

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1619 of 2015

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Ram Keshwar Ram Son of Late Harkhu Ram, Resident of M.I.G. 325,
Kankarbagh Colony, Police Station- Kankarbagh, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna having his office in Old Secretariat, Patna.
2. The Principal Secretary, Road Construction Department, Vishwesharaiya Bhawan, Patna.
3. The Joint secretary, Road Construction Department, Vishwesharaiya Bhawan, Patna.
4. The Special officer - cum - Deputy secretary, Road Construction department, Vishwesharaiya Bhawan,
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rupak Kumar, Advocate
For the State	:	Ms Binita Singh, SC 28
		Mr. Apurv Harsh, AC to SC 28
For the BPSC	:	Mr. Rajnikant Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 28-02-2019

Heard Mr. Rupak Kumar for the petitioner as well as Ms.

Binita Singh, SC 28 for the State. The learned counsel for the BPSC is also present.

2. The petitioner has approached this Court for a direction upon the respondents to consider his case for regular promotion on the post of Chief Engineer with effect from 23.08.1999 and Engineer-in-Chief with effect from 31.12.2001 and to extend the consequential benefits arising out of such promotion including re-fixation of his pensionary benefits.

3. Claim is made by the petitioner asserting that juniors of



the petitioner from the gradation list dated 09.12.1987 were granted the said promotion. It is therefore, submitted that once a junior has been promoted the petitioner is also entitled to such promotion.

4. It is submitted by the petitioner's counsel that under orders of this Court the petitioner was granted promotion on the post of Superintending Engineer with effect from 08.11.1988 along with all consequential benefits, in light of the order dated 12.09.2014 passed in LPA No. 745 of 2005. It is submitted that the petitioner was in Class I service and as such has been promoted up to the post of Superintending Engineer after a protracted litigation, as earlier, promotion, even to the post of Superintending Engineer was being denied to the petitioner on grounds of pendency of departmental proceedings. Now that the proceedings are not in way of the petitioner and since the juniors of the petitioner from the gradation list dated 09.12.1987 have already been promoted, the respondents would be obliged to promote the petitioner to the post of Chief Engineer with effect from 23.08.1999 and Engineer-in-Chief from 31.12.2001.

5. Learned State counsel has submitted that the claim for promotion with effect from 23.08.1999 and 31.12.2001 as taken note of herein above was available to the petitioner at the time



order was being passed in LPA No. 745 of 2005 arising out of the writ proceedings earlier filed by the petitioner. Final order on the LPA was passed on 12.09.2014. The petitioner has not prayed for grant of the promotions even though relief was available to the petitioner at that point of time. Since the same was not done, the petitioner cannot be permitted to file a fresh writ petition for the relief which was available to him at the time of the decision on the earlier writ proceedings, since he has not raised the claim in the earlier writ proceedings.

6. It is also submitted that the case of the petitioner is now covered by the law as declared by this Court in the proceedings arising out of C.W.J.C. No. 11788 of 2006 on 05.12.2012. This Court in the said case filed by the **Bihar Engineering Services Association** has laid down the legal position as follows:

“Once it is held that Diploma holders have no entry in Class -I Service then for any reason those who have got into service wrongly can they now be permitted to be promoted. The answer must be emphatic no because their very foundation upon which they entered into Class -I Service was wrong except those who had entered by virtue of Rule -8 (b) as per 1971 amendment and the amendment in 1987 even in those cases they cannot travel beyond the post



of Executive Engineer.”

7. The petitioner who admittedly is a diploma holder and had become an Executive Engineer in Class I service on 24.02.1992 could not claim any promotion beyond the post of Executive Engineer since admittedly the petitioner had entered Class I service by virtue of Rule 8(b) as per the 1971 Amendment.

8. The counsel for the petitioner submits that since juniors of the petitioner have been promoted the petitioner has a right to promotion as prayed for in the instant writ proceedings. It is his submission that the qualification is irrelevant for the purpose as in case of the petitioner. Under orders of this Court passed in LPA No. 745 of 2005 the petitioner has traveled beyond the post of Executive Engineer already, as he was promoted as Superintending Engineer with effect from 08.11.1988 by notification dated 06.09.2016 issued much after the judgment in the case of the **Bihar Engineering Services Association** (supra)

9. This Court is in agreement with submission made by counsel for the respondent State, petitioner admittedly being a diploma holder, in terms of the decision of this Court in the case of **Bihar Engineering Services Association** (supra), could not claim any post beyond/higher than the post of Executive



Engineer.

10. Promotion as Superintending Engineer granted in compliance of an order passed by Division Bench of this Court in the proceedings arising out of LPA No. 745 of 2005 is not an issue in the instant proceedings. Petitioner's entitlement to benefit in terms of the said judgment cannot be raked up as a collateral issue in the instant proceedings, as the same stands concluded by order of the Division Bench of this Court in LPA 745 of 2005, which is binding inter parties.

11. In view of the legal position arising out of decision dated 05.12.2012 taken note of herein above in the case of **Bihar Engineering Services Association** (supra), and in view of the admitted position that petitioner being Diploma holder has entered Class I service by virtue of Rule 8(b) as per 1971 Amendment, he cannot claim promotion to the post of Chief Engineer and Engineer- in- Chief, which are beyond/higher than the post of Executive Engineer.

12. Writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

