

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14528 of 2007

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1. Akhileshwar Prasad Roy, son of late Jangi Roy, Resident of Village Naraw Tola, Dharam Baghi, P.S. Sautar Nagar, Dist. Saran at Chapra.
 2. Md. Moinuddin, son of Md. Animuddin, Resident of Village Punpun Bazar, P.S. Punpun Bazar, Dist. Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director, the Information Public Relation Department, Bihar, Patna.
3. The Joint Director, the Information Public Relation Department, Bihar, Patna.
4. The Secretary, the Information Public Relation Department, Bihar, Patna.
5. The Registrar, the Information Public Relation Department, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	None
For the Respondent/s	:	Ms. Nutan Kumari Sharma, AC to GA1
For the A.G.	:	Mr. Anjani Kumar Sharan, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 22-03-2018

No one appears for the petitioners. Counsel for the State is present. On the last day also, counsel for the petitioners was absent.

In the earlier order dated 20.3.2018, it has specifically been mentioned, if the parties will remain absent, this Court will decide the case on merit. In that view of the matter, on the basis of assistance given by the counsel for the State as well as the material available on record, this Court is disposing of the present case on its merit.

Basically, the petitioners have made a prayer that they should be granted relief of promotion on the post of Chalchitra Chalak



with effect from November, 1995 along with monetary benefit whereas they have been granted benefit from the date of issuance of the order no. 28 dated 8.2.2007 (Annexure-A to the counter affidavit).

The petitioners were initially appointed as Peon cum Khalasi on 10.7.1973 and 11.4.1977 respectively. In the year 1995, a Committee was constituted for giving promotion to the post of Chalchitra Chalak and, accordingly, the Committee recommended the name of these petitioners and some other persons by conducting their interview on different dates for promotion from Class IV post to Chalchitra Chalak, a Class-III post in the category of 50% which was to be filled up by promotion by holding competitive examination by the Public Service Commission except technical post. Even after recommendation, when the petitioners were not granted the benefit of higher scale of Chalchitra Chalak, they were compelled to approach this Court in C.W.J.C. No. 11203 of 2001 and the same was disposed of on 29.8.2001 with a direction to consider the grievance and pass order within a period of six weeks. Chalchitra Chalak is a post attached to the Director, Information Public Relation Department and the petitioners were holding the technical post and without license of operator of Chalchitra Chalak, no one can handle the machine such as



Projector and, as such, the post of Chalchitra Chalak is a technical post, not a non-technical post. In terms of the order passed by this Court, the petitioners filed representation and the same was rejected on the ground that their recommendation to the post of Chalchitra Chalak has been made without there being any recommendation of the B.P.S.C. and, as such, a claim of promotion substantially to the said post is not entertainable and the same was communicated through Memo No. 2375 dated 23.11.2001 which was challenged before the Writ Court in C.W.J.C. No. 7795 of 2002 and the same vide order dated 18.7.2005 has been allowed, relevant portion whereof reads as follows:-

“I am unable to appreciate the submission of the learned counsel for the State. The appointment of petitioners vide Annexure-3 was on probation of one year on temporary basis and until further orders. It is admitted by the learned counsel for the State that no order was ever issued either canceling or terminating the appointment of the petitioners. It is true that the said order mentions that after completion of probationary period necessary steps shall be taken for their regularization and in case they are not found fit for promotion or there is any irregularity in reservation, they will be reverted back in the original cadre during the probationary period itself. There is no such case of Respondents that there was any irregularity in the reservation or that the petitioners were not fit for promotion. However, no such order



reverting them back to the original cadre has been issued till date as has been admitted by the learned counsel for the State. Moreover, I find substance in the submission of the learned counsel for the petitioners that Annexure-A to the counter affidavit is not applicable to the present case as it is not denied by the Respondents that post of 'Chalchitra Chalak' are in the wing of Secretariat office, which is also obvious from the fact that the said posts are under Director, Information and Public Relation Department (Respondent no.2). Learned counsel for the State has not been able to show from any of the counter affidavit that according to Respondents the posts in question belong to the office other than Secretariat and allied office. Thus, in my opinion, rejection of the claim of the petitioners on the ground mentioned in impugned order is not tenable. As per the order of the appointment (Annexure-3) the petitioners were entitled for consideration of their cases for regularization on the posts in question.

Under such circumstances, in my opinion, the impugned order contained in Annexure-7 cannot be sustained and it is, accordingly, quashed. Writ application is allowed. The Respondents are directed to consider the case of the petitioners for their regularization in the light of their order of appointment, contained in Annexure-3 within four weeks of the receipt/production of a copy of this order."

In the aforesaid order, it has been recorded that the plea of the State that the recommendation was made without there being any



approval of the B.P.S.C. does not carry any weight for its implementation but, the Court rejected the submission and held that there is not dispute that all through the petitioners were working and still they were working on the post and the plea for approval from the B.P.S.C. does not carry any substance and directed to consider the case of the petitioners for grant of promotion to the post of Chalchitra Chalak but, the State challenged the aforesaid order before the L.P.A. unsuccessfully and the same was again challenged before the Hon'ble Apex Court in S.L.P. (Civil) No. 8105 of 2006 whereafter the petitioners have filed an application for implementation of the order. Ultimately, the State has passed the order on 8.2.2007 vide Memo No. 28 dated 8.2.2007 thereby the granted benefit of promotion to the post of Chalchitra Chalak from the date of issuance of the letter. A plea has been taken by the petitioners that the Committee was constituted in the year 1995 itself, the petitioners were recommended for promotion to the post of Chalchiltra chalak and they all through have discharged the duty of Chalchitra Chalak, depriving the petitioners their salary for the said period and giving the benefit from the date they were recommended is completely negation of the justice.



Learned counsel for the State has submitted that the State has rightly given the benefit from 2007 when finally the case has been adjudicated and decided in favour of the petitioners. In the present case, admittedly, the recommendation of the committee has been given in the year 1995 whereafter the petitioners were working on such post and they were never demoted or terminated from service. In such circumstances, granting relief after a long delay is completely against the rules of natural justice and equality.

In that view of the matter, this Court directs the respondent authority to make necessary correction in the order dated 8.2.2007 and make it applicable with effect from the date the first order has been passed by this Court in C.W.J.C. No. 11203 of 2001 dated 29.8.2001.

If the petitioners have already been given the benefit, there is no question of granting the same relief again to the petitioner.

With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

