

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15370 of 2008

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ASHARFI BAITHA, SON OF LATE DAMODAR BAITHA RESIDENT OF VILLAGE
HARAULI, POLICE STATION HAJIPUR SADAR, DISTRICT VAISHALI

.... Petitioner

Versus

1. THE STATE OF BIHAR
2. THE CHIEF SECRETARY, GOVERNMENT OF BIHAR, PATNA
3. THE SECRETARY, DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE
REFORMS, BIHAR, PATNA
4. THE COMMISSIONER, TIRHUT DIVISION, MUZAFFARPUR
5. THE DISTRICT MAGISTRATE CUM COLLECTOR, VAISHALI

.... Respondents

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Appearance :

For the Petitioner : Mr. Ajeet Kumar, Advocate and
Mr. Avinash Kumar, Advocate

For the Respondents : Mr. Sanjay Kumar, AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 29-03-2018

Heard learned counsel for the petitioner as well as
learned counsel for the State.

2. The petitioner has prayed for quashing order contained
in Memo no. 562 dated 4.7.2007 (Annexure 10) and for a direction
to the respondent authorities to promote him on the post of Office
Superintendent (General) in terms of the Seniority list contained in
Letter no. 92 dated 5.2.1999.

3. The petitioner has earlier moved this Court on two
occasions by filing C.W.J.C.No. 10325 of 1997 which was
disposed of vide order dated 6.8.1999 directing the petitioner to
make a fresh representation before respondent no.2 ventilating his
grievances in light of the order of promotion granted to the



petitioner in the junior selection grade, which may be considered as he claimed entitlement to be placed at Serial no. 1 in the gradation list for promotion as Head clerk. The petitioner had claimed in C.W.J.C.No. 10325 of 1997 that he was promoted on the post of Junior Selection Grade (Cadre) Clerks with effect from 1.11.1989, whereas others were promoted later to him and as a result thereof his seniority was subsequently modified keeping in view that he was a member of the Scheduled Caste and entitled to be placed at the proper position considering the roster point.

4. Annexure 6, i.e., the inter se seniority list of clerks on the identified need based post dated 22.8.2000 was issued thereafter. In view of the fact that he was entitled to the identified need based post to the Senior Selection Grade (Head clerk) with effect from 1.2.1996 he was given his due position in Annexure 6. He submits that thereafter by issuing Annexure 7, i.e., the seniority list of clerks on the identified post of Head clerk, his position was modified to his disadvantage whereafter he filed C.W.J.C.No. 465 of 2005. The same was disposed of vide order dated 1.9.2006 directing the respondents to consider petitioner's representation for appropriate correction in the gradation list dated 6.7.2005.

5. Learned counsel for the petitioner submits that pursuant to the said order passed by this Court, the respondents



have issued the impugned order contained in Memo no. 562 dated 4.7.2007 (Annexure 10), but have not given him his due position. He submits that some modifications have been made and he has been placed below Kamaldeo Narain Singh and Basisth Prasad Gupta treating them to be the seniors on the basis of their initial appointment, but the same does not show any consideration of the petitioner's claim being a Member of the Scheduled Caste. The petitioner was entitled to the better position than what is reflected in Annexure 10.

6. He prays that he would file a representation drawing the attention of the respondents to the discrepancy with reference to the due position as per the roster point as he is entitled to the post of the Office Superintendent after retirement of Awadh Narain Baitha. Learned counsel submits that during pendency of the writ petition, the writ petitioner has also superannuated. Therefore, the petitioner would make such representation claiming notional promotion.

7. Contention of the State counsel is that by Annexure 10, the claim of the petitioner, in terms of order dated 1.9.2006, passed by this Court in C.W.J.C.No. 468/200586, has been addressed and the due position, on basis of the date of initial appointment, has been granted to the petitioner.



8. In view of limited prayer made by the counsel for the petitioner, the writ petition is disposed of with liberty to the petitioner to approach the District Magistrate, Vaishali (respondent no.5) by making the representation within four weeks from today. If such representation is filed, respondent no.5 shall be obliged to consider the same and dispose of the representation by a reasoned and speaking order in accordance with law. While undertaking the exercise, it would be open for the respondents to hear other parties, if any, are likely to be affected by such exercise.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	4.4.2018
Transmission Date	NA

