

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5072 of 2015

=====

Vijay Chandra Thakur. Son of Late Jai Narayan Thakur. Resident of Village - Chainpur, P.S.- Bangaon, District - Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Deptt., Govt. of Bihar, Patna.
2. The Principal Secretary, Water Resources Deptt., Govt. of Bihar, Patna.
3. The Under Secretary, (Management) Water Resources Deptt., Govt. of Bihar, Patna.
4. The Officer on Special Duty, Water Resources Deptt., Govt. of Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Manikant Mishra, Advocate
For the Respondent/s : Mr. Bijoy Kumar Sinha, AC to AAG 5

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 27-08-2018

Heard learned counsel for the petitioner and the respondent State.

2. Petitioner has filed this writ petition seeking grant of the benefits of the promotional post of Research Officer from a date prior to the date on which it has been granted to him under the promotion order dated 11.09.2013 bearing memo no. 5006 i.e., the notification issued by the Water Resources Department.

3. Counsel for the petitioner has very strenuously urged that he has been agitating his claim for the said promotion ever since filing of the writ petition in the year, 1998. It is his submission that



having approached this Court for the same benefit in the year 1998 benefit has finally been granted to him by the notification dated 11.09.2013. He submits that the respondents have deliberately delayed consideration of his case and thereby he has suffered grave prejudice by delayed grant of promotion to the post of Research Officer from the post of Assistant Research Officer even though others have been granted benefit from the much earlier date.

4. The records reveal that the petitioner's earlier writ petition bearing CWJC No. 8189 of 1998 was finally disposed off by order dated 25.01.1999. Taking note of the fact that the petitioner had been appointed after the cut of date for consideration, i.e., 22.07.1974, he could not have been granted promotion as Research Officer with effect from the date on which he was claiming in the said writ proceedings. Taking note of this fact, this Court disposed off the petitioner's writ petition with the following observations/directions:

“If the posts of Research Officers are vacant then there is no justification not to fill up the same from the eligible candidates. As such, I am disposing of this writ application with a direction to the respondents that in case if sanctioned posts of Research Officers are still vacant then they should consider the case of all eligible candidates within a period of four months from today.

With the aforesaid direction, the writ application stands disposed of.”



5. Petitioner thereafter, complained of non-consideration in the matter of grant of promotion in violation of the said order passed in CWJC No. 8189 of 1998. He filed a contempt proceeding bearing MJC No. 1792 of 2000. On 25.09.2003, the contempt application was disposed off. In view of the fact that in the meantime, his regularization as Assistant Research Officer has been cancelled, the contempt application of the petitioner was disposed off by observing as hereunder:

“This Court does not find any violation of the order passed by this court on 25.1.1999 in C.W.J.C. No.-8189 of 1998. However, ultimately if the petitioner is restored to the post of Assistant Research officer then his case should be considered for promotion to the higher post.”

6. Cancellation of regularization of the petitioner's services was challenged in CWJC No. 3433 of 2003 and a prayer was made to reinstate the petitioner as Assistant Research Officer with all consequential benefits. The writ petition was allowed under order dated 11.02.2011. The petitioner was thereafter, as per his own prayer reinstated as Assistant Research Officer.

7. From the order dated 11.02.2011 passed in CWJC No. 3433 of 2003, it is apparent that till that date the petitioner himself



was making a prayer for reinstatement as an Assistant Research Officer, which came to be allowed on 11.02.2011. Thus, till that date the petitioner could not have made any enforceable claim to the promotional post of Research Officer. Even after passing of the order dated 11.02.2011, the consequential benefits were not paid to the petitioner for sometime. Finally, it has been admitted that all the consequential benefits under the said order dated 11.02.2011 passed in CWJC No. 3433 of 2003 were paid to the petitioner.

8. Counsel for the petitioner however, submits that as a consequence of the said order he was entitled to consideration and grant of promotion as Research Officer which was not done by the respondent authorities. The same has only been done about two and half years thereafter, by issuing the notification dated 11.09.2013 promoting the petitioner on the post of Research Officer with effect from the date on which he assumes the charge of the promotional post.

9. In view of the aforesaid developments, it is admitted that till 11.02.2011 the petitioner was only claiming reinstatement as Assistant Research Officer and for consideration of his case for promotion as Research Officer, which consideration has finally been approved by issuance of notification dated 11.09.2013.

10. Otherwise as submitted by the State in its counter



affidavit none of the juniors of the petitioner have ever been promoted as a Research Officer. The other three persons, with whom the petitioner was claiming parity in the proceedings arising out of CWJC No. 3433 of 2003 namely, Kashi Nath Mishra, Ratan Kumar and Kumar Kant Lal, finally could also not get the benefit of promotion as before consideration and grant of promotion by the notification dated 11.09.2013 they already retired. Apparently the petitioner has been more fortunate than the said four persons with whom the petitioner is claiming parity.

11. There is no basis for the petitioner to claim the benefits of the promotional post from any date prior to 11.02.2011, i.e., the date on which notification has been issued granting benefits of the promotional post with effect from the date on which he joins on the promotional post.

12. The writ petition therefore, does not make out any enforceable claim for benefits from the earlier date.

13. The writ petition is therefore dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

