

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2659 of 2023

Rahul Kumar Son of Late Binay Krishna Shah Resident of Mohalla-Chowk Shikarpur, Kahartoli Gali, Mahabir Asthan Lane, P.O. Begumpur, P.S. Chowk, District-patna-800009, Presently Posted as Assistant Engineer Under the Public Health Engineering Department, North Division, District-Nalanda at Biharsharif

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Bailey Road, Patna.
3. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Bailey Road, Patna.
4. The Executive Engineer, Public Health Engineering Department, Government of Bihar, Bailey Road, Patna.
5. The Engineer-in-Chief-Cum Special Secretary (Investigation) Conducting Officer), Public Health Engineering Department, Government of Bihar, Patna.
6. Krishna kumar Bhargava Son of not Known to the Petitioner, Presently Posted as Assistant Engineer (Civil), Public Health Engineering Department, Awar Pramandal, Daudnagar, Aurangabad (Promoted to the Post of Executive Engineer at Bhagalpur East, Bhagalpur.
7. Md. Naseem Nazar, Son of not Known to the Petitioner, Assistant Engineer, Public Health Engineering Department, Awar Pramandal, Barsoi, (Katihar) (Promoted to the Post of Executive Engineer at Katihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajay Prasad, Adv
For the State : Mr.Vishwambhar Prasad, AC to AAG 5

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 26-07-2023 Heard learned counsel for the petitioner and learned counsel for the State.

2. At the very outset, learned counsel for the petitioner submits that relief (i) i.e., for quashing the Notification



Patna/dated 18.01.2023 issued under the signature of Joint Secretary, Public Health Engineering Department, Government of Bihar (Respondent No.3) by which respondent Nos. 6 and 7 alongwith some others were promoted to the post of Executive Engineer, is not being pressed in the instant proceedings.

3. The petitioner claims promotion from the post of Assistant Engineer to Executive Engineer. He submits that he has been overlooked while issuing notification dated 18.01.2023.

4. A counter affidavit has been filed on behalf of the respondent Nos 2 and 5 wherein, there is specific stand taken that charge memo was issued to the petitioner under Resolution no. 702, dated 03.05.2019. In view of the pendency of such proceedings, the petitioner would not be entitled to promotion till such time the proceeding is concluded.

5. Leaned counsel for the State fairly submits that should any process be conducted in the meantime, having regard to decision of the Apex Court in case of ***Union of India & Ors. vs. K.V. Jankiraman*** reported in ***1991 4 SCC 109***, the petitioner's claim though may be considered by the DPC, but the result would not be available as the same would remain in sealed cover till conclusion of the proceedings. Having made



such submission, he further states that Annexure 1 notification dated 18.01.2023, is not an order of promotion and it is only handing-over charge of certain posts to certain Assistant Engineers in their own pay-scale. This fact is evident from bare perusal of notification dated 18.01.2023 (Annexure 1). This Court would also take notice of the specific stand in the counter affidavit that there being a general embargo on grant of promotions, the exercise of promotion/ DPC can only be done after the embargo is lifted.

6. The facts and circumstances, taken note of above, is not disputed by the learned counsel for the petitioner.

7. In the above noted facts and circumstances, there is no occasion for this Court, at the moment, to issue any direction for confirmation of the petitioner's services or his promotion. No case is made out. Writ petition is dismissed.

8. In the meantime the authorities should conclude the disciplinary proceedings since the admitted position is that the petitioner has submitted his reply to the second show-cause on 02.05.2022 (Annexure 6) and the fact is admitted by the respondents in their counter affidavit that final decision is pending in the departmental proceedings. The final decision should, in the opinion of the Court, be taken positively within



eight weeks from the date of receipt/production of a copy of this
order.

(Madhuresh Prasad, J)

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