

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7960 of 2012

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RAMJI PRASAD Son Of Late Raghuni Singh Resident Of Mohalla-New
Punaichak, 57/84 Officers Flat, P.S. Shastri Nagar, District-Patna

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Chief Secretary, Old Secretariat, Govt. Of Bihar, Patna
3. Commissioner-Cum-Secretary, Building Construction Department, Govt. Of Bihar, Patna
4. Commissioner-Cum-Secretary, Personnel and Administrative Reforms Department, Govt. Of Bihar, Patna
5. Joint Secretary, Building Construction Department, Govt. Of Bihar, Patna
6. Deputy Secretary, Building Construction Department, Govt. of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar, Advocate
For the Respondent/s : Mr. Rajendra Kr. Jha, GP-18

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 20-12-2023

Heard Mr. Pramod Kumar, learned counsel appearing on behalf of the petitioner and Mr. Rajendra Kumar Jha, GP-18, learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for the following reliefs :-

*“(a) The order under memo No. 640 (Bha)
dated 24.01.2012 passed by the Deputy Secretary
(respondent no. 6) be quashed.*



(b) By issue of an appropriate writ, the respondents be commanded/directed to fill up the post of Chief Architect in the Building Construction Department under Government of Bihar and issue notification making permanent/regular appointment of the petitioner on the said post and also to issue notification with respect to appointment of the petitioner as Senior Architect.

(c) The respondents be commanded/directed to issue notification of the petitioner for the post of Senior Architect and then to issue notification for the post of Chief Architect with effect from respective dates when the petitioner has been appointed on those posts on officiating basis or under working arrangement.

(d) The petitioner be allowed all the consequential benefits for pay, increment and other incidental financial benefits for the said post of Senior Architect and Chief Architect with effect from the date the petitioner has been discharging the function on those posts and the arrears of salary etc. be paid



*within the time fixed by this Hon'ble Court by issuing
an appropriate writ.*

*(e) Any other relief or reliefs which the
petitioner be found entitled to be granted to him.*

3. The learned counsel for the petitioner submits that the petitioner was appointed as an Architect Assistant on 10.11.1967 and after recommendation of the BPSC he was confirmed on that post from 11.11.1969. The petitioner was promoted as Assistant Government Architect on ad-hoc basis which came to be regularized on 18.11.1974 on recommendation of the BPSC. The petitioner was a senior most Assistant Government Architect in the State of Bihar and the post of Senior Architect was lying vacant for which the petitioner was eligible and entitled. The petitioner has filed his representation to fill up the said post of Senior Architect by promotion. The matter of petitioner for promotion to the post of Senior Architect for consideration of the department and the Chief Architect on being called to give his opinion, the Chief Architect had given opinion that the post may be filled up with petitioner. The post of Senior Architect in the district of Bihar was lying vacant and the petitioner was the senior most Assistant Government Architect. The department had directed the petitioner to discharge the



function of Senior Architect under working arrangement vide notification under Memo No. 3369 dated 17.08.1988. He continued to discharge his duties as a Senior Architect satisfactorily. Despite availability of vacancy in the next promotional post of Chief Architect, on retirement of the previous incumbent on 31.10.1997, the petitioner was asked to discharge his duties as Chief Architect in addition to his duty as a Senior Architect and the petitioner was superannuated from the post of Senior Assistant Government Architect while holding officiating charge of the Senior Architect and Chief Architect.

4. The petitioner fulfills the eligibility and condition of promotion to the post of Senior Architect and Chief Architect. Vacancy being available, the respondents in their interest gave him officiating charge without giving the benefits of the higher post. In this manner, the petitioner was superannuated from the post without having the benefits of the promotion holding the substantive post of Assistant Government Architect. When the petitioner filed his explanation to the respondents but the respondents had not taken any action when the petitioner had filed CWJC No. 11735 of 2002. In the aforesaid writ petition, the State has filed a counter affidavit and in the counter affidavit there was no mention of the fact that the post of senior Architect was created



for any reserve category candidate and that the petitioner was not entitled for the post on that account and the previous proceeding i.e. CWJC No. 11735 of 2002 the State has not taken such stand that the post in question was created for any reserved category candidates or that for any such reason the petitioner was not entitled for promotion as claimed by the petitioner.

5. The aforesaid CWJC No. 11735 of 2002 was allowed but the State has filed LPA No. 1394 of 2009 against the order dated 05.03.2009 passed in C.W.J.C. No. 11735 of 2002. The judgment of the writ court was modified vide order dated 18.07.2011 and matter was let upon to be considered by the respondents about promotion to the post of Senior Architect and Chief Architect.

6. Pursuant to the order passed in LPA No. 1394 of 2009, the Deputy Secretary, Building Construction Department vide order dated 24.01.2012 has been pleased to reject the claim of the petitioner and made out a new case which was never come before this Court in the previous proceeding i.e. CWJC no. 11735 of 2002.

7. Learned counsel for the petitioner submits that in view of the Provision under Rule 103 of the Bihar Service Code, 1957 which reads as follows:



“103. The pay of a Government servant appointed by the State Government to hold substantively, as a temporary measure, or to officiate in, two or more independent post at one time shall be regulated as follows:-

(a) the highest pay to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post;

(b) for each other post he may draw such reasonable pay, in no case exceeding half the presumptive pay (excluding overseas pay) of the post, as the State Government may fix; and

(c) if a compensatory allowance is attached to one or more of the posts he may draw such compensatory allowance as the State Government may fix provided that such allowance shall not exceed the total of the compensatory allowance attached to all the posts.”

8. Learned counsel for the petitioner further relied upon paragraph nos. 6, 7, 8 and 9 of a Division Bench judgment reported in 2008(3) PLJR 144 (Prafulla Ranjan Shrivastava Versus State of Bihar), which are quoted hereinunder :



(6.) Learned counsel for the petitioner has rightly relied upon the judgment of the Supreme Court in the case of Secretary-cum-Chief Engineer V/s. Hari Om Sharma, 1998 5 SCC 87. Dealing with a comparable situation, the Supreme Court observed as follows:

"6. Having regard to these facts, we are of the view that the Tribunal was fully justified in ordering that the respondent shall be promoted on the basis of "quota" fixed for non-diploma-holders with 10 years of service and not on the basis of integrated seniority. The Tribunal was also justified in ordering payment of salary to the respondent for the post of Junior Engineer I with effect from 1990 when he was made to work on that post. It is true that the respondent, to begin with, was promoted in stop-gap arrangement as Junior Engineer I but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since



1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.

7. Learned counsel for the appellant has placed reliance on Sreedam Chandra Ghosh V/s. State of Assam, 1996 10 SCC 567 as also on State of Haryana V/s. S.M. Sharma, 1993 Supp3 SCC 252, to contend that since the respondent was promoted on the basis of stop-gap arrangement, he could not claim promotion as a matter of right nor could he claim salary for the post of Junior Engineer I as he was given only current duty charge of that post. Both the contentions cannot be accepted. The Tribunal has already held that the respondent having been promoted as Junior Engineer I, though in stop- gap arrangement, was continued on that post and, therefore, he has a right to be considered for regular promotion. Having regard to the facts of this case, there is no reason to differ with the Tribunal.

8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stopgap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stopgap arrangement, he would not claim promotion



as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stopgap arrangement is made to place him on the higher post he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.



(7.) Learned counsel for the petitioner has equally rightly relied upon the judgment of the learned Single Judge of this Court in Dr. Sachita Kumar Sinha V/s. The State of Bihar and Others, 1995 1 PLJR 362, which also dealt with a comparable situation. A Deputy Director of Secondary Education was asked to discharge the duties of Additional Director (Secondary Education), in addition to his own work for over 3 years prior to reaching the age of superannuation but was denied the benefits available to Additional Director. Relying upon the judgment of the Supreme Court as well on a consideration of Rules 58 & 103 of the Code, the learned Single Judge allowed the writ petition and directed the respondent authorities to allow the petitioner the pay scale admissible to the Additional Director with consequential reliefs of arrears of differential amount of salary and payment of retiral benefits. Para-15 of the judgment is reproduced herein below for the facility of quick reference:

"Therefore, I am unable to uphold the pleas raised by the learned counsel for the respondents and I allow this writ application by directing the respondents to pay to the petitioner the salary and other allowances



for the work taken from him for the post of Additional Director of Secondary Education from 6.8.1988 to 9.5.1990 and for the post of Director of Secondary Education from 10.5.1990 till 31.12.1991 on the basis of the revised scale of pay as stated above after deducting the amount already paid. I further direct the respondents to pay the retirement benefits of the petitioner on the basis of his pay as Director, Secondary Education. The respondents are further directed to make the aforesaid payment within a period of three months from today and fix the pension of the petitioner and other retirement benefits, as aforesaid, within a period of four months from date."

(8.) In our view, Rule 103 of the Code was intended to take care of a situation where an employee was given additional charge on a purely temporary and transitional basis, where permanent arrangement was not required, or for a period or pending finalization of the permanent arrangement.

8.1) A number of cases are coming up before this court where the Government has not taken steps to fill up the higher post on a permanent basis.



Furthermore, Rule 103 of the Code does not, to our mind, seem to contemplate a situation where the additional charge of a higher post is given. Perhaps Rule 103 covers cases of equivalent or coordinate post. In this connection, we may usefully reproduce para-12 of the judgment in Dr. Sachita Kumar Sinha (supra);

"12. There is also another aspect of the matter inasmuch as the Supreme Court has repeatedly asked the State to act as a model employer. In a welfare State where the Government is one of laws and not of men, the role of a model employer of the State is not at all compatible with its action in the present case, namely, getting the work for higher posts discharged by the petitioner and at the time of making payment trying to defeat the claim of the petitioner by raising all sorts of, if I may say so, without any disrespect, specious pleas."

(9.) In the result, we respectfully disagree with the order of the learned writ court. The writ petition is allowed. The petitioner shall be entitled to the pay scale admissible to the Chief Town Planner, for the period



8.2.1996 to 31.1.1997. He shall accordingly be entitled to the differential amount of salary and post retirement benefits.”

9. The eligibility of the petitioner to the promotional post is not denied by the respondents. The availability of sanctioned vacancy against which the petitioner was asked to officiate on both the promotional post is also not in controversy and the State Government has taken a new stand while rejecting the claim of the petitioner that the post in question was for reserved category candidates and on the sole ground the claim of the petitioner has been rejected.

10. In the aforesaid background the respondents have taken a new stand in the writ petition, which stand was never come in the previous proceedings i.e. C.W.J.C. No. 11735 of 2002 and the judgment of this Hon’ble Court reported in **2008 (3) PLJR 144**, the order dated 24.01.2012 (Annexure-11) is set aside and the respondents are, therefore, directed to pay him the full wages of the post of Senior Architect less what was paid to him from the date that he commenced to discharge his duties in the capacity on officiating basis and also full pay for the post of Chief Architect from the date that he next discharged his duty in that officiating capacity. Accordingly, the petitioner shall be entitled to re-fixation



of the pension and other retiral dues on the basis that he was last holding the latter post on the applicable pay scale.

11. The writ petition stands allowed with the aforesaid direction.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
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