

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4574 of 2016

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Ajit Kumar Son of Late Raj Kishore Prasad Singh, resident of Flat No. 301
Rama Kundan Apartment, Road No. 13 /A Rajendra Nagar, Patna-16.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Engineer-in-Chief-cum-Additional Commissioner- cum-Special
Secretary, Road Construction Departm
3. The Joint Secretary, Road Construction Department, Government of Bihar,
Patna.
4. The Deputy Secretary, Road Construction Department, Bihar, Patna.
5. The Executive Engineer, New Capital Road Division, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dharmendra Kumar Sinha Mr.Ajay Kumar Singh
For the Respondent/s	:	Mr.M.K. Pathak- SC-7

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

3 23-08-2019 Heard learned counsel for the parties.

2. Petitioner's father was appointed on 29.08.1959 as
Junior Engineer in Road Construction Department
(Jharkhand). He was granted promotion to the rank of
Assistant Engineer through departmental notification No. 627
(S) dated 12.02.1986 and was posted at Rural Engineering
Organization, Patna. He retired from service with effect from
30.06.1995, on attaining the age of superannuation. He died
on 06.04.2013. These facts are not in dispute at all.

3. The promotion granted to the petitioner's father



through notification dated 12.02.1986 was to take effect from the date of his joining as an Assistant Engineer. There is no chit of paper on record to establish that the petitioner's father, on his promotion to the rank of Assistant Engineer, had joined to promotional post. It is the petitioner's case that his father's service book was lost and he was not allowed any increment during his service period and he was made to receive salary on the basis of basic pay available for the post of Junior Engineer.

4. In the above noted background of facts, the petitioner is seeking direction to the respondents to pay to the petitioner arrears of salary which his father was legally entitled to for the period 1978 to 30.06.1995, when he retired. The service book was reconstructed on 20.04.1999 after his retirement on the basis of records available in the Department and salary on that basis is said to have been provisionally fixed on 11.10.2003. It is further case of the petitioner that till date the exercise of final fixation of pay and salary has not been completed by the State-respondents. It transpires that the petitioner had approached the authorities for redressal of grievances. The Deputy Secretary of Road Construction Department, Government of Bihar by an order dated



13.09.2013 has decided to allow death-cum-retiral benefits, consequent upon retirement and subsequent death of the petitioner's father, treating him to be a Junior Engineer as on the date of his retirement. The said order dated 13.09.2013 has also been put to challenge in the present writ application.

5. Counter affidavit and a supplementary counter affidavit have been filed on behalf of the respondents-State of Bihar. It has not been denied that the service book of the petitioner's father was lost, which was subsequently reconstructed in 2003, i.e., eight years after retirement of the petitioner's father. It has been stated in paragraph 16 of the counter affidavit that father of the petitioner had not taken charge of joined against the promoted post of Assistant Engineer and the death-cum-retiral benefits are being processed accordingly, treating the petitioner's father to be a Junior Engineer as on the date of his retirement.

6. The only document which the petitioner is relying on to make out his case that the petitioner's father had in fact functioned as an Assistant Engineer is an office order issued by the Superintending Engineer, South Bihar Circle, Patna, whereby the quarter which was allotted to the petitioner's father was subsequently allotted to another officer. In the said



order, the designation of the petitioner's father has been mentioned as Assistant Engineer. Noticing the said office order, this Court had directed the State-respondents to file a supplementary counter affidavit and accordingly the supplementary counter affidavit has been filed. The genuineness of the said document has not been disputed in the supplementary counter affidavit.

7. Mr. Ajay Kumar Singh, learned counsel appearing on behalf of the petitioner has submitted that it was because of admitted lapse on the part of the State-respondents that service book of the petitioner's father had got misplaced because of which he had to receive salary on the basis of basic pay without any increment, right from his date of appointment till the date of his retirement. He has submitted that the State-respondents ought to have disclosed the place/post where the petitioner's father had discharged his duties after his promotion to the rank of Assistant Engineer and mere denial that the petitioner's father did not join the promoted post is not enough for the State-respondents to deny the petitioner's claim.

8. The gist of controversy has been mentioned in the order dated 13.09.2013, which is impugned in the present writ



application, whereby a decision has been taken that the death-cum-retiral benefits, consequent upon the retirement and subsequent death of petitioner's father is to be calculated, treating him to be a Junior Engineer on the date of his retirement. What is apparent from the said order dated 13.09.2013 is that there is no definite conclusion that the petitioner's father had not joined the post to which he was promoted. It has been mentioned in the order that by notification dated 24.12.1986, the petitioner's father was posted in Rural Engineering Organization (Head Qr), Patna but there is no evidence available as to whether he had joined or not. The order, it is reiterated, does not conclude that the petitioner's father had not joined the place of his posting. The conclusion recorded in the order dated 13.09.2013 is of inability of the Department to say definitely, whether the petitioner had joined against the promotional post or not. This will have to be seen in the background of an admitted fact that service book of the petitioner's father was admittedly missing for several years and was reconstructed nearly eight years after his retirement. In the absence of conclusive case of the respondents that the petitioner had not joined against the post of Assistant Engineer, his claim could not have, in



my opinion, been denied on the basis of presumption.

9. There is another aspect, however, which this Court cannot overlook. The petitioner's father retired on 30.06.1995. He did not raise any claim as is being raised in the present writ application. He was alive for nearly 18 years after he retired on 30.06.1995 without raising his claim by way of filing writ application. This writ application has been filed nearly 23 years after the retirement of the petitioner's father and five years after his death.

10. In normal circumstance, I would have refused to entertain this writ application on the ground of delay and laches as noted above. However, considering the admitted fact that service book of the petitioner's father was admittedly missing because of which he was deprived of the entitlements which he could otherwise he receive and service book was subsequently reconstructed, admittedly eight years after his retirement, I dispose of this writ application with the following orders /directions:-

(a) The impugned order dated 13.09.2013 passed by the Deputy Secretary, Road Construction Department, Government of Bihar, is quashed for the reason that it does not record the conclusive finding that the petitioner's father



had not joined as Assistant Engineer after his promotion consequent upon notification dated 24.12.1986. He was duty bound to examine and record a finding as to where was the petitioner's father functioning and discharging his duties, after grant of promotion, if he had not joined against the promotional post.

(b) The Deputy Secretary, Road Construction Department, Govt. of Bihar, Patna is directed to consider the case afresh and pass an order after carrying out a proper enquiry. The order must be passed within a period of three months from the date of receipt/production of a copy of this order. The claim of the petitioner that his father had retired as Assistant Engineer can be denied only if the Department reaches a definite conclusion that he had not joined the said post on promotion.

(c) After an order is passed by the Deputy Secretary in the light of the above, the respondents will be obliged to complete the exercise of fixation of pay and salary, which the petitioner's father would have been legally entitled to, which could not be paid to him because of absence of the service book. The respondents shall further be obliged to ensure payment of arrears of salary, if any, and the retiral benefits, in



accordance with law, once a succession certificate is submitted by the petitioner, within a reasonable period of time.

11. This disposes of the application.

(Chakradhari Sharan Singh, J)

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