IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4845 of 2019

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Ranjeet Kumar, S/o Late Babu Ram Singh Vill.- Jagdishpur, P.o.- Dumra, P.s.- Amba, Distt.-Aurangabad

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary cum Principal Secretary, Department of Water Resource, Govt. of Bihar, Patna, Bihar
2. The Chief Engineer (EE) Department of Water Resource, Dehri-on-Sone, Rohtas at Sasaram
3. The Executive Engineer Planning and Monitoring Division, Dehri-on-Sone, Rohtas at Sasaram
4. The Executive Engineer Sone Cannal Division, Buxar

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amaresh Kumar Sinha, Advocate
		Mr. Anirudh Kumar Verma, Advocate
For the Respondent/s	:	Mr. Harish Kumar (GP-8)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 14-05-2019

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

2. Though the present petition has been filed for a direction to the concerned respondent to promote the petitioner to Class-III post of Tax Collector from the Class-IV post which the petitioner is holding, but during the course of argument, the prayer has been limited to the extent that a direction be issued to the concerned respondent for giving him officiating

allowance for the work which is being taken from him of a Tax Collector since 02.09.2016 which is a Class-III post.

3. Learned counsel for the petitioner has submitted that the Tax Collector is a higher post in the cadre with a higher pay-scale and even when the petitioner and others have been made to work as Tax Collectors since 02.09.2016, they have not been paid for the same.

4. Mr. Amaresh Kumar Sinha, learned counsel for the petitioner, however, has submitted that despite the post of Tax Collector remaining vacant for several years, such arrangement has been made by an office order for three years. This, therefore, presupposes that it is a stop-gap arrangement against a substantive post.

5. This, it has been submitted, coupled with the stand of the State that the petitioner shall be considered for promotion to such higher post of Class-III grade according to the vacancy, gives the required deservedness to the petitioner to be paid for the work which is being taken from him.

6. The only objection of the State is that if the prayer of the petitioner is allowed such benefit will have to be avoided

to other 183 Class-IV workers, from whom such work of Tax Collector is being taken in different revenue districts. The purpose of pitching in the petitioner and other for the aforesaid work of tax collection is only to obtain revenue and it is no promotion against any substantive post or even a temporary arrangement.

7. The counter argument of Mr. Sinha is that if it were not for providing a temporary arrangement, perhaps the order to discharge the functions of Tax Collector would not have been made for three years.

8. It has further been submitted that rule 89 of Bihar Service Code, rule 89 provides that subject to the provision of rule 103 or to any orders regulating acting promotion from grade to grade, a government servant if is made to officiate on a post, shall not be paid higher than the amount which is admissible to a person holding the substantive post, meaning thereby, that officiating allowance has to be given for the work that is taken from a government servant. The proviso to rule 89 further clarifies that the officiating appointment would not be deemed to involve the assumption of duties or

responsibilities of greater importance if the post to which it is made on the same scale of pay as the aforesaid permanent post. Similarly, Rule 90 indicates that if a government servant is officiating on a post, he would draw the presumptive pay of that post provided that such assumption of post or responsibilities is not on the asking of the government servant or at his request.

9. In the present case, it appears that the petitioners and others had not been promoted to the higher post under the rules and have been made to work as Tax Collector for a period of three years. In the case of the petitioner, he is discharging the function of the Tax Collector since 2016 as has been noted above.

10. Under the aforesaid circumstances, this Court deems it appropriate to direct the petitioner to make a representation before the Principal Secretary, Department of Water Resources, Government of Bihar, Patna, detailing his grievances and making out a case of grant of officiating pay to the petitioner. Should such a representation be filed within a period of four weeks from today, the same shall be looked into

and disposed off by a reasoned order within a further period of eight weeks thereafter. The Principal Secretary, Water Resources Department, Government of Bihar, Patna shall take into account that under the rules, the exercise ought to have been taken for promoting Group D post holders to Group C and if the petitioner and other similarly situated persons are made to work on a Group C post for a longer period, it ought to mean that instead of promotion, an alternative arrangement has been made for some time and, therefore, while disposing off such representation, shall consider the necessity of paying such officiating allowance in terms of rules 89 and 90 of the Bihar Service Code.

11. With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
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