

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9975 of 2021

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Parwez Alam Son of Late Mahboob Alam Resident of Mohalla- Sherpur, P.S.-
Maner, District- Patna.

... .. Petitioner/s

Versus

1. The Bihar Public Service Commission Through its Chairman, Patna.
2. That the Chairman Bihar Public Service Commission, Patna.
3. The Secretary Bihar Public Service Commission, Patna.
4. The Under Secretary Bihar Public Service Commission, Patna.
5. The Section Officer B.P.S.C., Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satish Chandra Jha 3, Advocate
For the Respondent/s : Mr. Sanjay Pandey, Advocate
Mr. Zaki Haider, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 08-03-2022

In the instant petition, petitioner has prayed for the
following reliefs:-

“(i) To direct the respondents to consider for his the Case of the petitioner appointment/adjustment on class 3 Post taking into account his education qualification etc. and post him at any suitable class 3 rd post like other Similarly situated employees and grant him all consequent monetary benefits in accordance With law.

(ii) To direct the respondent to consider the representation of the petitioner in the light of order passed by the Hon'ble Court in C.W.J.C. No. 7320 of 1990 decided vide order dated 01.04.1991, as also taking into account his educational qualification and four clear vacancy of Class 3 Post at the time of his selection/consideration as 4th grade employee on Compassionate ground.



(iii) That the Hon'ble Court may be pleased to grant any other relief or reliefs to the petitioner this as Hon'ble Court may think it proper in the present facts and circumstances of this case.

Short question for consideration in the present petition is whether the petitioner is entitled to switch over from Class-IV post to Class-III post with reference to his appointment on compassionate ground on Class-IV post or not?

The petitioner has not pointed out any provision of law that he is entitled to Class-III post only. On the other hand, learned counsel for the petitioner vehemently contended that in identical circumstances persons' whose names were reflected in the representation were permitted to switch over to Class IV to Class III, therefore, the petitioner is entitled on the ground of discrimination.

Heard learned counsel for the respective parties.

For issuance of writ of mandamus one must have two ingredients namely legal/statutory right followed by demand before the competent authority. Petitioner has not apprised this Court that he has a vested right against Class-III post.

On the other hand, the one and only one ground is that official respondents have discriminated the petitioner in not providing him to switch over to Class-III to Class-IV post. In the absence of any statutory provision permitting appointment on com-



passionate ground to the post of Class-IV and switching over to Class-III post, petitioner is not entitled on the point of discrimination among the employees. Time and again, Hon'ble Apex Court held that illegality committed by the officials does not enure to the benefit to similarly situated persons and in directing to commit one more illegality by the concerned authority.

Recently, Hon'ble Apex Court in the following cases made an observation that illegality cannot be perpetuated:-

(i) R. Muthukumar & Others Vs. Chairman and Managing Director TANGEDCO & Others reported in 2022 SCC Online SC 151, decided on 07.02.2022.

(ii) Karnataka Rural Infrastructure Development Limited Vs. T.P. Nataraja & Others reported in 2021 SCC Online SC 767.

Accordingly, the present petition stands dismissed.

At this juncture, learned counsel for the petitioner submitted that Class-III posts are available, therefore, the petitioner should be accommodated in any one of the vacancies.

It is to be noted that the petitioner has not questioned the validity of his initial appointment to Class-IV under protest so as to seek appointment against one of the vacant post of Class-III. In the absence of challenge to initial appointment to Class-IV, the



aforesaid relief of the petitioner cannot be entertained. Hence, the
petition stands dismissed.

(P. B. Bajanthri, J)

Vikash/-

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

