govt. of Bihar, Patna.
4. Sri Krishna Chandra Saha S/o Not known At present Chairman, Bihar Public Service Commission, Jawahar Lal Nehru Marg, Patna.
5. Dr. Ashok Kumar S/o Not known At present Member, Bihar Public Service Commission and Chairman, Departmental Promotion Committee.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. R.N. Shankar, Adv.
For the State : Mr. Prabhu Narain Sharma, AC to AG
For the B.P.S.C. : Mr. Zaki Haider, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

18 01-11-2018

Heard learned counsel for the petitioners and learned counsel representing the State.

The present application has been preferred for initiation of a proceeding of contempt against the opposite parties for their willful disobedience and disregard shown to the order dated 05.12.2012 (to be read with corrigendum dated 12.02.2013)



passed in CWJC No.11788 of 2006 by which the learned Writ Court had been pleased to hold and declare that the diploma holders cannot enter in Class-I Service. The learned Writ Court has also held that if they have for any reason entered into service wrongly then they cannot be permitted to be promoted. Learned counsel submits that though in the said case applying the principle of equity, the learned writ Court restricted the promotion of the diploma holders to the position and post of Executive Engineer, but then promotion order issued in respect of those diploma holders was quashed.

The grievance of the petitioners at this stage is that despite there being an adjudication on the issue that the diploma holders cannot enter in Class-I Service, in the garb of equitable principles, some of the diploma holders namely Shri Shashi Bhushan Kumar Chaudhary, Sri Dularchand Ram, Sri Panchu Paswan and Sri Ashok Kumar Lal were promoted to the post of Executive Engineer vide notification no.3228(S) dated 28.04.2014 with retrospective effect from the date of promotion of their juniors and the date before 05.12.2012 i.e. the date of order passed by the Hon'ble High Court, Patna in CWJC No.11788 of 2006. Learned counsel submits that once adjudication of the learned Writ Court which was also approved by the Hon'ble Division



Bench was available with the department, the diploma holders could not have been granted promotion to the post of Executive Engineer and if that has been done it is an attempt to willfully disobey the order of the learned Writ Court in order to confer benefits to those who were not eligible to get promotion.

Learned counsel for the State is present. A show cause and supplementary show cause have been filed on behalf of the opposite party nos.1 to 3 in which a stand has been taken that after passing of the order by the Hon'ble Court no engineers holding diploma has been promoted to the Bihar Engineering Service Class-I, but at the same time it is stated that some notification regarding promotion of diploma holder engineers to the post of Executive/Superintending Engineer with retrospective effect has been issued in the year 2014, 2016 and 2017 in compliance of the order passed in various C.W.J.C./M.J.C./L.P.A. It is also stated that all diploma holder engineers who got promotion to the post of Superintending Engineer and were posted at different places have already retired from service.

By filing supplementary show cause once again the aforesaid stand has been reiterated by answering opposite parties. This time in paragraph 6 a stand has also been taken that notification no.3228(S) dated 28.04.2014 has been issued in



compliance of the order of the Hon'ble High Court in CWJC No.7495 of 2006, CWJC No.6881 of 2009 and CWJC No.9668 of 2011 as also CWJC No.21062 of 2011 and similar cases. With regard to one Sri Ramekshwar Ram it has been stated that he was granted promotion to the post of Superintending Engineer vide notification dated 7221 dated 06.09.2016 in compliance of the order passed by the Hon'ble High Court in L.P.A. No.745 of 2005 arising out of CWJC No.7258 of 2002 with retrospective effect.

Learned counsel for the petitioners has contended before this Court that once an adjudication dated 05.12.2012 was there on the record wherein it was clearly held that the diploma holders cannot enter in Class-I Service, there was no reason for the opposite parties to grant promotion with retrospective effect in the garb of the order passed by the Hon'ble High Court in the several writ applications mentioned in paragraph 6 of the supplementary show cause. At one stage the submission was also that the diploma holders had mislead the Court in the cases where the reliefs were granted to the diploma holders.

Learned counsel for the State submits that since there is a specific statement that the notification no.3228(S) dated 28.04.2014 and the notification no.7221(S) dated 06.09.2016 were issued in compliance of the certain order of this Court in C.W.J.C.



and L.P.A., it cannot be argued on behalf of the petitioners that there is a willful disobedience or disregard shown to the order dated 05.12.2012 passed in CWJC No.11788 of 2006. Learned counsel further submits that if at all the petitioners were aggrieved by those notifications which were issued in compliance of the order of the Court they have an appropriate remedy available to challenge those notifications which has not been done. It is thus submitted that taking note of the fact that no diploma holders is posted as Superintending Engineer and the notifications issued in the year 2014 and 2016 conferring status of executive engineer with retrospective effect were in compliance of the order of the learned writ Court, no proceeding for contempt is required to be initiated.

Having heard learned counsel for the petitioners and learned counsel representing the State, this Court is of the considered opinion that when there is a specific statement in the show cause of the opposite parties saying that no diploma holders engineer has been promoted to the Bihar Engineering Service Class-I after the order dated 05.12.2012 save and except that some notifications were issued granting promotion with retrospective effect in case of diploma holders only in compliance of the order of the learned writ Court in various writ applications and the LPA as



mentioned in paragraphs 6 and 7 of the supplementary show cause and also that presently no Superintending Engineer is posted in the Department from amongst the diploma holders, no case for initiation of contempt proceeding is made out.

This Court is of the opinion that in order to invoke jurisdiction of this Court, the petitioners must prove that there is willful disobedience and disregard to the order of the learned writ Court, unless it is shown to be a willful disobedience, only by drawing some kind of inference the action of the opposite parties cannot be said to be contemptuous. This Court is, thus, not willing to initiate a proceeding of contempt in the facts and circumstances of the case. The petitioners will however be at liberty to challenge the notifications of the year 2014 and 2016, if so desire, in accordance with law.

Learned counsel for the petitioners also submits that in fact even after quashing of Annexure-11 vide order dated 05.12.2012 by the learned writ Court the persons in respect of whom said Annexure-11 was quashed were allowed to continue as Superintending Engineer from the date of the order of the learned writ Court and till their superannuation and have been paid the benefits thereof in violation of the order of the learned writ Court.

So far as this part of the contention is concerned, the



petitioners are given liberty to bring it to the notice of the competent authority who will look into the same and if it is found to be correct then appropriate remedial measures shall be taken in accordance with law.

This application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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