

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22579 of 2013

KAILASH KUMAR RAI SON OF LATE JAGDISH RAI AT + P.O. + P.S.
MANIHARI, DISTRICT - KATIHAR, 3RD GRADE ASSISTANT, ZILA
PARISHAD, KATIHAR

... .. Petitioner/s

Versus

1. The Zila Parishad, Katihar Through Its Chairman
2. The D.D.C. - Cum - Chief Executive Officer, Zila Parishad, Katihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rama Nand Poddar
For the Respondent/s : Mr. Kumar Brajindra Nath

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

Date : 21-03-2018

This writ petition under Article 226 of Constitution of India has been filed by petitioner for a direction to Respondent-authorities to grant salary to the petitioner as a Class III employee, Zila Parishad, Katihar, as Respondents had taken work from petitioner as class III employee from the date of his joining on 6.11.1988 although his appointment was made on class-IV post. Petitioner had earlier filed CWJC No. 18869 of 2010 which was disposed of on 1.4.2011 with a direction to the concerned authorities to decide the representation within four months from the date of production of a copy of the order which was dismissed



by Respondent-authorities by order dated 30.7.2012, as contained in Annexure-10 of this writ petition.

Briefly stated fact of the case is that petitioner was appointed by Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Katihar, on the post of Chowkidar which is a Class-IV post. Petitioner was posted as Chowkidar of Manihari Dakbangla, Zila Parishad, Katihar, when by order dated 2.1.1988 of the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Katihar he was directed to hand over the charge within three days to one Sri Gholta Jharudar and report in the Head Office for performing duty of Assistant. However, he will be paid salary of Class-IV post and his application will be considered after roster clearance and after approval by the competent authority and pursuant to said order petitioner handed over charge on 6.11.1988 and reported in the Head Office of Zila Parishad, Katihar. to perform the work of Assistant.

It has been submitted that petitioner performed the work and duty assigned as third grade employee of Zila Parishad to the satisfaction of all and on several occasions petitioner was deputed for election duty treating him to be a Grade III employee for which he got emoluments of third grade employee. The salary of Assistant was not paid to petitioner and petitioner approached the



authorities, who assured him that steps are being taken for making such payment but nothing was done. Petitioner filed representation on 1.12.1989 before the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Katihar, but no order was passed. Petitioner also drew attention of the Chairman that even after several representations the salary for Class-III Grade is not being paid to him although he is discharging duty of Class-III post and in the year 1995 roster clearance was also done. Petitioner lastly represented on 2.7.2010 for salary meant for third Grade employee as he has been working on the post of Assistant since 6.11.1988. Petitioner has earlier filed a writ petition being CWJC No. 18869 of 2010 which was permitted to be withdrawn with direction to Zila Parishad to dispose of the representation within four months from the date of order dated 1.4.2011 and same was rejected on 30.7.2012 which is under challenge in this writ petition.

In the order impugned dated 30.7.2012 passed by the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Katihar, it has been stated that as per direction passed by the Hon'ble Court the service record of petitioner was produced in which his name has been recorded as Kailash Prasad Mandal, son of Jagdish Prasad Mandal. He was appointed on the post of



Chowkidar at Manihari Dakbanglow, Zila Parishad, Katihar. The Chief Engineer had opened his service book in which the date of birth of Kailash Prasad Mandal has been recorded as 1.10.1954 on the basis of medical certificate provided by the Medical Officer. Service Book was opened on 13.4.1979 which means that on the date of opening of service book he was only literate and had he passed from any school or admitted in any school there should be school leaving certificate. For recording of date of birth of any employee the opinion of Medical Board is taken when he had not been a student of middle school or High School, otherwise date of birth is recorded on the basis of school leaving certificate.

In the service record there is one photo copy of school leaving certificate of Kailash Kumar Rai, son of Jagdish Rai dated 2.5.1981 in which entry has been made that Kailash Kumar Rai was admitted in the school on 10.1.1970. He was admitted in 1970 in the school in the name of Kailash Prasad Mandal, son of Jagdish Prasad Mandal. The DDC has observed that when school leaving certificate of Kailash Kumar Rai was available then how his date of birth has been recorded on the opinion of Medical Officer. This Kailash Prasad Mandal has changed his name by naming Kailash Kumar Rai, he cannot change name of his father from Jagdish Prasad Mandal to Jagdish Rai. Even if all the



documents of petitioner are deemed to be true that in school his name was Kailash Kumar Rai and he obtained education and all certificates are true then under what circumstances he was appointed as Kailash Prasad Mandal when such certificate was scrutinized at the time of his appointment. He also claims to have passed the Matriculation Examination as regular student during his service period which is neither possible nor permissible under the service Rule. Petitioner was granted several opportunities to produce matriculation certificate but same was not produced by him.

From the materials on record the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Katihar, has held that his age in the service book was recorded on the opinion of the Medical Officer and not on the basis of any certificate issued by the School. He has failed to produce any educational certificate in its original even after sufficient time was granted to him to produce the same. In absence of educational qualification a person cannot claim promotion for which he is not eligible. Petitioner does not hold required educational qualification to be promoted on the post of Assistant and he has failed to produce any educational certificate regarding this aspect, as such, his petition for grant of salary of Class-III post was rejected.



However, Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Katihar, has left the issue open that in future if petitioner would be able to produce reliable evidence and original certificate then his case can be considered. At present there is no material available by which it can be held that he holds the educational qualification for promotion on Class-III Post.

A counter affidavit has been filed on behalf of Zila Parishad, Katihar, in which it has been admitted that petitioner was appointed as Chowkidar in Zila Parishad, Katihar,. He submitted application on 16.11.1987 and 14.4.1988 for promotion to Class III post and after order dated 2.11.1988 he was asked to work as Assistant on his own pay scale of Class-IV post and after roster clearance his application will be considered. However, petitioner was never promoted on Class III post and he was paid salary of Class IV post.

It has further been stated that academic qualification of an Assistant is Matriculation. Petitioner was directed to submit academic certificate but he failed to do so. He was also asked to clear position of his date of birth because his date of birth as per entry in the service book is 1.10.1954 whereas as per school leaving certificate his date of birth is 10.1.1954. He was also



asked to clarify how he passed Matriculation Examination as regular student but he remained mum every time. There is variance in the name of petitioner which has been recorded as Kailash Prasad Mandal, son of Jagdish Prasad Mandal, whereas in the school leaving certificate produced by him his name is Kailash Kumar Rai son of Jagdish Rai. He was asked to submit original matriculation certificate but he never submitted. The post of Assistant was also not vacant as petitioner belongs to backward category class and the vacant posts are of Scheduled Caste, Scheduled Tribe and backward caste female.

After going through the materials available on record, I do not find any error or irregularity in the order dated 30.7.2012 passed by the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Katihar by which he has rejected the claim of petitioner for salary for Class-III post from the date of his joining and performed the work of Assistant, a Class-III post.

Although it is a settled proposition of law by different judgments of Supreme Court that an employee if discharging the duty of higher post is entitled for salary of higher post even he has not been regularly promoted on such post. However, in those cases an employee was eligible for promotion on said post on which he is discharging the function of higher post in officiating



or in ad hoc capacity. However, in the present case, petitioner was appointed as Class IV employee and for promotion on Class III post the eligibility is matriculation and no matriculation certificate has been produced by petitioner before the authority and he was not eligible to be promoted on Class III post, as such he cannot be granted benefits of such judgment passed by the Apex Court as well as High Court. The Apex Court in the case of ***A. Francis vs. Management of Metropolitan Transport Corporation Limited, Tamil Nadu*** since reported in ***2014(13) SCC 283*** has held in para-6 which is being extracted below :-

“6. The order dated 28.2.2001, by which the appellant was allowed to discharge duties in the post of Assistant Manager had made it clear that the appellant would not be entitled to claim any benefit therefrom including higher salary and further that he would continue to draw his salary in the post of Assistant Labour Welfare Officer. If the above was an express term of the order allowing him to discharge duties in the higher post, it is difficult to see as to how the said condition can be overlooked or ignored. The decision of this Court in Secy.-cum-Chief Engineer was rendered in a situation where the incumbent was promoted on ad hoc basis to the higher post. The aforesaid decision is also distinguishable inasmuch as there was no specific condition in the promotion order which debarred the incumbent from the salary of the higher post. Such a condition was incorporated in an undertaking taken from the employee which was held by this Court to be contrary to public policy.”

In view of the law laid down by the Apex Court, an employee working on a higher post is not entitled for higher



salary of that post if a condition has been imposed and accepted by him that he would continue to draw his salary of his substantive post. In cases Apex Court and High Court had allowed employees salary of higher post when they were discharging duty of higher post on which they were officiating or given ad hoc promotion and were eligible for regular promotion. In present case petitioner was not promoted on higher post on ad hoc basis or officiating basis as he could not be promoted as he was not eligible for such promotion and was only asked to perform duty of Class- III post with a condition that he would be paid salary of his substantive post and his case is covered by judgment of Apex Court as referred above.

There is no merit in this writ petition and it is accordingly dismissed.

(S. Kumar, J)

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Transmission Date	

