

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.561 of 2018

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Dinesh Kumar Singh, S/o Late Ram Sharan Singh, resident of Village-
Nathanpura, P.O.- Kadirganj, P.S.- Nawada, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural works Department, Bihar, Patna.
2. Secretary, Rural works Department, Bihar, Patna.
3. Chief Engineer (1) Rural Works Department, Bihar, Patna.
4. Superintending Engineer, R.W.D., Work Circle- Gaya, Rural Works Department, Bihar, Patna.
5. Executive Engineer, R.W.D. Works Division, Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Kr. Sinha, Sr. Advocate.
Mr. Devendra Pd. Singh, Advocate
Ms. Uma Kumari, Advocate.

For the Respondent/s : Smr. Archana Meenakshee, GP6
Mr. Prabhat Ranjan.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-08-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present case, the petitioner has prayed relief to
grant the salary and other allowances as Junior Accounts Clerk
with effect from 27.10.1997.

The petitioner was appointed as Class IV employee on
the post of Peon at Rural Engineering Organization, Work
Division, Nawada on 7.1.1986. For the first time the Executive
Engineer vide his letter dated 27.10.1997 directed the petitioner
to discharge the duty of Bill Clerk and prepared the bill
accordingly. Whatever the duty was attached with the office, he



started discharging the duty of bill clerk He continued to discharge the same, later on the Executive Engineer vide memo no.5 dated 3.1.2004 superseding all the previous orders, petitioner was directed to discharge the duty of bill clerk as well as directed to prepare pay bill pertaining to establishment whereafter the Executive Engineer started writing letters to the Superintending Engineer vide letter no.535 dated 29.5.2006, letter no.147 dated 6.2.2013, letter no.61 dated 22.1.2014 to promote him on the post of clerk.

In all the letters, the Executive Engineer has given details of facts recommended for his promotion to clerical grade but the petitioner failed to get the benefit of promotion whereafter he has filed an application to the Executive Engineer and made a prayer to give him financial benefit. It also appears that Superintending Engineer vide letter no.1891 dated 26.8.2017 has written letter to the Chief Engineer, Rural Works Department, Patna wherein he confirmed the nature of duty of clerical staff was being discharged by the petitioner and recommended for payment of salary of Class III post. When petitioner filed to get proper response then he has filed the present writ petition.

During pendency of this writ petition, the order has been passed by the Executive Engineer vide Memo. No.1842 dated 16.11.2017 by which the petitioner has been asked to hand over



the charge thereby prevented him to discharge the duty of clerk. In the said letter the description of work performed by the petitioner has been mentioned, it also appears that vide memo no.220 dated 17.2.2018 the petitioner has been asked to hand over the charge. Letter no.1891 dated 26.8.2017 also mentions the nature of job performed by the petitioner as Class III.

Learned counsel for the petitioner has submitted, he is not challenging the action of the department to bringing him on the original post but the prayer has been confined for payment of salary to the post which he has discharged for last 20 years.

In the counter affidavit there is no denial of the fact that statement made in the writ petition is incorrect but only plea has been taken by the State that in terms of PWD Code the Superintending Engineer is the only authority to promote from Class IV post to Class III post. At the same time, it is the Superintending Engineer who is over all the in-charge of the office and none of the order has been issued by the Superintending Engineer, as such, all orders are illegal would not give right to claim the salary of Class III. Though the Executive Engineer may not have jurisdiction but in fact there is no denial that the petitioner has not discharged the duty. It has also not denied that the Executive Engineer from time to time brought to the notice of the Superintending Engineer for nature of work discharged by the petitioner. There is no denial that



Superintending Engineer himself recommended for payment of salary of Class III which the petitioner was discharging. Merely because the Superintending Engineer has not passed any order giving direction to discharge the duty of class III but Executive Engineer who took the work from petitioner, himself has requested the Superintending Engineer to grant promotion to the petitioner looking to the work he was discharging including his integrity and honesty. The Superintending Engineer was knowing the fact always, that the petitioner was discharging the duty of higher responsibility.

In such circumstance, depriving the petitioner from salary to the post which he has discharged for last 20 years cannot be approved in absence of order of Superintending Engineer asking him to discharge the duty of Class III.

This issue is no longer in *res integra* as this Court as well as Hon'ble Supreme Court has taken view of payment of salary of higher post and reliance can be placed on the following judgments:

(i) Prafulla Ranjan Shrivastava v. The State of Bihar and others, reported in 2008 (3) PLJR 144

(ii) Secretary-cum-Chief Engineer Chandigarh v. Harim On Sharma and others, reported in (1998) 5 SCC 87

(iii) Sudeb Kumar Mookherjee v. The State of Bihar and



others, reported in 2012 (1) PLJR 408

(iv) The Chairman, Bihar State Power Holding Company Lts. & others v. Ganesh Lal, reported in 2017(4) PLJR 282

In all those cases it has been held that if a person has discharged the duty of higher responsibility for a long period he cannot be denied the salary which he has successfully discharged. As the petitioner is not claiming substantive promotion to the post, this Court does not have any doubt to give direction to the respondents to make payment of salary to the petitioner for the post of Class III from the date he had discharged the duty. Payment should be made within a period of four 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	28.8.2018
Transmission Date	NA

