

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25403 of 2019

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Krishna Kumar Paswan Son of late Govind Paswan, Resident of Mohalla-Laxmisagar, Saidpur, District- Darbhanga Presently at Deputy Manager(Statistics), Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road Patna and residing at 402, Palam Anand Apartment Purandarpur Do Pulwa, P.S. Jakkanpur, District- Patna.

... .. Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Ltd. through its Chairman and Managing Director, Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
2. The Director(Administration), Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
3. The General Manager(HR), Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna.
4. The Deputy General Manager (HR), Bihar State Power (Holding) Company Ltd. Vidyut Bhawan, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anand Prakash
For the Respondent/s	:	Mr.Vinay Kirti Singh
For BSPHCL	:	Ms. Soni Shrivastava

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 29-01-2020 Heard learned counsel for the parties.

2. This writ application has been filed seeking direction to the respondent- Bihar State Power Holding Corporation Limited, Patna to promote him to the post of Deputy Director (Statistics) in Pay Band III with G.P. instead of Deputy Manager (Statistics) as has been done with the issuance of notification by the Company dated 29.12.2016 in the Pay Band-III (15,600-39,100/-G.P. 5,400). It is the petitioner's



claim that he is entitled for promotion as Deputy Director (Statistics)/Deputy Manager (Statistics) in the scale of Rs. 15,600/- to 39,100/- with the grade pay of Rs.6650/- instead of grade pay of Rs. 5400/-. This is not in dispute that the post of Deputy Director (Statistics) does not exist in the Company.

3. This is to be noted that the petitioner had earlier approached this Court by filing writ application, giving rise to CWJC No. 20715 of 2010, seeking a direction upon the erstwhile Bihar State Electricity Board, the predecessor body of the Company, to consider his case for his promotion to the post of Deputy Director (Statistics) from the post of Statistical Officer with effect from 02.11.2009. After taking into account, the entire facts and circumstances, the Court dismissed the petitioner's writ application in following terms by an order of this Court dated 15.03.2011:-

“Thus so long the post of Statistical Officer continued to exist the post of Deputy Director of Statistics would remain in abeyance and both cannot remain together in view of the clear Resolution of the Board which having been taken on the same day clearly show the mind of the authorities of the Board when such a decision was taken. The subsequent making of the post of Statistical Officer as permanent



without any further decision to revive the post of Deputy Director of Statistics can only mean that the post of Deputy Director of Statistics would cease to exist from the said date unless the Board decides to create separately the post of Deputy Director of Statistics.

In the above circumstances, there being no post of Deputy Director of Statistics in existence, there can be no question of any promotion being granted to the petitioner from the post of Statistical Officer to that of Deputy Director of Statistics.

In view of the above discussion, the writ application must fail. It is, accordingly, dismissed.”

4. The petitioner again filed a writ application before this Court by filing CWJC No.8931 of 2011. While considering the petitioner’s case in CWJC No. 8931 of 2011, this Court noted in the order dated 19.05.11 that in the second round of litigation, the petitioner was seeking such relief which he could not get directly in the earlier writ application viz, CWJC No. 20715 of 2010. The Court noticed that the petitioner had adopted a novel procedure for getting relief which he could not get relief in the earlier writ application by seeking a direction to set aside the office order contained in Memo. No. 1502 dated



19.04.1974 whereby post of Director of Statistics was kept in abeyance in the Bihar State Electricity Board. The Court observed that apart from the fact that the writ petition was bordering upon being an abuse of the process of the Court by trying to obtain an order which the petitioner could not get in the earlier writ petition, it suffered from the vice of delay and laches by putting to challenge an office order dated 19.04.1974 after 37 years. The Court finally held in the order dated 19.05.2011 passed in CWJC No.8931 of 2011 as under:-

“Moreover, it is a well established proposition that right to create or abolish a post is a matter of administrative policy decision dependent upon exigencies of circumstances and administrative necessity. The creation, continuation and abolition of post are decided by the Government or Governmental Authorities in the interest of administration. Even if a post is abolished, in the said circumstances, the holder of the post has nor right to claim continuance of the same and must go out with the said post. Reference may be made in this regard to the decision of a Constitution Bench of the Supreme Court in the case of N.Ramanatha Pillai vs. The State of Kerala and another AIR 1973 SC 2641.

Apart from what has already been decided in the earlier



writ petition, learned counsel for the petitioner is unable to show as to whether there exists any arbitrariness in the Office Order dated 19.04.1974 by which the Board decided to create a temporary post of Statistical Officer in lieu of the temporary post of Deputy Director of Statistics. If the Board did not want to increase the number of posts in the Statistical Section and keep the post of Deputy Director of Statistics on higher pay scale in abeyance while creating the post of Statistical Officer on lower scale, it is not for the petitioner to complain that the same is beyond the power of the Board or against the public interest. Such matter is directly in the domain of administrative policy.

The said Office Order was issued by the Board pursuant to the Resolution dated 28.06.1974, when the petitioner was not even in the service of the Board as admittedly he has joined the service of the Board in the year 1991. Thus, he cannot even raise any claim that when the said Office Order was issued there was any intention of the Board directed against him.

For the aforesaid reasons and those given in the earlier writ petition, being CWJC No. 20715 of 2010 filed by the petitioner, this Court does not find any force in the submissions of learned counsel for the petitioner.

The writ application is,



accordingly, dismissed.”

5. It is not known why the petitioner has not made any statement about filing of CWJC No. 8931 of 2011 in the writ application nor a copy of the order dated 19.05.2011 passed in the said case has been brought on record. A copy of the said order has been produced by Ms. Soni Srivastava, learned counsel appearing on behalf of the Company. This is further, to be noted that the petitioner had preferred an appeal against the said order dated 19.05.2011 passed in CWJC No. 8931 of 2011. The Letters Patent Appeal was dismissed by a Division Bench of this Court holding specifically that the appellant had no right to compel the Board to fill in a particular post. It was much after the Division Bench order dated 20.09.2011 passed in LPA No. 1325 of 2011 that a decision was taken by the Company on 17.12.2016 to abolish the post of Statistical Officer in Pay-Band-II and to revive the post of Deputy Director (Statistics) in Pay-Band-III-15600-39100, GP 5400/- with the nomenclature, ‘Deputy Manager (Statistics)’. It is because of the said decision of the company that the petitioner has been given promotion to the post of Deputy Manager, Statistics with the Pay-Band and the grade pay as prescribed in the notification dated 17.12.2016.

6. As has been noted above, the petitioner is raising a



claim that the Grade pay of Rs. 5400 has been wrongly prescribed for the post of Deputy Manager (Statistics) as the said post is result of revival of the post of Deputy Director (Statistics).

7. I do not find any merit in the writ application at all for the reason that the petitioner has not been able to make out a case that the said post of Deputy Manager (Statistics) ought to have been created with particular Pay-Band and with a particular Grade pay, consequent on revival of the post of Deputy Director (Statistics).

8. This application is misconceived and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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