

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4554 of 2008

=====

Ram Sewak Singh, son of Late Bengali Singh, Village Malpur, Post Office Piparia,
P.S. Barhiya, Dist. Lakhisarai, presently residing at Custair's Town (Bawan Bigha),
Deogha, New Colony, Post Station Deoghar, Dist. Deoghar, Jharkhand.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board through its Secretary, 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.
4. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar,
Mr. Ashok K.Karna

For the Respondent/s : Mr. Vinay Kirti Singh,
Mr. Vijay Kumar Verma
Mr. Akhileshwar Singh

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-03-2018

Heard learned counsel for the petitioner and learned
counsel for the Bihar State Electricity Board.

In the present case, petitioner is claiming that though he
has been promoted to the post of Electrical Superintending
Engineer notionally vide notification no.662 dated 31.8.2004
with effect from 1.12.2003 after his retirement, deprived him
from monetary benefit.

The petitioner is claiming that though he has been granted
notional promotion but, having been deprived of the salary for



the period 1.12.2003 to 30.3.2004 as well as the pension and other retrial dues has not been given as per the notification whereby the petitioner has been promoted to the post of Superintending Engineer from 1.12.2003.

In the present case, two claims have been made by the petitioner, one for the actual benefit of salary from 1.12.2003 to 30.4.2004 as learned counsel for the petitioner submits that petitioner was not facing any criminal case or departmental proceeding nor the petitioner was at fault in getting the benefit of Superintending Engineer but, the fact remains that the Departmental Promotion Committee has considered the cases of large number of persons including the case of petitioner accordingly vide letter dated 31.8.2004, the benefit of promotion has been granted to the petitioner along with others, so deprivation of salary from December to April is not justified act on the part of the Board, inasmuch as, the petitioner has not been granted the consequential benefit in terms of fixation of his pension and other retrial dues.

Learned counsel for the Board submits that as during the period the petitioner had not discharged the duty of Superintending Engineer and Departmental Promotion Committee found him fit for promotion with effect from



1.12.2003 notionally. Accordingly he was given the said benefit and in a similar manner, all the persons have been treated alike, the petitioner has not been treated differently to those whose names are appearing. Even the person below him, namely, Kamal Kishore Verma who has been granted benefit from 1.1.2004 notionally actual payment from the date of the notification. The Board submitted that petitioner cannot claim monetary benefit on account of fact that he had never discharged the duty even for a single day. In support of his contention has placed reliance on the judgment of the Hon'ble Supreme Court in the case of State of Haryana Vs. O.P.Gupta, reported in (1996 7 SCC 533 wherein identical question was raised and Hon'ble Supreme Court has held that when the petitioner had not worked, the principle of "no work no pay" will apply. It will be relevant to quote paragraph nos. 6 and 7 of the aforesaid judgment:

“(6) THIS Court in Paluru Ramakrishnaiah v. Union of India, (1989) 2 SCR 92 considered the directin issued by the High Court and upheld that there has to be “no pay for no work”, i.e., a person will not be entitled to any pay and allowance during the period for which he did not perform the dutieis of higher post although after due consideration, he was given a proper place in the gradatin list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not



entitled to the payment of arrears of the salary. The same ratio was reiterated in Virendere Kumar v. Avinash Chandra Chand, (1990) 3 SCC 472.

7. *IT is true, as pointed out by Shri hooda, that in Union of India v. K.V. Jankiraman, AIR 1991 SC 2010, this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of him, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."*

Having considered the rival contentions of the parties there is no dispute in the fact that the petitioner was promoted to the post of Superintending Engineer after his superannuation vide notification dated 31.8.2004 and alike other persons he was not given any monetary benefit but, he has been granted the notional benefit.

In such circumstances, when the Board has not discriminated in treating the persons who have been given the benefit and it is also a fact that petitioner had never discharged the duty of Superintending Engineer, hence the point raised by



the Board cannot be brushed aside and the claim of the petitioner for the salary for the period from 1.12.2003 to 30.4.2004 is not accepted and the same is rejected. So far relief of consequential benefit, as the petitioner has been granted promotion to the post of Superintending Engineer from 1.12.2003, if the Board has not granted consequential benefit, this Court directs that petitioner will be given the consequential benefit from 1.12.2003 while giving pensionary benefit to the petitioner. All process including the payment must be completed with a period of three months from the date of receipt/production of a copy of this order.

With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.3.2018
Transmission Date	NA

