

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 14475 of 2014

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Ram Vinay Sharma S/o Late R. Sharma Residing at K-29, P.C. Colony,
Kankarbagh, Patna-800020 at present posted as Deputy Director Retired
Department of Mines and Geology, Government of Bihar, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Joint Secretary, Department of Mines and Geology, Government of Bihar, Patna.
4. The Under Secretary, Department of Mines and Geology, Government of Bihar, Patna.
5. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
6. The Joint Secretary, Department of Finance, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Amaresh Kumar Sinha, Advocate
For the Respondent/s : M/s Jitendra Kr, Raj Ballabh Pd Yadav,
ACs to AAG XI

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 03-09-2019

Heard learned counsel for the petitioner as well as the
learned State Counsel.

2 It is the petitioner's case that he was officiating as
Deputy Director in the Department of Mines and Geology since
19.05.1999.



3 Earlier, the petitioner was working as Geologist and, thereafter, to the post of Senior Geologist -cum- Assistant Director in substantive capacity. Since the petitioner was discharging the duties of the post of Deputy Director since 19.05.1999, he approached this Court in a writ proceeding arising out of CWJC No 14084 of 2012 seeking a direction for substantive promotion to the post of Deputy Director. The petitioner's writ petition was disposed of with a direction to the Principal Secretary to consider the petitioner's claim by order dated 21.01.2003 passed in the writ petition. Aggrieved by non-grant of relief by the Writ Court, petitioner preferred an Intra Court Appeal being LPA No 603 of 2013. In the LPA, State came out with a Notification dated 27.12.2013 substantially promoting the petitioner as Deputy Director. Having regard to the said development during pendency of the LPA, the LPA was disposed of with liberty to the petitioner to claim benefits for the post of Deputy Director from 19.05.1999 till his promotion in substantive capacity by Notification dated 27.12.2013.

4 Petitioner has filed the instant proceedings availing the liberty granted by the Division Bench in the petitioner's Letters Patent Appeal bearing LPA No 603 of 2013 on 07.07.2014.



5 Petitioner's counsel submits that the petitioner has officiated on the said post of Deputy Director since 1999 on which post he has been subsequently promoted. His qualification for holding the post is not in dispute. Merely because the State has failed to issue notification or that notification substantively promoting him on the said post have been issued later cannot be made the basis for denying the petitioner the post of Deputy Director. In this connection, petitioner's counsel places reliance on the case of Dr Sachita Kumar Sinha -Versus- State of Bihar & Others reported in 1995 (1) PLJR 362 which has been affirmed later on in the case of Prafulla Ranjan Shrivastava -Versus- State of Bihar & Others reported in 2008 (3) PLJR 144 by Division Bench of this Court. This Court, in the said judgments, has considered the effect of a conjoint pleading contained in Rules 58 and 103 of the Bihar Service Code.

6 Learned State Counsel, relying upon the averments made in the counter affidavit, submits that for the same set of facts, petitioner has earlier approached this Court in CWJC No 14084 of 2012. Since this Court has not allowed his prayer in the earlier writ proceedings, the petitioner is stopped from raising the same claim in the instant writ proceedings.



7 Submission of the learned State Counsel is noted only to be rejected. Order passed by the Division Bench in LPA makes it more than obvious that the Division Bench had granted liberty to the petitioner to seek his remedies, for which the instant writ petition has been filed. Objection taken by the State in the counter affidavit is, thus, none est in the eyes of law. Petitioner's claim is fortified by the two decisions in the case of Dr Sachita Kumar Sinha (supra) and in the case of Prafulla Ranjan Shrivastava (supra).

8 The Authorities would, therefore, be obliged to grant the petitioner benefits of the post of Deputy Director with effect from the date he has been made to officiate on the said post, being 19.05.1999.

9 This Court would also consider it relevant to observe that the issue stands settled by the Division Bench as well as Single Judge which has been taken note of herein above and, as such, the Authorities, in terms of the settled legal position on account of the said judgments, should have extended the benefits to the petitioner on its own volition in view of the provisions contained in Rule 4.C (1) of the Bihar State Litigation Policy, 2011 which requires extending of same benefits to "covered matters".

10 Writ petition is allowed.



11 Respondents are directed to grant the monetary financial benefits to the petitioner as Deputy Director, Department of Mines and Geology since 19.05.1999.

12 Other admissible consequence of the same should also be granted to the petitioner expeditiously without any undue delay and preferably within three months from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.10.2019
Transmission Date	NA

