

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6894 of 2011

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Md. Wasimuddin, MA. M.Com, Son of Late Salimuddin, Assistant Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna, presently posted at BIADA Regional Office, Large Industrial State, Barari, Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the industrial Development Commissioner, Industries Department Bihar at New Secretariat, Patna.
2. The Chairman, Bihar Industrial Area Development Authority at Udyog Bhawan (East Gandhi Maidan), Patna.
3. The Managing Director, Bihar Industrial Area Development Authority at Udyog Bhawan (East Gandhi Maidan), Patna.
4. The Secretary, Bihar Industrial Area Development Authority at Udyog Bhawan (East Gandhi Maidan), Patna.
5. The Chairman, Minority Welfare Commissioner, Old Secretariat, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Prasad Singh, Advocate
For the Respondent/s : Mr. Kaushal Kr. Jha, S.C.-4

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 27-06-2018

Heard the parties.

2. This writ petition under Article 226 of the Constitution of Indian has been filed for direction to the respondents to consider promotion of petitioner on the post of Sectional Officer and subsequently on the post of Executive Director/Deputy Secretary and further to quash the advertisement dated 11.03.2011 whereby post of Executive Director has been advertised for appointment on contract basis and further all four posts of Executive Director in Bihar Industrial Area Development Authority be filled by promotion



from its employees in the cadre of Assistants.

3. Briefly stated, the facts of the case is that the petitioner was initially appointed as Typist on daily wages in North Bihar Industrial Area Development Authority, Muzaffarpur from 27th December, 1975 to 26th August 1976. Advertisement was made in January 1976 for appointment on the post of Typist (Typist clerk) and requisition was sent to employment exchange also pursuant to which 39 applicants applied and petitioner was appointed on 25.08.76 and he joined at Barauni on 26.08.76.

4. Petitioner was promoted on 16.09.78 on the post of Assistant and a new authority was carved out as Darbhanga Industrial Area Development Authority and subsequently in June 2003 all the Industrial Area Development Authority were amalgamated into one authority as Bihar Industrial Area Development Authority. The service conditions applicable to State Government employee was adopted by the Industrial Area Development Authority for its employees.

5. State Government constituted four regional office and one head quarter at Patna and post of four Assistant, one Sectional Officer and one Secretary was sanctioned for the head quarter and six posts of Assistant, three Sectional Officers and



four Executive Director alongwith other post were sanctioned.

6. Petitioner was in the cadre of Assistant and was entitled to be promoted on the post of Sectional Officer and thereafter Executive Director/Deputy Director. Petitioner has been continuing on the post of Assistant from 16.09.1978 and was given 1st time bound promotion on 16.09.88. The gradation list was published in which petitioner was shown at 10th place and petitioner filed his objections against said gradation list. Gradation list was prepared on 19.06.2003 of Assistant in which petitioner was at serial No. 1, subsequently a fresh gradation list was published on 07.07.2006 in which objections were invited and petitioner submitted his objections as petitioner was senior most Assistant in the cadre.

7. It has been further submitted that 11 Assistants are working against 10 sanctioned posts and next promotion post is Sectional Officer having four sanctioned post and thereafter next promotional post is Executive Director and four post of Executive Director has been sanctioned. The grievance of the petitioner is that petitioner is not being promoted on the post of Sectional Officer and Executive Director and those posts are being filled up by contract appointment or on deputation. It has been further submitted that petitioner is not getting benefit of 6th



pay revision and ACP Scheme for which they are entitled but same benefit is granted to persons appointed on contract basis.

8. Petitioner has also challenged memo No. 2538 dated 19.06.2003 by which State Government has re-organized Industrial Area Development Authority by which post of Executive Director is to be filled either by deputation or on contract and post of Secretary to be filled by deputation from Bihar Administrative Service. Petitioner has also challenged service regulation and procedure of Bihar Industrial Area Development Authority Regulation, 2007 and has further prayed that said post be filled from cadre of Assistant as per Bihar State Secretariat Service Rules. Service condition for the employees in Industrial Area Development Authority was adopted as that of Bihar State Government Employee.

9. Petitioner had worked on the post of Typist from 27.12.1975 to 26.08.1976 on daily wages in north Bihar Industrial Area Development Authority at Muzaffarpur and thereafter appointed in Regular manner against the sanctioned and vacant post of typist on 27.08.1976 at Barauni Branch which subsequently came under Darbhanga Industrial Area Development Authority. Petitioner was promoted as Assistant on 16.09.1978.



10. Industrial Area Development Authority Service Regulation, 1975 was framed by Development Authority. It has been contended that the petitioner is entitled to be considered for promotion as Section Officer in the year 1982/1994/1997 as per Administrative Rules of Bihar Secretariat for promotion from Assistant up to Deputy Secretary. Under the Regulations qualifications for appointment on the post of Executive Director/ Secretary/Chief Administrative Officer has been made MBA (HRD)/MBA (Personnel) which is arbitrary and petitioner has been deprived to be considered on said post because of Service Regulation of 2007.

11. Counter affidavit has been filed on behalf of respondent No. 1 in which it has been stated that petitioner was employee of BIADA and retired from the post of Assistant on 31.01.2014 and has challenged advertisement dated 11.03.2011 for filling up of post of Executive Director on contract/deputation basis with a further prayer to fill up the post by way of promotion.

12. Counter affidavit on behalf of respondent Nos. 2 to 4 has been filed in which it has been stated that the advertisement had been made as per rules and petitioner is not entitled for appointment to the post of Executive Director. It has



further been submitted that petitioner has been subjected to departmental proceeding on various charges. It has been further stated that after framing of the regulations and service conditions same is being followed by BIADA and ACP Scheme has not been adopted by BIADA.

13. A supplementary counter affidavit has been filed in which it has been stated that by resolution No. 2003 of Department of Industry and BIADA Regulation 2007 provision has been made for appointment on contract/deputation basis to the post of Executive Director/Secretary/Chief Administrative Officer. BIADA employees are not government employees and are governed by BIADA Regulation, 2007.

14. During pendency of writ petition petitioner has retired from service in the year 2014 and has filed a petition for a direction to respondents to consider petitioner and other retired employees for appointment on contract basis.

15. After hearing both the parties and perusing the materials available on record, this Court does not find that petitioner has any subsisting or legal right to be promoted on the post of Section Officer and subsequently on the post of Executive Director. BIADA is an autonomous body and a creature of State Government and petitioner was appointed as



an employee of Industrial Development Authority which initially had adopted a service conditions of State Government employee but subsequently framed its own regulations and service conditions of employees and same is binding on the employees of BIADA. The petitioner has raised stale and time barred claim of promotion and as such same cannot be considered. The Authority was competent to prescribe the qualification for the post of Executive Director/Secretary/Chief Administrative Officer on contract/deputation basis. Petitioner was not qualified to be appointed on said post as he lacked qualifications for the said post during service period as well as after his retirement. However, if any advertisement is issued by the BIADA for appointment on contract basis of retired employees and petitioner is eligible for the same, the authority may consider his application for appointment on contract basis in accordance with law.

16. With the said observation and direction writ petition is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.07.2018
Transmission Date	N.A.

