

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 13344 of 2014

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Mihir Kumar Mishra, Son of Sri Kritya Nand Mishra, resident of Flat No 302,
Annapurna Apartment, Punaichak, PS- Shastri Nagar, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Road Construction Department, Bihar, Patna
3. The Engineer-in-Chief, Road Construction Department, Bihar, Patna
4. The Deputy Secretary, Road Construction Department, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prabhu Nath Pathak
For the Respondent/s	:	Mr.Sc5- Satya Deo Kumar

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 16-07-2019

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

2 Petitioner was earlier serving as Assistant Engineer on daily wages/ad hoc basis. The services of the petitioner were regularized on 28.03.2012 vide Notification No 3535 (S) (Annexure 2 of the writ petition). Regularization was pursuant to an undertaking submitted by the petitioners and on that basis, the terms of regularization crystallized in the Notification dated 28.03.2012. The Notification dated 28.03.2012 was subsequently modified and Clauses 2 and 3 of the Notification were sought to be



obliterated. Clauses 2 and 3 of the Notification dated 28.03.2012 reads as follows:

“2. इन्हें वित्त, बिहार, पटना की सहमति से वेतन संरक्षण का लाभ प्रदान किया जायेगा।

3. नियमित नियुक्ति के पूर्व तक तदर्थ रूप से की गई सेवा की घटनोत्तर स्वीकृति प्रदान की जाती है।”

3 The modification was brought out by a Notification dated 13.05.2014. The same was further modified by issuance of a further notification dated 12.09.2016. By Notification dated 12.09.2016, the petitioner was purported to be deprived of the pay protection granted earlier. CWJC No 16664 of 2016 was filed by other similarly situated persons like the petitioner. The same was dismissed by this Court under order dated 30.11.2016. The petitioners therein preferred a Letters Patent Appeal. LPA No 2285 of 2016 was allowed by a Division Bench of this Court. The operative portion of order passed by the Division Bench reads as follows:

“In our considered view, the learned Writ Court has not taken note of all these factual aspects of the matter while dismissing the writ petition. Merely on the ground that petitioners are not Government servants, the benefit is denied. But the fact remains that even if the petitioners were treated as ad hoc but, for all practical purposes and in fact, they were Government servants and, therefore, the benefit of pay protection should be available to them. Even if the benefit of seniority or grant of ACP may not be available to them, the pay protection should at least be granted to them as their



substantive pay on their regularization should not be reduced. What they got while termed as ad hoc by the State Government cannot be taken away when they are regularized and if that be the principle to be applied, the petitioners are entitled to the benefit.

Keeping in view the aforesaid, we allow this appeal, quash the order passed by the learned Writ Court and the impugned order passed by the State Government and direct them to grant pay protection to the petitioners as contemplated in Rule 39 of the Bihar Service Code. However, grant of this pay protection will not mean that the petitioners would be entitled to seniority or promotion in the cadre in question. The same cannot be granted to them as the prayer identical in nature of the employees has already been rejected by a Division Bench of this Court in CWJC No 16664 of 2016.”

4 The particulars mentioned in the operative portion, in so far as case details is concerned, was subsequently modified by the Division Bench on 16.05.2017.

5 The Division Bench, in respect of the benefit of seniority, had made a specific observation that the same cannot be granted. In respect of pay protection, it has been observed by Division Bench that the same should at least be granted to the petitioners.

6 Now, the instant writ petition claims grant of seniority contrary to the terms of the Notification dated 28.03.2012 under which the petitioner was regularized. The claim for the seniority prayed in the instant writ petition with effect from his



initial appointment as Assistant Engineer dated 27.06.1987 is devoid of merit.

7 Mr Prabhu Nath Pathak appearing for the petitioner submits that issue regarding grant of seniority is also pending before the Apex Court in similar proceedings arising out of SLP No 20700 of 2015.

8 The oral submission has been made and a voluminous rejoinder has been filed in the Court when the matter was listed under the heading For Orders. This Court, therefore, would only observe that if benefit of seniority is granted under orders of the Apex Court, it is needless to say that petitioner would also be entitled to claim the same benefits.

9 Facts, as stand today, and the records of this Court do not make out a case for grant of seniority to the petitioner with effect from the date of his date of appointment.

10 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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