

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No. 1108 of 2022

In
Civil Writ Jurisdiction Case No.6057 of 2020

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Vashishth Narain Son of Late R.V. Ram, resident of Village- Kazipur, P.S.-
Simri, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar Mr. Aamir Subhani.
2. Mr. Pratyay Amrit, the Principal Secretary, Road Construction Department, Bihar, Patna.
3. Mr. Sandeep Kumar R. Pudakalkatti, The Special Secretary, Road Construction Department, Bihar, Patna.
4. Ms. Poonam Kumari, The Deputy Secretary (Vigilance), Road Construction Department, Bihar, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.A.K.Nath, Sr.Advocate Mr.Prabhu Nath Pathak,Advocate
For the State	:	Mr.Manoj Kumar Ambastha (Sc26) Mr.Santosh Kr. Mishra, AC to SC 26

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

Date : 17-10-2022

Present contempt petition is for non-compliance of the
order dated 13.12.2021 passed in CWJC No. 6057 of 2020 extract
the order reads as under:-

*“ Short question for consideration in
the present petition is whether the petitioner is
entitled to be promoted to the post of Engineer-
in-Chief or not?*

*Undisputedly, no disciplinary
proceedings are pending against the petitioner.
On the other hand, he is facing criminal
proceedings and it is pending consideration for
more than two years. In this backdrop, whether
the petitioner is entitled to be promoted on ad*



hoc basis in terms of Circular at Annexure-11 dated 11.09.2002 in view of Clause 5.

The Sate Government is hereby directed to examine the petitioner's grievance for the purpose of promotion to the post of Engineer-in-Chief on ad hoc basis in terms of Circular read with fact that criminal proceedings in pending for more than two years. Such a decision shall be taken within a period of two months from the date of receipt of this order.

With the aforesaid observations, the writ petition stands disposed off."

On 25.07.2022 respondents have passed a detailed order while considering the petitioner grievance and rejected the same.

In order to ascertain factual aspects this Court has passed following order on 18.08.2022 and 31.08.2022 reading of second supplementary show cause filed on behalf of the respondent no. 02 to 04 dated 14.09.2022. Learned counsel for the respondent vehemently contended that petitioner's grievance read with the Annexure-11 dated 11.09.2002 (Clause 5) to the CWJC is not attracted in the present case. In support of the aforesaid contention it is submitted that no doubt the petitioner is at serial no. 3 in the Chief Engineer seniority list and he is the only Chief Engineer on officiating basis as on today.

In the light of the aforesaid factual aspects question of promoting petitioner on ad hoc basis to the post of Engineer-in-Chief with reference to Circular at Annexure-11 dated 11.09.2002



vide Clause 5 is not attracted. It is further submitted that the aforesaid Clause 5 would be attracted in such of those cases where an official whose name has been considered and kept in sealed cover on account of the disciplinary proceeding or criminal proceedings.

On the other hand, in the present case the State has not taken any action to fill up the post of Engineer-in-Chief on regular basis. On the other hand, they have resorted to appoint on contract basis. In the light of the aforesaid submission made by the learned counsel for the respondent, petitioner had option of questioning the validity of the contract appointment to the post of Engineer-in-Chief or in the alternative application to fill up the Engineer-in-Chief and to consider his name.

On the other hand, the petitioner was harping upon the fact that the petitioner name was considered for the post of Engineer-in-Chief and his name has been kept in sealed cover on account of certain disciplinary proceedings/criminal proceedings. The presumption of the petitioners that this case was kept in sealed cover is not true so as to attract Clause 5 of Circular dated 11.09.2002 (Annexure-11) to the writ petition.

In view of these facts and circumstances direction given by this Court in CWJC No. 6057 of 2020 dated 13.12.2021 it is



impracticable to give effect, for the reasons that petitioner name was never considered by the State of Bihar to the post of Engineer-in-Chief so as to give effect to the Clause 5 of the Circular dated 11.09.2002. Therefore, the present contempt petition stands dropped, reserving liberty to the petitioner to question the validity of communication dated 25.07.2022 or contract appointment to the post of Engineer-in-Chief or in the alternative giving representation to fill up the post of Engineer-in-Chief in accordance with law. In the event, of non-consideration such representation the petitioner has remedy before this Court.

(P. B. Bajanthri, J)

shoaib/-

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

