

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.270 of 2019

Parmanand Sinha S/o Late Ram Baran Sinha Vill.-Simra, P.O.-Parasa Bazar,
P.s.-Phulwari, Distt.-Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. The Secretary-cum-Commissioner Water Resources Department, Sinchai Bhawan, Bihar, Patna
3. The Engineer-in-Chief Water Resources Department, Sinchai Bhawan, Bihar, Patna
4. The Chief Engineer (Mechanical) Water Resources Department, Old Secretariat, Bihar, Patna
5. The Superintending Engineer (Mechanical) Mithapur, Patna
6. The Executive Engineer Field Machinery Division, Digha, Camp, Karbigahia, P.O.-G.P.O., Patna
7. Bhola Prasad S/o not known present working as Senior Mechanical Grade-II, Mechanical Division, Gandak Project, Balmiki Nagar, District- West Champaran.
8. Mukhtar Singh S/o not known present working as Senior Mechanical Grade-II, Mechanical Division, Gandak Project, Balmiki Nagar, District- West Champaran.
9. Ashok Singh S/o not known present working as Senior Mechanical Grade-II, Mechanical Division, Gandak Project, Balmiki Nagar, District- West Champaran.
10. Sudhakar Sharma S/o not known present working as Senior Mechanical Grade-II, Mechanical Division, Gandak Project, Balmiki Nagar, District- West Champaran.
11. Md. Amirullah S/o not known present working as Senior Mechanical Grade-II, Mechanical Division, Gandak Project, Balmiki Nagar, District- West Champaran.
12. Satya Narayan Chaudhary S/o not known present working as Senior Mechanical Grade-II, Mechanical Division, Gandak Project, Balmiki Nagar, District- West Champaran.
13. Harinandan yadav S/o not known present working as Senior Mechanical Grade-II, Mechanical Division, Gandak Project, Balmiki Nagar, District- West Champaran.

... .. Respondent/s



Appearance :

For the Appellant/s : Mr.Bhubneshwar Prasad
For the Respondent/s : Mr.Anjani Kumar (Aag4)
Mr. Deepak Sahay Jamuari, AC to AAG 4
Mr. Shailendra Kr. Singh, AC to AAG 4

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 28-09-2022

Heard learned counsel for the respective parties.

Mr. Sanjay Agarwal, Principal Secretary, Water
Resources Department, Patna is present in Court.

On 14.09.2021, the following order was passed:-

“State Counsel could not apprise this Court relating to feeder cadre to the post of Senior Mechanic Grade-II Therefore, the Commissioner-cum-Secretary, Water Resources Department is hereby directed to appear in person along with complete records. He has to apprise this Court how the post of Senior Mechanic Grade-II has been created in the department and further what is the method of recruitment to the aforesaid post. Is it by direct recruitment or promotion or deputation or appointment by transfer so as to ascertain as to how the appellant has been extended benefit of promotion to the post of Senior Mechanic Grade-II w.e.f. 01.04.1991. For the purpose of promotion to the aforesaid post, feeder cadre seniority list is required to be prepared and finalised and final



seniority list is to be operated for the post of Senior Mechanic Grade-II or not ? In this regard, necessary materials be placed on record so as to apprise this Court that the appellant- Parmanand Sinha name appears at particular place in the seniority list of the feeder cadre.

Relist this matter on 28.09.2022.”

Today, counter affidavit on behalf of the second respondent has been filed. Mr. Sanjay Agarwal, Principal Secretary, Water Resources Department, Patna stating that the post of Senior Mechanic Grade-II and other identical matters are not permanent post they are part and parcel of work charge establishment. Therefore, the appellant has no right to claim arrears of salary from 01.04.1981 till 04.12.2008, the date on which he was extended notional promotion to post of Senior Mechanic Grade-II.

It is submitted on behalf of the respondent in terms of Annexure-B item no. 59 read with 60 even work charge employees were extended benefit of time bound advancement and ACP and they were also extended particular pay-scale. The appellant has been extended promotion to the post of Senior Mechanic Grade-II with effect from 01.04.1981 in the absence of method of recruitment to the post of Senior Mechanic Grade-II and so also in the absence of any criteria as to how to fill up the post of Senior



Mechanic Grade-II. It is astonished to know that in the service jurisprudence work charge employee is entitled to particular pay-scale, time bound advancement and ACP. Further, root of the matter is that how to fill up the post of Senior Mechanic Grade-II is not forthcoming. On the other hand, the post of Senior Mechanic Grade-II has been dumped in the list of work charge employee. In the service jurisprudence work charge employee is entitled to only consolidated pay whereas State Government has extended initially consolidated pay and thereafter particular pay-scale has been extended even the norms of pay-scale is not forthcoming. Further, criteria like work charge employee who has fulfilled certain number of years of service he is entitled to particular pay-scale. No such criteria has been laid down by the Government. In other words, in whims and fancy the orders are being passed in respect of extending various service benefits to such of those work charge employee unless and until particular creation of post under Article 309 or 166 of the Constitution. Further, service condition of a particular post like Senior Mechanic Grade-II is not issued under Article 309 or 166 of the Constitution.

However, the official respondents contended that the appellant is not entitled to arrears of pay from 01.04.1981 to 04.12.2008 for the post of Senior Mechanic Grade-II on the score



that he had been extended first time bound advancement on 01.04.1981, second time bound advancement on 29.12.1992 and further has been extended First ACP on 09.08.1999 and Second ACP on 01.04.2001 respectively.

In the light of these facts and circumstances, the appellant-Parmanand Sinha is not entitled to arrears of salary in the post of Senior Mechanic Grade-II with effect from 01.04.1981 the date on which he has been given notional promotion. The department has not reconciled service benefit extended to appellant like time bound advancement on two occasions and ACP benefit, in that event of extending arrears of pay in the post of Senior Mechanic Grade-II w.e.f. 01.04.1981. The appellant is not entitled to arrears of pay of notional promotion w.e.f. 01.04.1981. On this issue, statement of official respondents are silent. In other words, they do not have any policy decision. On the other hand, their stand is that once an employee has been extended time bound advancement and ACP benefit in such an event if he is retrospectively promoted or notionally promoted to a particular post. In that event he is not entitled to arrears of salary on the promotional post. In this regard, State department must examine and carry out necessary amendment to the relevant rules wherever it is warranted.



With the above observations, the present petition stands disposed off.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

