

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13037 of 2010

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ABHAYA KUMAR SINGH S/o Jagdish Narayan Singh R/o Village-Khanpur,P.S.-Derani,Dist.-Saran, At present posted as Assistant Engineer Civil, Head Office, Public Health Engineering Department Govt. of Bihar,Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Additional Secretary to the Govt.,Public Health Engineering Department,Govt. of Bihar,Patna.
3. Joint Secretary, Public Health Engineering Department,Govt. of Bihar,Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kali Pd.Singh Mr. Apurv Harsh Mr. Manu Tripurari
For the Respondent/s	:	Mr. Harish Kumar, G.P.-8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 05.09.2019

The present writ petition has been filed challenging the order dated 30.04.2010 passed by the Principal Secretary, Public Health Engineering Department, Bihar, Patna, whereby and whereunder the case of the petitioner for promotion with effect from 07.03.1996 on the post of Assistant Engineer (Civil), has been rejected.

The brief facts of the case are that the petitioner had joined the post of Junior Engineer on 07.03.1991 and had completed five years of service on the post of Junior Engineer on 07.03.1996 and while in service he had obtained the



Associate Membership of Institute of Engineers on 06.10.1994, hence it is the case of the petitioner that he had become eligible to be promoted to the post of Assistant Engineer (Civil) against the 3 per cent quota with effect from a date subsequent to 07.03.1996. It is not disputed that the petitioner had become eligible to be considered for promotion on the post of Assistant Engineer (Civil) with effect from 07.03.1996 but now the question would be as to whether there were ample number of vacant posts as far as the post of Assistant Engineers (Civil) is concerned, subsequent to the date 07.03.1996, upon adjustment of the eligible candidates who were senior to the petitioner. In this regard, the learned counsel for the petitioner has submitted that on 18.03.1997, two employees who were holding the post of Assistant Engineer (Civil), namely, Diwarkar Kumar and Amrit Narayan Jha had been promoted on the post of Executive Engineer (Civil), hence admittedly two post had become vacant. Thereafter, one Subhash Chandra, Assistant Engineer (Civil) was promoted to the post of Executive Engineer (Civil) on 05.04.1997 and, therefore, yet another post had become vacant as far as the post of Assistant Engineer (Civil) is concerned.

Per contra, the learned counsel for the respondents has submitted that the two posts of Assistant Engineer (Civil), which



had become vacant on 18.03.1997, were filled up accommodating one Permanand Prasad and one Sabir Hussain, hence, the said two posts had become occupied and as on 18.03.1997, there was no vacancy to accommodate the petitioner herein. Nonetheless, in paragraph no. 8 of the supplementary counter affidavit filed on behalf of the respondents, it has been admitted that one Subhash Chandra was promoted on the post of Executive Engineer on 05.04.1997 but the same had not been filled by either promoting the petitioner or any person junior to the petitioner.

Having regard to the aforesaid stand taken by the respondents in their supplementary counter affidavit, this Court finds that the order dated 30.04.2010 passed by the Principal Secretary, Public Health Engineering Department, Patna, is not fully correct and is required to be revised on account of the aforesaid stand taken on behalf of the respondents in the supplementary counter affidavit filed in the present case i.e. to the effect that though there were vacancy on 05.04.1997, on the post of Assistant Engineer (Civil), but neither the petitioner nor any person junior to the petitioner had been promoted with effect from 05.04.1997, thus the date of promotion of the petitioner on the post of Assistant Engineer (Civil) i.e.



01.04.1999 would probably be required to be shifted to 05.04.1997.

Considering the aforesaid facts and circumstances of the present case as also for the reasons mentioned herein above, the order dated 30.04.2010 passed by the Principal Secretary, Public Health Engineering Department, Patna is quashed and the matter is remanded to the Principal Secretary, Public Health Engineering Department, Patna to reconsider the case of the petitioner for promotion with effect from 05.04.1997, in light of the facts stated herein above in the preceding paragraphs as also the statements made in the supplementary counter affidavit filed by the respondents. It is needless to state that the final decision in this regard shall be taken within a period of eight weeks of receipt/production of a copy of this order.

The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.10.2019
Transmission Date	

