

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16913 of 2019

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Lal Mohan Sharma, son of Chulhan Singh, resident of village- Bari Kopa, P.S. Naubatpur, District- Patna, at Present Junior Engineer, R.W. Department, Bihar Government.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary (Home), Bihar Government, at old Secretariat, P.S. Sachivalaya, District- Patna.
2. The Secretary, Rural Works Department, Govt. of Bihar.
3. The Upper Secretary, Rural Works Department, Govt. of Bihar.
4. The Under Secretary, Rural Works Department, Govt. of Bihar,
2 to 4 Office at 5th Floor, Vishveshwariya Bhawan, Bailey Road, P.S. Shashtri Nagar, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Binod Pd. Singh, Advocate
For the State	:	Mr. Dharendra Kumar, A.C. to AAG-6

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 14-10-2019

I have heard learned counsel appearing on behalf of the petitioner and learned A.C. to AAG-6 representing the State of Bihar.

2. The matter relates to grant of promotion to the petitioner to the rank of Assistant Engineer from Junior Engineer. It transpires that a Departmental Promotion Committee had considered the cases for promotion of Junior Engineers to the rank of Assistant Engineer under Rural Works Department, Government of Bihar, on 11.06.2018. The Proceedings of the said Departmental Promotion Committee, which has been brought on record by way



of Annexure-1/P of the writ petition shows that the case of the petitioner was also considered inasmuch as his name figured at Sl. No. 84. Since a Departmental Proceeding was pending against the petitioner, sealed envelope procedure was adopted in his case.

3. A counter affidavit has been filed on behalf of the Respondent State of Bihar. It is undisputed that the petitioner has been exonerated of the charge in the Departmental Enquiry with the issuance of an Office Order dated 06.02.2018 by Rural Works Department, Government of Bihar, under the signature of the Chief Engineer, which is at Annexure-2 to the writ application. It is not disputed that on the basis of recommendations of the Departmental Promotion Committee, Junior Engineers have been allowed promotion to the rank of Assistant Engineer. It is, however, stand of the State of Bihar, in the counter affidavit, that there is a general stay operating in whole of the State of Bihar in the matter of promotion in the light of certain decisions of the Court on the point of providing reservation in the matters of promotion. An order dated 11.04.2019 issued by the General Administration Department, Government of Bihar, has been brought on record by way of Annexure-B to the counter affidavit.

4. Learned counsel appearing on behalf of the petitioner has submitted that the petitioner was entitled to be



promoted, much before the order dated 11.04.2019 was issued by the General Administration Department. He has submitted that since even the persons junior to the petitioner have been allowed promotion on the basis of recommendations made by the Departmental Promotion Committee, denial of such benefit to the petitioner on the strength of a subsequent order dated 11.04.2019, is highly arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. He has further submitted that promotion has been granted to a member of the Bihar Administration Service, Shri Ahmad Mahmood, by a Notification dated 11.06.2019, issued by the General Administration Department, copy of which has been brought on record by way of Annexure-1 to the rejoinder filed on behalf of the petitioner to the counter affidavit on behalf of the State.

5. Learned counsel appearing on behalf of the State of Bihar, on the other hand, has submitted that the said promotion in favour of Shri Ahmad Mahmood has been granted on notional basis only, which is permissible as per the order of the General Administration Department dated 11.04.2019.

6. After having heard learned counsel appearing on behalf of the parties and considered rival pleadings on record, it can be easily seen that there is one crucial fact which is not at all



in dispute. The persons similarly situated, lower in seniority than the petitioner, who were considered by the same Departmental Proceeding, Departmental Promotion Committee have been allowed promotion to the rank of Assistant Engineer much before issuance of the Office Order dated 11.04.2019. Pendency of a Departmental Proceeding against the petitioner was the only reason for withholding the petitioner's promotion, which also vanished with exoneration of the petitioner in the Departmental Proceeding. The order was passed in January, 2019 itself and it was issued on 06.02.2019 exonerating the petitioner from the charges of the Departmental Proceeding. This was also much before issuance of the letter dated 11.04.2019.

7. In such circumstance, in my view, the order dated 11.04.2019 issued by the General Administration Department withholding general promotion in the State of Bihar cannot come in way of granting the petitioner's promotion to the rank of the Assistant Engineer. Denial of such promotion to the petitioner, with effect from the date his juniors have been given promotion, will, in my view, amount to violation of Articles 14 and 16 of the Constitution of India.

8. Secondly, I am not convinced with the submission advanced on behalf of the State of Bihar that grant of promotion to



Shri Ahmad Mahmood through Notification dated 11.06.2019 issued subsequent to the order dated 11.04.2019 whereby general promotions in the State were not stayed is not actual promotion. It is clear from the language of the order that the post of the Deputy Secretary, which Shri Ahmad Mahmood was holding, was itself upgraded to the rank of Additional Collector against which he was promoted and posted. Said Ahmad Mahmood, as can be seen from the Notification itself, has been granted regular promotion, despite its own order of the General Administration Department, staying general promotion. The said promotion has, however, been made subject to Supreme Court's decision in case of **Sushil Kumar Singh and Ors. (SLP No. 29770/2015)**.

9. In such circumstance, the action of the respondents in refusing to allow the petitioner promotion to the rank of Assistant Engineer is held to be highly arbitrary and unreasonable.

10. The respondents are directed to allow the petitioner promotion to the rank of Assistant Engineer, at least, with effect from the date his juniors have been given such promotion on the basis of recommendations of the Departmental Promotion Committee in question, within a period of one month from the date of receipt/production of a copy of this order. I have consciously passed this order directing the respondents to promote the



petitioner to the post of Assistant Engineer in view of uncontroverted and admitted facts, particularly, the fact that the persons junior to the petitioner have been allowed promotion.

11. This writ application is, accordingly, allowed with a cost of Rs.5,000/- to be paid to the petitioner within three months from today.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21/10/2019
Transmission Date	N.A.

